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AN EXAMINATION OF DETERRENCE THEORY OF PUNISHMENT IN THE ENFORCEMENT OF JUVENILE JUSTICE IN NIGERIA

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Abstract

Deterrence theory is regarded as a very significant theory of criminal jurisprudence in Nigeria, premised on the belief that fear of punishment prevents crime. This theory has influenced the policies, laws, and practices aimed at safeguarding the welfare of juveniles and juvenile offenders. This paper examines this theory of punishment and its application in Nigeria's juvenile justice system. It briefly studies the evolution of the theory and its influence in the Nigerian criminal justice system. It assesses the effectiveness of the theory in the existing legal framework and correctional practices while appreciating the Nigerian approach to juvenile offenders. This paper adopts the doctrinal methodology of study. It relies on statutes, textbooks, articles, and other relevant literature in its study of the application of the theory within the Nigerian juvenile justice system. It identifies gaps between the theoretical and practical implementation of this theory as a significant factor in the attainment of a juvenile justice system of accepted international standards. By exploring these aspects, the paper finds that deterrence contributes to prison overcrowding, neglects rehabilitation, and fails to sustainably reduce crime. The paper concludes by advocating for restorative and rehabilitative justice as more effective alternatives attuned to international standards.

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1. INTRODUCTION

The juvenile justice system is a part of the criminal justice system in Nigeria. It was established to address the need to enforce social order among children, juveniles, and young persons by ensuring that juvenile offenders are treated differently from adults in criminal matters.[1] One of the methods the system employs to achieve this is by prescribing punishments that will serve as a deterrent to future offenders. The deterrence theory of justice has long been a cornerstone of criminal jurisprudence, premised on the belief that fear of punishment prevents crime. It has significantly influenced the juvenile justice system of Nigeria. However, its practical application has revealed significant shortcomings, particularly in contexts such as Nigeria's juvenile justice system.

This paper examines the theory of Deterrence, its origins, its advantages and disadvantages, while highlighting the inefficacy, ethical limitations, and systemic consequences of its application in children, juveniles, and cases involving young persons in modern times. The paper finds that deterrence, while theoretically appealing, fails to address the complex realities of crime and justice for and with juveniles. Instead, deterrence contributes to prison overcrowding, neglects rehabilitation, and fails to sustainably reduce crime. The paper adopts a doctrinal methodology of study. It relies on statutes, textbooks, articles, and other relevant literature in its study of the application of the theory in the Nigerian juvenile justice system. It identifies aspects of the system that need reform due to existing gaps between the theoretical framework and practical implementation. By exploring these aspects, the paper concludes by advocating for

[1] EEO Alemika, I C Chukwuma, Juvenile Justice and Administration in Nigeria: Philosophy and Practice, CLEEN,2001 (Ikeja, Lagos) ISBN: 978-35160-3-5, p. 10

restorative and rehabilitative justice as more effective alternatives attuned to international standards.

2. DEFINITION OF TERMS

i. Child

Section 2 of the Children and Young Persons Act [2] provides that a juvenile is a child and a young person. It defines a child as one under the age of 14 years and a young person as one who has attained the age of 14 years but is below the age of 17years.

The Child Rights Act [3] defines a child as a person who has not attained the age of eighteen years. In like manner, the Administration of Criminal Justice Act[4] provides that a 'child' means a person who has not attained the age of eighteen years.

This paper observes that both the Criminal Code (CC) and the Penal Code (PC) of Nigeria do not define who a child is, but both codes adopt the minimum age principle and state the ages for exemption from criminal responsibility. For example, by s.30 CC, a person under the age of seven is not criminally responsible for any act or omission.[5] A person under the age of twelve years is not criminally responsible for an act or omission, unless it is shown that he had capacity to understand the gravity of his act or omission at the time of doing the act or making the omission.[6] Similarly, the PC provides to the effect

[2] CYPA, Cap C14 Laws of the Federation (LFN) 2004
[3] Childs Rights Act 2003, Section 277. This is similar to the provisions of Article 1 of the United Nations Convention on the Rights of the Child (UNCRC) 1989 and Article 2 of the African Charter on the Rights and Welfare of the Child
[4] 2015. S. 494. This Act applies uniformly to Federal courts across Nigeria and courts within the Federal Capital Territory (FCT). Many states have also adopted their own versions, known as Administration of Criminal Justice Laws (ACJL).
[5] Criminal Code Act, Cap. C38, LFN,2010
[6] Section 30 (a) The Penal Code (Northern States) Federal Provisions Act, 1960, formally cited as Cap 89 Laws of Northern Nigeria 1963.

that a child under seven years of age cannot commit an offence, likewise 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.[7] Ordinarily, the simple interpretation of s.30 of the CC and s.50 of the PC is that a child below the age of seven has immunity from criminal responsibility simpliciter and a child below the age of 12 is not criminally responsible for an act or omission unless he knows and understands what he was doing at the time of doing the act or making the omission. This means, therefore, that where it is shown that a child below the age of twelve exhibits that he knows not to do the act or make the omission, that child will be held criminally responsible.

The Violence against Persons (Prohibition) Act 2015 also failed to define who a child is.

Nevertheless, this paper adopts the definition of a child as anyone under the age of eighteen, as defined by the CRA.

ii. Juvenile

A juvenile is a young person, typically someone who is not yet old enough to be legally considered an adult, usually under the age of eighteen, and who may be subject to special legal procedures and protections.[8] Section 2 of the Criminal Procedure Act defines a "Juvenile offender" as an offender who has not attained the age of seventeen years.[9]

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[7] Section 50 (b)

[8] A Imosemi,'Child/Juvenile trials under Criminal Justice Administration in Nigeria: An Urgent Compulsions for Reformation.' (International Journal of Law, 2018). https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url [accessed March 19, 2025].

[9] Criminal Procedure Act, Section 2.

In legal terms, a juvenile is a person who has not reached the age of majority, typically defined as 18 years old, and who is subject to the juvenile justice system rather than the adult criminal justice system.[10]

iii. Young person

A "young person" generally refers to someone in the early stages of life, typically encompassing adolescence and early adulthood, with the exact age range varying depending on cultural and societal norms. In legal contexts, who a "young person" is can vary depending on the jurisdiction and the specific law being applied. For example, Section 59 of the Labour Act defines a young person as "a person under the age of eighteen years."[11] This paper shall use the terms interchangeably to refer to anyone under the age of eighteen years.

iv. Adult

In Nigeria, an adult is someone who has attained the age of 18years. Once an individual reaches adulthood, they gain full legal capacity to enter contracts, be held fully accountable for criminal offenses, and exercise civil rights such as voting and marriage, subject to applicable laws.

v. Crime

A crime is the intentional commission of an act specifically prescribed as forbidden and prohibited in a society. [12] It operates beyond the realm

[10] A Imosemi,'Child/Juvenile trials under Criminal Justice Administration in Nigeria

[11] The Act provides specific protections for young persons in employment, prohibiting their engagement in hazardous work and restricting night work.[11] It differentiates between children (under 12 years), who are generally prohibited from employment, and young persons (12 to 18 years), who may engage in light work under regulated conditions. This definition ensures that young people receive legal protection from exploitative labour while allowing for appropriate vocational and apprenticeship opportunities.

[12] Britannica, 'Crime- Definition, Examples, Law & Criminology'< https://www.britannica.com/topic/crime-law> [accessed May 30, 2026]

of private hurt and is deemed a public harm that is liable to punishment.[13]

vi. Theory

A theory denotes the intellectual basis, philosophical rationalization, or coherent scheme underlying or explaining a subject.[14] In essence, a theory is the reason for a belief or an action.

vii. Juvenile Justice System

Black's Law Dictionary defines the juvenile justice system "as the collective institutions through which a youthful offender passes until any charge has been disposed of or the assessed punishment has been concluded. [15]

viii. Deterrence

The Black's Law Dictionary[16] defines Deterrence as the act or process of discouraging certain behaviour, particularly by fear; especially as a goal of criminal law. It is also defined as the prevention of criminal behaviour by fear of punishment.

3.0 THEORY OF RETRIBUTIVE JUSTICE AND DETERRENCE

a. Retributive Justice:

Retributive justice is believed to be the oldest theory of punishment. [17] Rooted in the primordial concept of vengeance, the ancient "an eye for an eye", it is premised on the belief that punishment should be

[13] Ibid
[14] R Gardiner, *International Law* (Pearson, Longman, 2003) p.30
[15] Garner B. 10th Edition
[16] Ibid
[17] D Carter, K Mclean, *Retribution, Introduction to the U.S. Criminal Justice System* (Penn State, Pressbooks) < https://psu.pb.unizin.org/criminaljusticemclean/chapter/9-2-retribution/> [accessed December 31, 2025]

proportionate to the offense committed.[18] The earliest records of this theory of justice being accepted by society can be traced as far back as the days of early Babylon.[19] Some of the first written forms of this justice policy were developed in early Babylonian law and have been found contained in the Code of Hammurabi.[20] Other ancient codes have been found to contain prescriptions for retributive justice as well. For example, the Holy Bible prescribes "an eye for an eye, a tooth for a tooth"[21] and the Holy Quran, which provides for proportionate punishments for offences like theft, murder, and injury.[22] The Romans, by the law of the Twelve Tables, recognised the concept of *Lex Talionis*, which roughly translates as the "law of retaliation" or the revenge for a wrong.[23] In many traditional Nigerian societies, retributive practices were evident in customary justice, where the community ensured that the punishment met the gravity of the offense.[24]

The law of the Twelve Tables marked the shift of retributive justice from private to public restitution, while maintaining its character of matching harm or wrong done.[25] These laws established restitution as the accepted method for many crimes and marked the beginning of state-involved justice, although victim retaliation was still a fallback

[18] Ibid
[19] Ibid
[20] Ibid
[21] Exodus 21:23-25, Leviticus 24:17-20 contain the order of retributive justice in Old Testament Israel.
[22] Surah Al-Ma'idah 5:45
[23] Britannica, "Retributive Justice", < https://www.britannica.com/topic/retributive-justice> [accessed November 25, 2025]
[24] D Garland, *Punishment and Modern Society: A Study in Social* Theory (University of Chicago Press) (1990).
[25] Avalon Project, The Twelve Tables, Yale Law School, Lilian Goldman Library < https://avalon.law.yale.edu/ancient/twelve_tables.asp> [accessed December 31, 2025]

option if restitution failed.[26] This legacy persists in the modern legal system of Nigeria, where retribution remains a compelling rationale for punishment. [27]Retribution favours the principle of fair deserts.[28]

Immanuel Kant is a known proponent of this theory.[29]. He invokes the principle of equality for punishment when he writes:

> *whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself.*
> *Thus, he who steals deprives himself (by the principle of retribution) of security in any property…. [and if] he has committed murder he must die.*[30]

By this, it is clear that Kant is of the view that retributive justice should apply to an offender because he deserves it and not because it would compensate the offended. Retributive legislation is characterized by punitive sentencing such as detention in remand homes or correctional institutions[31], detention in correctional facilities[32], use of corporal punishment, and also long custodial sentences.

Elements of retributive justice still exist within Nigeria's legal framework, in legislation like the Criminal Code Act (applicable in Southern States) and the Penal Code (applicable in Northern States).

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[26] Ibid
[27] D Garland, *Punishment and Modern Society: A Study in Social* Theory
[28] CO Okonkwo, *Okonkwo and Naish on Criminal Law in Nigeria*, (Spectrum Books Limited, (2nd ed) 2002) p.28. Fair or just deserts mean that offenders deserve a recompense commensurate to the harm caused, thereby balancing justice by restoring fairness rather than just deterring future crime.
[29] Stanford Encyclopedia of Philosophy, 'Retributive Justice' (2020) < https://plato.stanford.edu/entries/justice-retributive/> [accessed December 01, 2025]
[30] Ibid
[31] Section 9 of the CYPL, 1958 provides, among others, for the committal of juveniles for short sentences, often not exceeding six months, although the Minister can extend the mandate.
[32] Ibid

These codes provide for various forms of punishment, ranging from caning to long term imprisonment of offenders, depending on the gravity of their crimes; Sharia Penal Codes (applicable in the Northern States) contain provisions for penalties like caning, amputation, and, in some cases, death for specific offenses; the Administration of Criminal Justice Act (ACJA) 2015[33] retains the procedures of the formal prosecution, conviction, and sentencing (imprisonment) of offenders, among others. All these are aimed at making the offender 'pay back'.

This paper observes that retributive justice evolved from the primal desire for revenge to a state-supported concept aimed at ensuring that offenders are justly rewarded for their offences, and this just reward is naturally expected to serve as deterrence to future offenders.

b. Deterrence

Rooted in classical criminology, the theory of Deterrence was birthed in the 18th century, at an age when philosophers queried the then dominant criminological and religious systems of that time.[34] It argued that, contrary to the then-popular belief that human behaviour was predestined, human behaviour was the expression of individual free will and rational decision-making, which can only be moderated by rational thought and fear of consequences.[35]

3.1 Key proponents of this theory were:

a. Thomas Hobbes, who in his work, Leviathan, published in 1651, argued that men are neither good nor bad but are creatures of their own

[33] Section 17

[34] L Forrester, C Ruiz,' Classical Theories of Criminology: Deterrence', Griffith University, 'Introduction to Criminology and Criminal Justice'< https://griffithuniversity.pressbooks.pub/criminology-criminal-justice/chapter/classical-theories-deterrence/> accessed July 29, 2026]

[35] ibid

volition.[36] He disagreed with philosopher Thomas Aquinas' opinion that men naturally do good.[37] To Hobbes, the pursuit of self-interest, such as material gains, personal safety, and social reputation, is the basis upon which men conduct themselves, the result of which is often conflict (crime and war) and resistance without a fitting government to maintain public safety.[38] To avoid this, society enters into a social contract with the government for their protection; thus, it becomes the duty of the government or state to enforce the social contract.[39] Where an individual still goes on to commit a crime despite this contract, Hobbes proposed that the punishment then must be greater than the benefit that would have come from the commission of the crime.[40] Deterrence is the essence of punishment for violating the social contract, and it serves to maintain the agreement between the state and the people.[41]

b. John Locke, a British philosopher, was of the view that punishment of crimes committed was the right thing to do, as it was directly useful for procuring some greater good. [42]He argued that the power to punish crime is inherent in every man in his natural state. This power makes it possible for man's actions to deter others from repeating the harm and

[36] A K Shittu, R O Awo,' Deterrence and Elimination Theories of Crime, Content and Application within the Nigeria Justice System',(2021) vol.9 (5) The International Journal of Humanities & Social Studies, ISSN 2321 – 9203, p.268 https://www.internationaljournalcorner.com/index.php/theijhss/article/view/164569/113437 [accessed July 28,2026]
[37] Ibid
[38] Ibid
[39] Ibid
[40] Ibid
[41] Ibid
[42] O P Olayinka,' Deterrence: European Antecedent and Contemporary Perspectives', Benue State University Law Journal, Vol. 10. 2021, p. 352 https://bsum.edu.ng/journals/law/vol10/files/file18.pdf accessed June 15, 2026

to secure him from the unreasonable acts of others.[43] His writings reveal that Locke greatly favoured deterrence and retributive justice.[44]

c. Cesare Bonesana di Beccaria, marquis of Gualdasco and Villa regio (1738-94).[45] He first paved a shift in the thinking about human behaviour and justice. Drawing inspiration from Montesquieu's *Spirit of the Laws*, he argued in his essay, 'On Crimes and Punishment' that punishment should be rational, systematic and grounded in the principles of proportionality and protection of individual rights instead of arbitrary measures of punishment for he was of the view that the ultimate goal of punishment is deterrence.[46]

To Beccaria, laws are the conditions under which men who are naturally independent, united themselves in society in order to enjoy rest in peace and security.[47] All punishments, which exceed the necessity of preserving this bond, are in their nature unjust.[48] It is in the best interest of human society that there is a reduction in the commission of crimes and so the measures employed by the legislature should be severe enough and proportionate enough to deter offenders.[49]

d. Beccaria's view was supported by Jeremy Bentham whose writings on utilitarianism and penal reform further advanced the idea of deterrence. Bentham was of the view that hedonistic calculus, which is

[43] Ibid
[44] Ibid
[45] C Beccaria,'On Crimes and Punishment (1764)', Historical Document, National Constitution Centre, https://constitutioncenter.org/the-constitution/historic-document-library/detail/cesare-bonesana-di-beccariaon-crimes-and-punishments-1764 [accessed July 29, 2026
[46] Ibid
[47] Ibid
[48] Ibid
[49] Ibid

the calculation of the pleasure or reward against the pain or consequence, is what shapes human behaviour.[50] This means that criminals are rational actors who decide to break the law only when they believe the benefits outweigh the consequences.[51] Like Beccaria, he also advocates that punishment should be swift, proportionate and severe enough to deter future occurrence.[52] To Bentham, this is essential to maintain social order.

The origins of deterrence in customary law administration is not certain. However, the use of deterrence as a means of establishing social order was also significant in indigenous customary law in pre-colonial Nigerian societies.[53] Customary law relied on restorative justice, communal shame, and spiritual fear to deter the commission of crimes and offences rather than state imprisonment.[54] Societies would employ measures such as ostracism, exile and boycott from communal life, public ridicule and shaming, spiritual sanctions, restitutions and compensations.[55] These measures were executed by chieves, heads of families and clans and sometimes, members of the age- group.[56] All these warned other members of the society to desist from behaviour deemed unacceptable in the society.[57]

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[50] S Aich, 'Bentham's Ideas on Crime',(2025) Scribd < https://www.scribd.com/document/832582302/Bentham-Ideas-on-Crime> [accessed July 28, 2026]
[51] Ibid
[52] Ibid
[53] O S Afatakpa,' Traditional Igbo Concepts of Justice and Punishment: A Cultural Analysis', *Perinola Journal*, ISSN: 1342-0267 Volume 15, Issue 11, 2025 < https://www.researchgate.net/publication/397961944_Traditional_Igbo_Concepts_of_Justice_and_Punishment_A_Cultural_Analysis> accessed July 28, 2026
[54] Ibid
[55] Ibid
[56] Ibid
[57] Ibid

The theory of Deterrence has since shaped criminal justice systems worldwide, Nigeria not being an exception.

3.2 Deterrence Theory in Nigerian Criminal and Juvenile Legislation

Nigerian criminal law system is significantly influenced by the Deterrence theory with the aim to not only punish the offender but to also deter the public from the commission of same. It reflects in severe penalties like the death sentence for serious offences such as murder,[58] treason,[59]culpable homicide punishable with death[60] and armed robbery.[61] Anti-corruption laws equally prescribe strict penalties such as long prison terms, forfeiture of assets and imposition of heavy fines in a bid to deter corrupt practices among officials, public and private.

The rules vary with respect to juvenile justice. Given their developmental stage and inherent immaturity, juveniles are particularly vulnerable and thus require a justice system that recognizes their unique circumstances.[62] The juvenile justice system is established to address this need by ensuring that juvenile offenders are treated distinctly from adults.[63] It encompasses all government agencies that investigate, adjudicate, supervise and where necessary, confine juveniles who are guilty of committing crimes. Its focus is the overall welfare of the child or juvenile in such cases.[64]

[58] S. 319 Criminal Code (CC)
[59] S. 37 CC
[60] S.211 Penal Code (PC)
[61] S.1(2) Robbery and Firearms (Special Provisions) Act
[62] Ibid
[63] Ibid
[64] Ibid

The Court in *Okoro v. State,*[65] laid down the steps to be observed where juveniles are offenders. It emphasised that it is the duty of a trial court duty to inquire into the age of an accused person only arises when the offender appears to be a juvenile. This is because the law prohibits the death penalty for juvenile offenders. These are:

a. Confirmation of Age Where the Offender Appears to be A Juvenile:

In *State v Dau*,[66]the respondent was convicted for culpable homicide punishable with death and sentenced to fifty years imprisonment after conviction by the trial court. At the time of sentencing, the respondent was fourteen years old and had been imprisoned for sixteen years since then.

The Appeal court held that the conviction of the appellant by the trial court was wrong and illegal since he was a minor at the time of the commission of the offence. The Court ordered his discharge and release from prison. The Court, per Ariwoola, reasoned that:

> *the draftsmen of section 272(2) of the Criminal Procedure Code and section 12 of the Children and Young Persons Act had a good reason for absolving children and young persons from criminal liability. One of the reasons is that a child lacks the power of self-control and to understand the full import of a criminal act. If a sudden temper can cause an adult to lose control of his mind temporarily, how much more is a child? In the instant case, the respondent committed the offence whilst yet at the Age of criminal irresponsibility provided under section 272(2) of the Criminal Procedure Code and section 12 of the Children and Young Persons Act. Therefore, it would amount to grave injustice on the respondent to either pronounce capital punishment on him*

[65] (1998) 4 NWLR (Pt. 544) 115 C.A
[66] (2022) 9 NWLR (Pt. 1834) SC

> *or incarcerate him for life for an offence which he committed whilst under seventeen years of age and whilst temporarily deprived of the power of his self-control.* [67]

b. **Age of Criminal Responsibility**:

It is the law that capital offences are offences punishable by death in Nigeria. Where an accused person in a criminal trial is considered an adult, there is no duty on the court to inquire into his age.[68] However, where he appears to be a juvenile, the Court has a duty to inquire into his age to assess the extent of criminal responsibility.[69] Anyone less than seventeen years is a juvenile.[70]

The juvenile system does not prescribe the death penalty for children, juveniles and young persons. Section 319 (2) CC provides that an offender who is a minor and who is found guilty of a capital offence sentence of death shall not be put to death but detained at the Governor's pleasure. These procedures ensure that the statutory exception to the law as it concerns children and juveniles is observed.

The courts sometimes rely on deterrence when juvenile conduct threatens public safety. In *Uwa v. The State,*[71] a juvenile was convicted of armed robbery and the question arose whether section 319(2) CC would avail him. The Court of Appeal upheld a custodial sentence, noting that while the increase in crimes committed by youths needed a deterrent, the sentence must not be as severe as that imposed on adults. However, it was of the opinion that the remand of the juvenile would serve as a deterrent.

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[67] Pp. 82-83, paras. H-C."
[68] *Okoro v State*, n.65
[69] *State v. Dau,* n.66
[70] Ibid
[71] (2013) LPELR-21817(CA).

Nonetheless, the system adopts some deterrent measures for children, juveniles and young persons who commit crimes and offences. For example, section 295 of the Criminal Code Act and section 55 of the Penal Code confirm the right of parents to use force to "correct" their children by corporal punishment.

3.0. LEGAL AND INSTITUTIONAL FRAMEWORK

The juvenile justice system of Nigeria is a coalesce of local legislations and international conventions. These include the Child Rights Act 2003, the Criminal Code Act, the Penal Code, the Children and Young Persons Act/ Law, the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, among others.

a. **The Children and Young Persons Act[72]:**

The Children and Young Persons Act (CYPA), enacted in 1943, was Nigeria's first child-specific legislation on juvenile justice.[73] Its stated purpose is "to make provision for the welfare of the young, and the treatment of young offenders and for the establishment of juvenile courts.' Under the terms of the Children and Young Persons Law (CYPL), there are three categories of children who may become involved with the juvenile justice system: *children in conflict with the law* (those who have committed crimes similar to adult crimes), *children in need of care and protection* (those who have been abandoned or left destitute by their parents, or children of criminals, beggars or destitutes), and *children beyond parental control* (those

[72] CYPA, Cap C14 Laws of the Federation (LFN) 2004(used interchangeably with the Children and Young Person's Law)

[73] TT Bella, O Atilola & OO Omigbodun, "Children Within the Juvenile Justice System in Nigeria: Psychopathology and Psychosocial Needs", Annals of Ibadan Postgraduate Medicine (2010 Jun) (8) (1):34–39. doi: 10.4314/aipm.v8i1.80344 < https://pmc.ncbi.nlm.nih.gov/articles/PMC4138769/> [accessed March 30, 2026]

brought to the attention of the authorities by their parents and are alleged to have engaged in minor criminal activity as well as truancy and running away from home).

While it established juvenile courts and correctional institutions (remand homes, approved schools and borstals) for custody and rehabilitation, in practice, its provisions leaned heavily on punishment and institutionalization rather than rehabilitation, making it a penal-oriented framework.[74]

b. **The Criminal Code and the Penal Code:**
These Codes do not recognize offences by anyone younger than seven years of age and only of persons above seven years, under special circumstances. However, they both contain provisions for the arrest, detention and trial of juveniles, which provisions tilt more in favour of deterrence and retribution than rehabilitation. These codes are still operative in States that have yet to domesticate the CRA.

c. The Child Rights Act 2003:
This is the most recent and arguably the most comprehensive legislation on juvenile justice in Nigeria. Domesticated from the United Nations Convention on the Rights of the Child (UNCRC), the Act not only defines who qualifies as a child, it also makes the welfare and best interest of the child its foremost consideration. Unlike the earlier legislation, the Act is more favourably disposed to the theory of Rehabilitation and Reintegration. Like earlier legislation, it provides for juvenile courts, diversionary measures, and prohibits capital punishment or life imprisonment for children.

[74] Ibid

d. **United Nations Convention on the Rights of the Child (UNCRC):**

Ratified by Nigeria in 1991, the UNCRC by its Article 40, provides for the administration of justice for juvenile offenders. It provides that respect for human rights, the age of the child and desirability of promoting the reintegration of the child to assume a constructive role in society should be primary considerations in juvenile justice administration.[75] The Act is very clear on its approach to juvenile justice administration. It mandates a rehabilitation approach to juvenile offenders. This approach is essentially the spirit of the CRA.

e. **African Charter on the Rights and Welfare of the Child (ACRWC):**

The ACRWC was ratified by Nigeria in 2001. It sets the standards for the protection and treatment of children in Africa. The Charter provides that imprisonment of child offenders should be only as a last resort. It favours education, rehabilitation and reintegration, like the UNCRC.

Nigeria's institutional framework for juvenile justice includes:

a. Judiciary and Juvenile Courts

The Judiciary is responsible for interpreting and applying laws, with the Supreme Court being the final court of appeal. The judiciary plays a critical role in Nigeria's juvenile justice system by ensuring that the legal and procedural rights of child offenders are protected while promoting fair and rehabilitative justice.[76] It draws its powers from the

[75] CRIN, "Article 40: Administration of Juvenile Justice", < https://archive.crin.org/en/home/rights/convention/articles/article-40-administration-juvenile-justice.html> [accessed March 30, 2026]

[76] Edorsa Enaruna, "The Judiciary as an Organ of Government" *An International Multidisciplinary Journal, Ethiopia* Vol. 8(3), Serial No. 34, July, 2014:92-101. https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ajol.info/index.php/afrrev/article/view/107502/97365&ved=2ahUKEwjVobjB

Constitution, the CRA 2003, and the ACJA, which mandate courts to adopt child-sensitive procedures in handling juvenile cases. ensuring that juveniles are tried in a manner that prioritizes their welfare, reintegration, and rehabilitation over punitive measures.[77]

Through the juvenile courts, the judiciary ensures the application of various punishment theories, particularly rehabilitative and restorative justice, in juvenile cases.[78] Judges are empowered to apply alternative sentencing mechanisms such as diversion programmes, probation, community service, and correctional training, instead of incarceration. Additionally, through judicial interpretations, courts uphold constitutional safeguards, such as the right to fair hearing[79] and protection against cruel and degrading punishment[80] ensuring that punishment imposed on juveniles is proportionate, just, and aimed at reform rather than retribution.

b. The Nigerian Correctional Services (NCoS)

The Nigerian Correctional Service, is statutorily empowered to take into lawful custody all those duly certified to be offenders by courts of competent jurisdiction. Established under the Nigerian Correctional Service Act, 2019,[81] the agency is responsible for ensuring that juveniles who come into conflict with the law are detained in

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[77] Ibid

[78] First established under the CYPA and recognized by subsequent legislation, juvenile courts exist to handle matters that concern children, juveniles and young persons. Proceedings are meant to be informal, protective, and rehabilitative.

[79] Section 36 of the 1999 Constitution

[80] Section 34

[81] Officially enacted as the Nigerian Correctional Service Act, 2019 (Act No. 9)), this is the primary legislation governing penal administration in Nigeria. The Act officially repealed and replaced the Prisons Act Cap. P29, Laws of the Federation of Nigeria, 2004

appropriate facilities and provided with rehabilitative programs that support their reintegration into society. Section 2 of the Act emphasizes rehabilitation and reformation over punitive measures, aligning with the rehabilitative and restorative theories of punishment that prioritize reforming offenders rather than simply punishing them.[82]

The NCoS ensures that juveniles are not detained in adult prisons but are instead housed in borstal institutions, remand homes, and approved schools, where they receive educational, vocational, and psychological support to aid their rehabilitation. Correctional Institutions, Approved Schools & Borstal Institutions.

i. Remand Homes

A remand home is a secure custody for short term custody of young offenders between the ages of 10 and 17 years who are either delinquent and beyond parental control or are awaiting trial or awaiting disposal for rehabilitation elsewhere after a guilty verdict.[83] Remand homes typically do not hold offenders for longer than three months.[84] Nigeria has remand homes situate in Lagos, Benue, Osun and Yobe states.[85]

ii. Approved Schools

These are schools set up to provide educational and reformatory facilities for children who have been processed through the juvenile justice system.[86] Their aim is to provide comprehensive rehabilitation

[82] Nigerian Correctional Services Act 2019, Section 2
[83] J J Olorunmola,'CSS 318: Correctional Centres and Correction of Offenders, n.67
[84] Ibid
[85] Ibid
[86] Ibid

for juveniles by providing vocational trainings and formal education as required.[87]

iii. Borstal Institutions

Borstal is a term having its origins in the United Kingdom.[88] They are reformatory institutions with regimented structure focused on re-educating older juveniles and young adults. Inmates typically serve up to 5 years.[89]

Nigeria has a limited number of functional Borstals, which are historically situated in Kaduna State, Ogun State and Kwara State.

c. **National Human Rights Commission (NHRC)**

Established under the National Human Rights Commission Act, 1995 (as amended) in 2010, the NHRC is an independent body responsible for ensuring that government agencies and private institutions protect, promote and enforce the fundamental human rights of citizens.[90] It also monitors juvenile detention facilities to prevent torture, inhumane treatment, and prolonged detention in order to ensure that juvenile offenders receive legal representation and fairness in trial.[91]

d. Non-Governmental Organizations (NGOs)

These are non- government, usually non – profit organisations which advocate for children's rights and work for the rehabilitation of children and juveniles – e.g. UNICEF Nigeria and Save the Children.

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[87] Ibid
[88] J J Olorunmola,'CSS 318: Correctional Centres and Correction of Offenders, n.69
[89] Ibid
[90] 'National Human Right Commission Mandate' <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.nigeriarights.gov.ng/about/nhrcmandate.html&ved=2ahUKEwiVydnD17yMAxUZYEEAHTLRLzoQFnoECBYQAQ&usg=AOvVaw25_SuD8JwS6dNT5hI3QeRr> [Accessed 2 April 2025].
[91] Section 34

e. Social Welfare Role: Limited involvement of welfare officers, with emphasis on custodial measures rather than community-based rehabilitation.

f. Law Enforcement Agencies

Police Juvenile Welfare Units handle child offenders, though often criticized for poor training and lack of child-sensitive procedures.

4. MERITS OF DETERRENCE IN JUVENILE JUSTICE

The greatest benefit of the theory of deterrence in juvenile cases, lies in its potential to dissuade future young offenders by the predictability, severity and certainty of unpleasant consequences for offenders.[92] It is only the rational choice to desist from crime when the negative consequences outweigh the benefits of commission.[93]

The establishment of boundaries on what is socially acceptable behaviour for the juvenile.[94] The unavoidable duty to give account and be held responsible for behaviour and actions can deter the commission of crime.[95] Explicit legal penalties for crimes tend to discourage negative behaviour and inclinations that pose risks to the individual and the society.[96]

The eventual outcome is reflected in fewer cases of juvenile delinquency, incarceration and rehabilitation which cost the institutions need for less resources and man- power in juvenile

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[92] L Forrester, C Ruiz, 'classical Theories of Criminology: Deterrence' in *Introduction to Criminology and Criminal Justice,* < https://griffithuniversity.pressbooks.pub/criminology-criminal-justice/chapter/classical-theories-deterrence/>[accessed August 25, 2026]

[93] Ibid.

[94] Ibid

[95] Ibid

[96] DL Myers,' Deterrence, as Delinquency Policy' in *The Encyclopaedia of Juvenile Delinquency and Justice,* (2017) < https://www.researchgate.net/publication/321166224_Deterrence_as_Delinquency_Policy> [accessed August 25, 2026]

criminal justice system.[97] The certainty of severe punishment also helps victims.[98] The conviction and removal of juveniles who pose threats to their safety and well-being provide significant redress.[99]

5. GAPS AND CHALLENGES

Deterrence theory has been criticized as not so effective for juveniles as many do not have the maturity to fully comprehend the gravity of their offences and the consequences.[100] Further, deterrence alone cannot explain or prevent crime, as social, psychological, and economic factors also play major roles.[101]

This paper observes that the non-domestication of the Child Rights Act in some states hinders the uniform application of restorative and rehabilitative approach to child offenders in Nigeria.[102] This creates significant disparities in how juvenile offenders are treated across different regions of the country.

Theories of punishment, particularly rehabilitation and restitution, are intended to guide juvenile justice procedures, yet the CYPA prescribed punishment and institutionalisation instead of rehabilitation and this has remained a significant influence on the approach to juvenile justice in practice. In addition, many juvenile courts lack specialized judges

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[97] L Forrester, C Ruiz, 'classical Theories of Criminology: Deterrence' in *Introduction to Criminology and Criminal Justice,* n. 92
[98] Ibid
[99] Ibid
[100] G James, "Assessment of the Administration and Practice of Juvenile Justice System in Abuja, Nigeria', (2013) (4) (1) Mediterranean Journal of Social Sciences, ISSN 2039-9340, pp.331-332
[101] Ibid
[102] In states where Sharia law applies, there have been instances where juveniles receive punishments that contravene international standards, such as flogging or even the death penalty in extreme cases.

and social workers, resulting in sentences that emphasize deterrence rather than reintegration.

The lack of adequate facilities that reflect in overcrowding, trained personnel, and funding hinders their effective implementation.[103]

Weak enforcement of the provisions of the CRA is another challenge. Police and courts often fail to apply child-sensitive procedures and prefer to adopt punitive measures over rehabilitation.

Stigma and social reintegration issues still exist. Many children face discrimination after release.

6. RECOMMENDATIONS

This paper recommends that the full domestication of the Child's Rights Act by all the states in the country to enable a uniform application of the rehabilitative theories of juvenile justice.

It recommends that trainings in best practices of child-sensitive procedures be provided for personnel of both law enforcement and the Courts. It further recommends that funding and investment in upgrade of rehabilitation facilities and vocational training. Finally, this paper recommends that collaboration between government, NGOs, and international agencies to ensure compliance with global standards should be encouraged.

7. CONCLUSION

Nigeria's juvenile justice system reflects a significant influence of Deterrence theory in its provisions and practices. However, the theory poses several challenges to the achievement of modern global ideals

[103] *Garland, Punishment and Modern Society*

for juvenile justice. Its strict implementation has led to overcrowded prisons, ineffective crime reduction, and ethical shortcomings. While reforms are underway, practical enforcement challenges mean that young offenders often experience punishment-focused justice rather than restorative interventions. A shift toward restorative and rehabilitative justice is necessary to address crime's root causes and promote sustainable justice.