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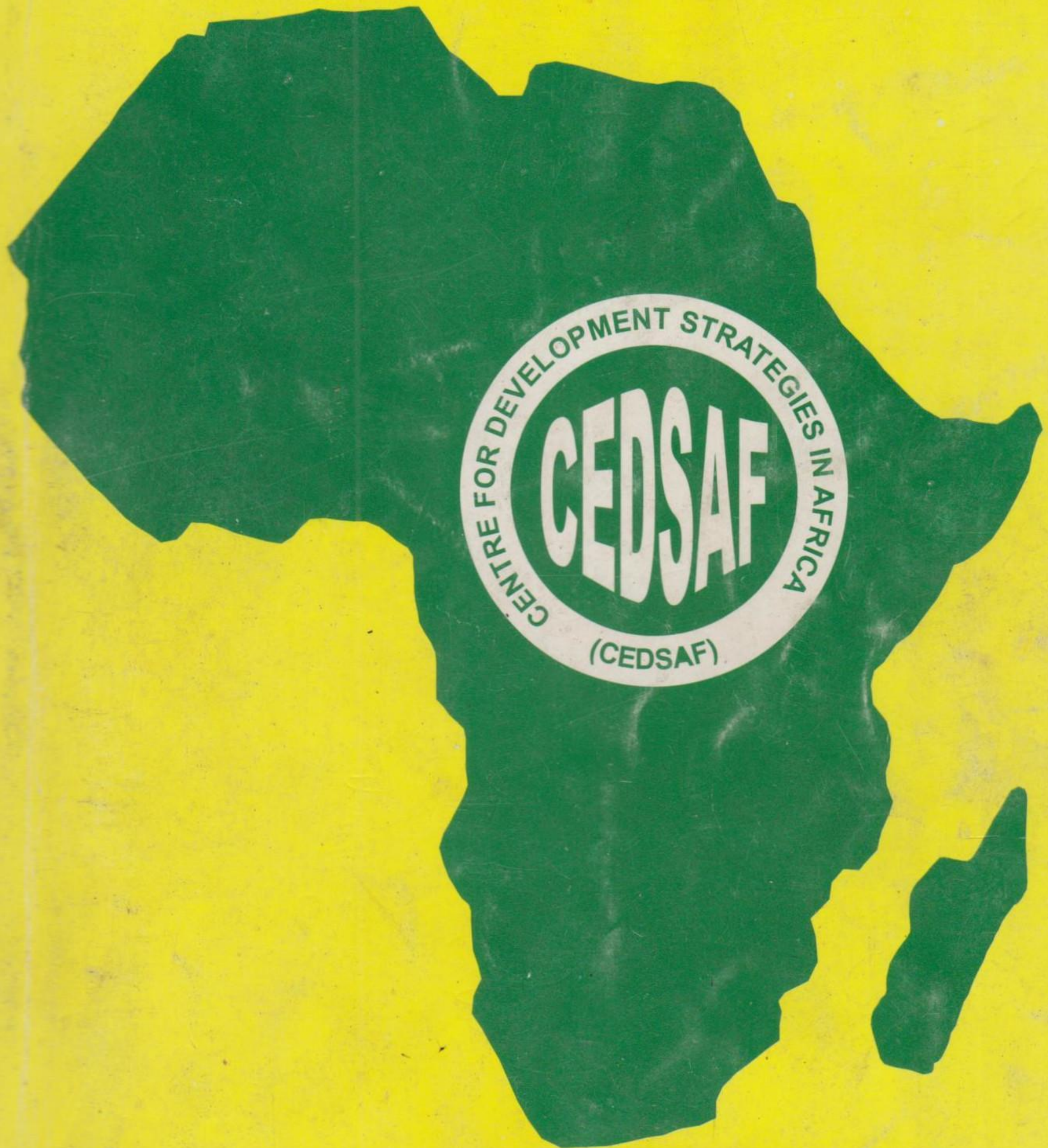

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NIGERIA AND INTERNATIONAL STANDARD OF CRIMINAL JUSTICE

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ABSTRACT

This article x – rays the concept, cannons, standards, modus oparandi and the territorial jurisprudence of International criminal justice as it affects the rights of the child and traces Nigeria's relationship with the relevant United Nations laws and her compliance. It theorizes that with the inherent weaknesses of the Nigerian legal system and inadequate capacity of the Nigerian criminal justice dispensation, the country, has been grossly unable to protect the rights of the Nigerian child. It therefore recommends amongst others that juvenile justice systems must be put in place to ensure that children in conflict with the law are treated appropriately and in line with recognized international standards for juvenile justice. Justice sector institutions must be gender sensitive and women must be included and empowered by the reform of the sector. Legal education , training and support for the organization of the legal community, including bar associations, are important catalysts for sustained legal development.

INTRODUCTION

Criminal Justice is a term used for "the series of suffocate steps" involved in proving any criminal activity like gathering evidence, arresting the accused, conducting trials, making defense, pronouncing judgment after the crime is proved and carrying out punishment. It can also be described as the system of law enforcement, the bar, the judiciary, correlations, probation that is directly involved in the apprehension, prosecution, defense, sentencing, incarceration, and supervision of those suspected of or charged with criminal offenses.

Criminal justice system differs from one country to the other and their response to antisocial behaviours is not always homogeneous. Africa is of course, no stranger to international justice initiatives, the most obvious example being the creation of the International Criminal Tribunal university applicable standards adopted under the auspices of the United Nations and must therefore serve as the normative basis for all Unitd Nations activities in support of justice and the rule of Law. United Nations norms and standards have been developed and adopted by countries across the globe and have been accommodated by the full range of legal systems of Member States, whether based in common law, civil law, Islamic law, or other legal traditions. As such, these norms and standards bring a legitimacy that cannot be said to attach to exported national models which, all too often, reflect more of the individual interests or experience of donors and assistance providers than they do the best interests or legal development needs of host countries. These standards also set the nominative boundaries of United

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Nations engagement, such that, United Nations tribunals can never allow for capital punishment, United Nations endorsed peace agreements can never promise amnesties for genocide, war crimes, crime against humanity or gross violations of human rights, and where we are mandated to undertake executive or judicial functions, United Nations-operated facilities must scrupulously comply with international standards for human rights in the administration of justice as contained in the United Nations Compendium of International Standards and Norms of Criminal Justice. United Nations instruments and standards related to international human rights law and combating crime are well developed and have an enormous influence on national (or domestic) criminal justice and criminal legislation. That influence is an integral part, on the one hand, of the internationalization and harmonization of the standards in protecting basic human rights and freedoms, on the other hand, of taking steps to combat crime, especially mounting organized crime. United Nations standards and instruments for the development of criminal justice and crime prevention are transforming the image of national criminal justice systems and criminal legislation. Such transformations can be noted not only in all modern, developed countries but in other countries, in particular those that joined the circle of countries in transition in the 1990s.

As far as criminal justice and combating crime are concerned, of the numerous international conventions, declarations and recommendations, the following universal international documents can be singled out:

- The declaration of Human Rights (1948)
- The International Covenant on Civil and Political Rights (1966) with additional protocols (1989).
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955).
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965).
- The Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (1984).

And by providing for determination of claims by competent judicial, administrative or legislative authorities, and to enforce such remedies when granted (art 2), the rule of law loathes arbitrariness in exercise of authority. The Convention thus explicitly prohibits arbitrariness in the deprivation of life (art 6), arrest and detention (art 9), exclusion from one's own country (art 12) and interference with privacy, family, home or correspondence (art 17 undertaken to take steps, with a view to achieving progressively the full realization of the rights recognized by all appropriate means... (art 2) to be sure, the rule of law is as vital to the protection of economic and social rights as it is to civil and political rights. For a legal system to ensure justice and the protection of the rule of law to all, it must incorporate these fundamental norms and standards for Rwanda (ICTR). However, over the years, the United Nations Standard and norms in crime prevention and criminal justice have provided a collective vision of how criminal justice should be structured and thus there exists the international standards of criminal justice. Despite their "soft-law" nature, these standards and norms have made significant contribution to promoting more effective and fair criminal justice

structures in three dimensions. Firstly, they can be utilized at the national level by fostering in depth assessments leading to the adoption of necessary criminal reforms. Secondly, they can help countries to develop sub regional and regional strategies. Thirdly, globally and internationally, the standards and norms represent "best practices" that can be adapted by States in meeting international criminal justice standards, including principally, the right to a fair trail, have been defined and guaranteed by no less than twenty global and regional human rights treaties and other instruments

THE UNITED NATIONS AND INTERNATIONAL STANDARDS OF CRIMINAL JUSTICE

Indeed, since its foundation, the United Nations has been active in the development and promotion of internationally recognized principles in crime prevention and criminal justice. Over the years, a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged, covering wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victim protection and violence against women. The United Nations Congresses on crime prevention and criminal justice have proved to be an invaluable source and driving force for this process. Indeed, the normative foundation in advancing the rule of law is the Charter of the United Nations itself, together with the four pillars of the modern international system: international human rights law, international humanitarian law; international criminal law and international refugee law. This includes the wealth of United Nations Human Rights and criminal justice standards developed in the last half century. These represent;

- The Basic Principles on the Independence of the Judiciary (1985); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985).
- The Declaration of Basic Principles of Justice for Victims and Abuse of Power (1985).
- The Convention on the Rights of the Child (1990).
- The United Nations Guidelines for the Prevention of Juvenile Delinquency (1990).
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).
- The United Nations Standard Minimum Rules for Non-custodial Measures (1990),
- The United Nations Declaration against Corruption and Bribery in International Commercial Transactions (1996).
- The United Nations Convention against Transnational Organized Crime (2000) amongst other conventions and regulation.

Highlighted below are selected conventions and regulations;

1) Universal Declaration on Human Rights, 1948

In 1948, the U. N. General Assembly adopted the Universal Declaration of Human Rights (Universal Declaration), which provides a worldwide definition of the human rights obligations undertaken by all U.N member states pursuant to Articles 55 and 56 of the U.N. Charter, including several provisions relating to the

administration of justice. For example, article 10 of the Universal Declaration states;

> ***"Everyone is entitled in full equality to a fair and public hearing by an independent tribunal, in the determination of his rights and obligations and of any criminal charge against him".***

Article 11 provide for the presumption of innocence, public trial, "all guarantees necessary for one's defense", and the right to be free retroactive punishment or penalties. Other provisions of the Universal Declaration, for example, as to arbitrary arrest, the right to an effective remedy; the right to be free from torture, the right to security of person and privacy are relevant to the criminal justice system and the fairness of the trial process.

2) International Covenant on Civil and Political Rights 1976

Following the adoption of the Universal Declaration, the U.N Commission on Human Rights drafted the international Bill of Human Rights, which includes the International Covenant on Civil and Political Rights (Civil and Political Covenant). The Civil and Political Covenant entered into force on 23 March 1976 as a multilateral treaty (ratified by 144 countries as of 1 November, 2000) and establishes an international minimum standard of conduct for all participating governments. The Civil and Political Covenant further elaborate, particularly in its Articles 14 and 15, but also in Article 2, 6, 7, 9 and 10 upon the criminal justice standards identified in the universal declaration. Article 14 of the Civil and Political Covenant recognizes the right in all proceedings to "a fair trial and Public hearing by a competent, independent and impartial tribunal established by law" every person is "equal before the courts and tribunals" under Article 14 (1).

Article 14 also distinguishes between the sort of fair hearing required for civil cases, on the one hand, and criminal cases, on the other. Article 14 (3) deals with the "minimum guarantee" required in the determination of any criminal charge observance of which is not always sufficient to ensure the fairness of a hearing. Among the minimum guarantees in criminal proceedings prescribed by Article (14) 3 is the right of the accused to be informed of the charge against him/her in a language that the accused understands; to have adequate time and facilities for the preparation of a defense and to communicate with counsel of one's own choosing; to be tried without undue delay; to examine or have examined the witnesses against the accused and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against the accused; to the assistance of an interpreter free of any charge, if the accused cannot understand or speak the language used in court; and the right not to be compelled to testify against oneself or to confess guilt. Article 14 also gives the accused the right to have one's conviction and sentence reviewed by a higher tribunal according to law; for compensation if there was a miscarriage of justice; and not to be subjected to trial or punishment for a second time under article 14 (4) juvenile persons have the same right to a fair trial as adults, but are also entitled to certain additional safeguards. Article 15 codifies the principle of *nullum crimen sine lege* and also gives the accused the benefit of any decrease in penalty that is promulgated after the person has committed an offense. Other relevant provisions of the Civil and Political Covenant forbid torture or cruel, inhuman or

degrading treatment or punishment: forbid arbitrary arrest; and require equality before the law.

The Human Rights Committee was established by the Civil and Political Covenant to interpret and apply the Covenant's provisions. The Committee has evolved a considerable jurisprudence on issues relating to the administration of justice, particularly as to the right to a fair trial. For example, many prisoners have complained to the Human Rights Committee that they have not received a prompt trial and the committee has sought to interpret that requirement. In 1984, the Human Rights Committee issued General Comment 13 authoritatively interpreting Article 14 of the Covenant and stating that the right to trial without undue delay relates not only to the time by which a trial should commence, but also to the time by which it should end and judgement be rendered; all stages must take place "without undue delay". It must be ensured, by means of an established procedure that the trial will proceed "without undue delay, both in the first instance and on appeal.

The Civil and Political Covenant identifies in Article 4 certain rights as nonderogable, that is, those rights which cannot be the subject of suspension during periods of emergency that threatens the life of a nation. While Article 4 does not specify Article 14 (right to a fair trial) as expressly nonderogable, it does mention Article 7 (prohibition of torture), 15 (*nullum crimen sine lege)* (no crime law), and 16 (recognition of every person before the law) as nonderogable. Further more, the Human Rights Committee has interpreted other nonderogable rights (e.g. the right not to be subjected to arbitrary deprivation of life) as implying that the basic fair trial provisions of Article 14 cannot be suspended during periods of national emergency. The Human Rights Committee will likely strengthen the nonderogable nature of the right to a fair trial by issuing a further General Comment as well as decisions and views on individual cases interpreting the Covenant.

3) Humanitarian Law

Furthermore, International Humanitarian law, codified in the four Geneva Conventions and two Additional Protocols ensure the right to a fair trial and related criminal justice standards during periods of internal and international armed conflicts. Common Article 3 of the four Geneva Convention for the protection of victims of armed conflict (entered into force 21 October, 1950, ratified by 188 countries as of 1November, 2000) and Article 6 of Additional Protocol II contain fair trial guarantees and other provisions relevant to the administration of justice for times of non-international armed conflict. For example, Common Article 3(d) prohibits the "passing of sentence and the carrying out of executions without previous judgement pronounced by a regularly constituted court..." Article 96 and 99-108 of the third Geneva Convention prescribe the rights of prisoners of war in judicial proceedings, essentially creating a fair trial standard. Article 54, 64-74 and 117-126 of the Fourth Geneva Convention contain provisions relating to the right to fair trial in occupied territories. Article 75 of Additional Protocol 1 (entered into force 7 December, 1978, ratified by 165 countries as of 1 November 2000) extends fair trial guarantees in an international armed conflict to all persons including those arrested for actions relating to the conflict.

4) African Charter on Human and Peoples Rights 1986

The African Charter on Human and Peoples' Rights entered into force on 21 October 1986, and as of 15 December, 1999 had been ratified by all forty-nine African countries except the Sahrawi Arab Democratic Republic. Article 7 of the Africa Charter guarantees several fair trial rights, including notification of charges, appearance before a judicial officer, right to release pending trial, presumption of innocence, adequate preparation of the defense, speedy trial, examination of witnesses, and the right to an interpreter. Under Article 26, African States are bound to guarantee the independence of the judiciary, which is a basic requirement for a fair trial. In addition to the above mentioned guarantees, Articles 3, 4, 5 and 6 of the African Charter also provide for the rights to equality before the law, the equal protection of the law, the inviolability of human right beings, as well as guarantees against all forms of degradation of man or any arbitrary arrest or detention. The African Commission on Human and People's Rights adopted a resolution in March 1992 on the "Right to Recourse Procedure and fair trial" which elaborated upon the provisions of the African Charter, including the right to an appeal to a higher court.

5) The American Convention on Human Rights 1976

The American Convention on Human Rights (American Convention) entered into force on 18 July, 1978, and as of 15 December, 1999 had been ratified by all twenty four states in the Western Hemisphere. Article 7 of the American Convention provides several criminal justice guarantees, including, for example, the right to notice and to *habeas corpus*. Article 8 deals with the right to a fair trial in a detailed manner, including the right to a hearing, the presumption of innocence, the rights to a free translator and to counsel, the right of the accused not to be compelled to be witness against himself, the principles of *neb is in idem* (not twice in the same), and that criminal proceedings be public. Article 9 guarantees freedom from ex post facto laws. The inter-American Commission on Human Rights also considers the right to compensation for miscarriage of justice as forming part of the right to fair trial under Article 10. Article 25 of the Convention further guarantees the right to "simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws for the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties"

The Inter-American Commission on Human Rights has interpreted the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man (1948 elaborating the rights necessary for a fair trial. The inter-American Court of Human Rights, through its adjudicatory and advisory jurisdiction, has also examined violations of human rights related to a fair trial, albeit in only a few cases. In addition to the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish or Torture, Inter-American Convention on Extradition, the Inter-American Convention on Mutual Assistance in Criminal Matters, and the Inter-American Convention on Serving Criminal sentences Abroad have also been issued under the aegis of the organization of American States.

6) International Criminal Tribunal for Former Rwanda and Yugoslavia

On 25 May 1993, the United Nations Security Council adopted resolution 827 (1993) in which it approved the establishment of "an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia" after 1 January 1991. Article 15 of the statue of the international tribunal authorizes the judges to "adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims, and witnesses and other matters". Article 20 of the statute provides that the Trial Chambers of the International Tribunal "shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses." Articles 20 through 26 contain more specific provisions relating to the right to a fair trial, judgement, and appeal. In particular, most of the fair trial provisions in Article 14 of the Civil and Political Covenant are reflected in Article 21 of the statue. although the Covenant is not mentioned as such.

Additional articles contain safeguards designed to ensure the impartiality of the tribunal (rule 14-36), ensure the suspect's right to free counsel and the assistance of an interpreter (42), provide for the video-or-audio-taping of all suspect questioning (63), require the prosecution to disclose all exculpatory evidence to the accused (68), allow the judges to close the proceedings to the public in certain circumstances (79), and provide for appeal (107-22) and pardon (123-125) procedures. The Rules of Procedure and Evidence for the Yugoslav Tribunal devote more attention to the rights of victims and witnesses than previous international criminal standards.

On 8th November, 1994 the U. N Security Council adopted resolution 955 (1994) in which it approved the establishment of an "International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other serious Violations of International Humanitarian Law committed in the Territory of Rwanda and Rwandan Citizens responsible for Genocide and other such violations committed in the Territory of neighbouring States", between 1st January 1994 and 31st December 1994. The Rwanda Tribunal has been established in Arusha, Tanzania, but shares the same prosecutors, appellate court, and basic rules of procedure as the Yugoslav Tribunal.

7) Other Global Standards

There are several other global non-treaty standards that relate to criminal justice, including basic principles on the independence of the judiciary; Basic Principles on the Role of Lawyers, Basic Principles for the Treatment of Prisoners, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Body of Principles for the Protection of All Persons under any Form of Detention or imprisonment, Code of Conduct for Law Enforcement Official, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Declaration on the Protection of All Person from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Declaration on the Protection of all Persons from Enforced Disappearance, Draft International Convention on the Protection of All Persons from Enforced Disappearance, Guidelines on the Role of Prosecutors, Standard Minimum Rules for the Treatment of Prisoners; Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment,

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Safeguards Guaranteeing Protection of the Rights of Those facing the Death Penalty; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Most of these Standards have been drafted by the U.N Committee on Crime Prevention and Control (which has been replaced by the Commission on Crime Prevention and Criminal Justice); one of the U.N Congresses on the Prevention of Crime and Treatment of Offenders (which have been held five years since 1955); the U.N Commission on Human Rights, and the U. N sub-commission on the Promotion and Protection of Human Rights (formerly the Sub-Commission on the Prevention of Discrimination and Protection of Minorities).

In addition, the second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, entered into force on 11 July 1991, and has been ratified by 44 nations as of 1 November 2000. furthermore, the convention (entered into force on 22 April 1954) and protocol (entered into force on 4th October 1967, 135 states parties as of 1st November 2000) relating to the Statue of Refugees contain a few provisions relating to the rights of refugees in the context of the administration of justice, such as access to the courts, including legal assistance. There are also a series of international instruments in relations to children and they also set international standards in the criminal justice system. They include;

1) **UN Convention on the Rights of the Child (CRC): -** The CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on all members of the United Nations, except Somalia and the USA (as they have not ratified the Convention). It is therefore powerful and more widely applicable than some of the other instruments. It defines 'children' as all people under the age of 18. The most specific article in relation to juvenile justice are Article 37 and 40. However, the CRC is not just a list of separate article. It was designed to look at children as entire human beings. It is therefore very important to set Article 37 and 40 in the context of the overall framework of the CRC and its main 'umbrella rights'. These include Article 6 (the right to life, survival and development); Article 3.1 (the best interests of the child as a primary consideration), Article 2 (non-discrimination on any grounds), Article 12 (the right to 'participant'), Article 4 (implementation including of economic, social and cultural rights to the maximum extent of available resources). Other CRC articles relevant to street children and juvenile, including aspects of prevention, i.e Article 3.3, 9, 13, 14, 15, 16, 17, 19, 20, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36, and 39.

2) **UN Guidelines for the Prevention of Juvenile Delinquency: The 'Riyadh Guidelines**

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area, family, school, and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situation, but rather as a means of positively promoting general welfare and well being. It requires a more proactive

approach that should involve "efforts by the entire society to ensure the harmonious development of adolescents". More particularly, countries are recommended to develop community-based interventions to assist in the prevention of children coming into conflict with the law, and recognize that 'formal agencies of social control' should be utilized only as a means of last resort. General prevention consist of "comprehensive prevention plans at every governmental agency, continuous monitoring and evaluation, community involvement through a wide range of services and programmes, interdisciplinary co-operation and youth participation in prevention policies and processes. The Riyadh Guidelines also call for decimalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

3) UN Minimum Rules for the Administration of Juvenile Justice: The Beijing Rules:- The Beijing Rules provide guidance to states on protecting children's right and respecting their needs when developing separate and specialized systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach. They pre-date the CRC, are specifically mentioned in the CRC preamble, and have several of their principles incorporated into the body of the CRC. The Rules encourage the use of diversion from formal hearings to appropriate community programmes, proceedings before any authority to be conducted in the best interests of the child, careful consideration before depriving a juvenile of liberty, specialized training for all personnel dealing with juvenile cases, the consideration of release both on apprehension and at the earliest possible occasion thereafter, the organization and promotion of research as a basis for effective planning and policy formation. According to these Rules, a juvenile justice system should be fair and humane, emphasize the well being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. The importance of rehabilitation is also stressed, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organizations, local institutions and other community resources to assist in that process.

4) UN Rules for the Protection of Juveniles Deprived of their Liberty: The JDLS:- This very detailed instrument sets out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offense, or simply because the child is deemed 'at risk' by order of any judicial, administrative or other public authority. In addition, the JDLs include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. In the context where deprivation of liberty is unavoidable, detailed minimum standards of conditions are set out. The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.

5) UN Standard minimum Rules for Non-Custodial Measures: The Tokyo Rule:- These rules are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society. When implementing the rules, governments shall endeavour to ensure, proper balance between the rights of individual offenders, victims and concern of society for public safety and crime prevention. In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post sentencing dispositions. Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.

6) UN Resolution 1997/30 – Administration of Juvenile Justice: The 'Vienna Guidelines (1997)

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guideline for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well functioning system of juvenile justice of administration according to the CRC, Riyadh Guidelines, Beijing Rules and JDLs.

7) African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC can be considered as an adaptation of the CRC to the regional context of Africa. It was drafted by the organization of African Unity (now know as the African Union) and it guarantees children's basic rights within the context of African Culture. As with the CRC, the ACRWC contains a broad range of Socio-economic provisions that can be referred to holistically, as well as the specific juvenile justice provision of Article 17. In summary, there are norms in these documents afore analyzed, inter alia, pertaining to:

i. The right to personal integrity and human dignity
ii. Prohibition of every type of discrimination and torture
iii. Conditions regarding the deprivation of liberty or restriction of rights to freedom and safety of every individual
iv. Right to fair trial for every individual
v. Presumption of innocence
vi. Right to privacy and protection of residence and correspondence
vii. Right to use legal remedies against the decision of a government body
viii. Prohibition of retrial for same offence
ix. Fundamental principles regarding juvenile delinquents and juvenile rights protection (or "in the best interest of the child")

x. Rights of convicted persons and treatment of the persons against whom the criminal sanctions are executed
xi. Right to rehabilitation and compensation for person who are unjustly convicted and unjustly deprived of liberty
xii. Independent and autonomous judiciary
xiii. efficient means of fighting against contemporary forms of organized crime and
xiv. protection of rights of victims of crime, and especially right to compensation

In this regard, the intensive efforts made by United Nations Institutions to seek cooperation in the field of criminal justice must be recalled, as well as its efforts to promote legal understanding based on the interpretation of international standards in cases coming before the Human Rights Committee. Indeed, in the past decade, the United Nations has established or contributed to the establishment of a wide range of special criminal tribunals too. In doing so, it has sought to advance a number of objectives, among which are bringing to justice those responsible for serious violations of human rights and humanitarian law, putting an end to such violations and preventing their recurrence, securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation, re-establishing the rule of law and contributing to the restoration of peace. To these ends, a variety of institutional models has emerged and of course, this include the ad-hoc international criminal tribunals established by the Security Council as subsidiary organs of the United Nations aforementioned for the former Yugoslavia (International Criminal Tribunal for the Former Yugoslavia) and Rwanda (International Criminal Tribunal for Rwanda); a mixed tribunal for Sierra Leone, established as a treaty based court, mixed tribunal for Cambodia, proposed under a national law specially promulgated in accordance with a treaty, a mixed tribunal (structured as a court within a court) in the form of a Special Chamber in the State Court of Bosnia and Herzegovina, a panel with Exclusive Jurisdiction over Serious Criminal Offenses in Timor-Leste, established by the United Nations Transitional Administration in East Timor, the use of international judges and prosecutors in the courts of Kosovo, pursuant to regulations of the United Nations Interim Administration Mission in Kosovo etc.

THE NIGERIAN CRIMINAL JUSTICE SYSTEM AND INTERNATIONAL STANDARDS

The system of international justice has made several singular advances. The domestic criminal justice systems of countries must comply with international human rights standards and international standards of criminal justice, to ensure their legitimacy and credibility. However, despite the adoption of numerous international instruments affirming the internationals standards of criminal justice, various states, including Nigeria, still have criminal justice systems that operate far below these standards. It is the case that the Nigerian Criminal justice system has the following components. In fact, it has been reported that in Nigeria, the criminal justice system is utterly failing Nigerian people, majority of inmates not convicted for any crime.

The Human Rights organization, Amnesty International, said the criminal justice system is utterly failing the Nigerian people, calling it a "conveyor belt of injustice, from beginning to end". In a detailed and scathing 50 page report, the

organization reveals how at least 65 percent of Nigeria's inmates have never been convicted of any crime, with some awaiting trial for up to ten years; how most people in Nigerian prisons are too poor to afford a lawyer, with only one in seven awaiting trial having access to private legal representation and only few lawyers working in the country and how appalling prison conditions, including severe overcrowding, are seriously damaging the mental and physical health of thousands. Amnesty furthermore exposed the appalling state of Nigeria's criminal justice sector and prison system, saying that the sector is filled with people whose human rights are being systematically violated. It is surprising that the Nigerian government has, on numerous occasions, stated its willingness to reform the criminal justice system, acknowledging its role in creating a situation of prolonged detention and overcrowding. Despite many Presidential Commissions and Committees recommending reforms, the recommendations have not been implemented. Instead, the government has set up new committees and commissions to study, review and harmonize the previous recommendations.

In July 2007 Amnesty International delegates visited 10 prisons in the Federal Capital Territory (FCT) and Enugu, Lagos and Kano States. The delegates also visited a psychiatric hospital in Enugu State which housed a number of people with mental illness who had been transferred there from prison. These locations were chosen to ensure a geographic, ethnic and religious Spread across the country. The prison included a mixture of some of Nigeria's main detention facilities as well as small prisons in rural areas. The delegates conducted interviews with prison directors, medical staff, wardens and around 250 prisoners. These included 55 women; most 160 prisoners who were awaiting trial, and 37 who had been sentenced to death. In most prisons, the delegates spoke to inmates in private and in some, they interviewed them through the bars of their cells.

Many national and international organizations have criticized the Nigerian government of the human rights violations occurring in its criminal justice system. In recent years, the Nigerian government has frequently expressed willingness to improve the criminal justice sector, the prison conditions and access to justice for those on pre-trial detention (inmates awaiting trial) etc. the establishment of a Presidential Taskforce on Prison Reforms and Decongestion led to the release of around 8,000 prisoner in 1999. However, no long-term policy was adopted to address the problems in prisons and within a few years, they were as congested as they had been before the release. In June 2001, the then Minister of Interior, Chief Sunday Afolabi, said that the government would review prison laws and prison reform, train personnel, rehabilitate inmates and revitalize the prison system with the Prison Reforms Programme. It is reported to have spent NGN 2.4 Billion. In July 2002, President Olusegun Obasanjo, himself a former inmate, described the situation of inmates awaiting trial as inhuman. Indeed since year 2000, several working groups and committees on prison reforms have been established. The National Working Group on Prison Reform and Decongestion reviewed 144 prisons and revealed in its 2005 report that the population of Nigerian prisons over the previous 10 years had totaled between 40,000 and 45,000 inmates, most of them concentrated in the state capitals. Of course, 65 percent were awaiting trial. Yet, the criminal justice system of Nigeria is bedeviled with a lot of problems which fall below the international standards of criminal justice. Some of these problems associated with the Nigerian criminal system are;

- Persons have been detained in police stations, detention cells of other law enforcement agencies in violation of international standards as there exists no appropriate legal framework to challenges illegal detentions.
- Torture by police and other law enforcement agencies is also routine and widespread, with "confessions" extracted by torture often used as evidence in trials.
- Many inmates awaiting trial are effectively presumed guilty, despite the fact that there is little evidence of their involvement in the crime of which they are accused. People not suspected of committing any crime are imprisoned along with convicted criminals. Some were arrested in place of a family member the police could not locate, others suffer from mental illness and were brought to prison by families unable or willing to take care of them. Most have no lawyer to advocate on their behalf.
- Cases take so long to get to court that once an inmate had been tried and convicted, they are reluctant to launch an appeal. Even those claiming innocence fear the risk of staying in prison longer, waiting for their appeal to be heard. Instead, they simply serve their sentence.
- Worthy of mention too is the plight of prison staff who work long and stressful hours for low wages. Poor pay often leads to petty extortion of prisoners, and staff shortages create security risks for both staff and inmates. Inmates are often relied on to govern themselves and have taken on disciplinary functions, including meting out corporal punishment, close confinement and diet restrictions, all of which do not comply with international standards.
- Living conditions in the prisons are appalling. They are damaging to the physical and mental well being of inmates and in many cases, constitute clear threats to health. Conditions such as overcrowding, poor sanitation, lack of food and medicines and denial of contact with families and friends fall short of U.N standards for the treatment of prisoners. The worst conditions constitute ill-treatment. In many Nigerian prisons inmates sleep - two to a bed - or on the floor in filthy cells. Toilets are blocked and overflowing or simply nonexistent, and there is no running water, as a result, disease is widespread.
- It has been argued by some groups that the maintenance of the death penalty for punishment of capital offences by Nigeria is against the international standards of criminal justice and contemporary demands foe its abolition. This is more so as it is argued that no one ever gets reformed after being executed.
- At least 65 percent of Nigeria's inmates have never been convicted of any crime, with some awaiting trial for up to ten years.
- While lack of resources throughout the court system allowed things to get this bad, a central problem is surely the severe shortage of legal aid organizations. The CSLS report's co-author, Professor Yemi Akinseye George, said that long term detention is "wrong, illegal" and against the constitution.
- Most prisons have small clinics or sick bays which lack medicines, and in many prisons inmates have to pay for their own medicines. Guards frequently demand that inmates pay bribes for such privileges as visiting the hospital, receiving visitors, contacting their families and, in some cases,

being allowed outside their cells. Prisoners with money may be even allowed mobile phones, whereas those without funds can be left languishing in their cells.

- The police do not bring suspects promptly before a judge or judicial officer, despite the Nigerian Constitution's guarantee that this will occur within 24 hours, it usually takes weeks and in some cases months before suspects are brought before a judge. Suspects are usually ill-treated in police custody, many are denied their right to contact their families or a lawyer, and in some stations, suspects do not receive any food. The police routinely use torture to extract confessions and, despite this being widely acknowledged by the police themselves, little is done to stop it, in addition, the police do not respect the principle of the presumption of innocence.
- The judiciary fails to ensure that all inmates are tried within reasonable time, indeed, most inmates wait years for a trial. When inmates are convicted, most courts do not inform of their right to appeal. Nor does the judiciary guarantee that all suspects are offered legal representation. Few of the courts take the necessary steps to end the use of evidence elicited as a result of torture. In breach of national and international law, the judiciary does not guarantee fair trial standards even in the case of minors.
- The rule of law as an institutional framework is expected to be a strong judiciary, which is independent and adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice. However, it is only recently that the judiciary in Nigeria began to risen up to the expectations of the public as being the last hope of the common man.
- All too often, individuals who are not suspected of committing any crime are incarcerated in Nigeria's prisons along with those suspected or convicted of crimes. Some were arrested in place of a family member whom the police could not locate. Others suffer from mental illness and were brought to prison to relieve their families of responsibility for their care. Most are very poor people who have no lawyer to advocate for them. The Nigerian Constitution (Section 35) guarantees the right to be brought to a court of law within a reasonable time. If there is a court of competent jurisdiction within 40km, a reasonable time is defined as one day, in all other cases, reasonable time is considered to be two days or longer, depending on the distances and circumstances. In practice, this is hardly ever accomplished. The Nigerian Police Force claim they cannot investigate a crime and interrogate suspects within such a short time, saying, there is no case that you crack within 24 hours unless it is a traffic offence.
- Individuals who are charged with crimes are routinely held in pre-trial detention for extended periods, even when there is little evidence to support the charge, where the accused person poses little or no risk to society, or where the crime is not a serious one.
- The prisons cannot ensure that conditions in all their facilities are adequate for the health and well being of the prisoners. Severe overcrowding and a lack of funds have created a deplorable situation in Nigeria's prison.

RECOMMENDATIONS FOR BETTER NIGERIAN SYSTEM OF CRIMINAL JUSTICE

For decades, a number of United Nations entities have been engaged in helping countries to strengthen their national systems for the administration of criminal justice in accordance with international standards. It is appreciated that effective strategies for building domestic justice systems will give due attention to law, processes (both formal and informal) and institutions (both official and non-official). Legislations that are in conformity with international core of systems based on the rule of law is a strong judiciary, which is independent and adequately empowered, financed, equipped and trained to uphold human rights in the administration of justice. Equally important are the other institutions of the justice sector, including lawful police services, humane prison services, fair prosecution and capable associations of criminal defence lawyers.

- Juvenile justice systems must be put in place to ensure that children in conflict with the law are treated appropriately and in line with recognized international standards for juvenile justice. Justice sector institutions must be gender sensitive and women must be included and empowered by the reform of the sector. Legal education and training and support for the organization of the legal community, including bar associations, are important catalysts for sustained legal development.
- Legal aid and public representation programmes are essential in this regard. Additionally, while focusing on the building of a formal justice system that functions effectively and in accordance with international standards, it is also crucial to access means for ensuring the functioning of complementary and less formal mechanisms, particularly in the immediate term.
- Independent national human rights commissions can play a vital role in affording accountability, redress, dispute resolution and protection during transitional periods. Similarly, due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition. Where these are ignored or overridden, the result can be exclusion of large sectors of society from accessible justice.
- Measure to ensure the gender sensitivity of justice sector institutions is vital in such circumstances. With respect to children, it is also important that support be given a nascent institutions of child protection and juvenile justice, including for the development of alternatives to detention, and for the enhancement of the child protection capacities of justice sector institutions.
- It is recommended by the writer that emphasis should be laid on the supremacy of international human rights law over all other laws, and that courts be provided with further guidance and training on international human rights standards.
- Future cases of illegal detention, including the regular practice of detention for more than 72 hours without hearing should be discouraged and persons detained like this should be able to challenges the lawfulness of their arrest and detention (*a habeas corpus remedy).*

- Vulnerable groups such as juveniles and victims of sexual violence within the criminal system, require enhanced protection and;
- The situation in Nigeria demonstrates clearly the need for growth in organizations who are interested in ensuring that the international standards for criminal justice are kept.
- It is essential for courts and law enforcement authorities to adopt a more consistent approach to the law, particularly as concerns pre-trial detention. Judges, public prosecutors and defense counsel require practical training in applying both domestic and international law.

The need for further work on implementation and application of the different standards and norms is in-exhaustive and may vary from one country to another but no country should be complacent enough to regard itself as being in full compliance with all the standards and norms. While it is true that the work of the United Nations in the rule of law and in increasing the efficacy and efficiency of criminal justice systems has in particular taken into account the needs of developing countries and countries in transition, the more developed countries also have their own setbacks.

CONCLUSION

The respect that is now accorded to human rights has resulted in the adoption of certain minimum legal safeguards and of certain mechanisms in those criminal systems where they had been absent or inconsistently recognized. Respect for human rights has also been recognized as promoting effective crime prevention and control, nationally and internationally. The rights of all person involved in the criminal justice systems of states have been affirmed directly by international human rights instruments, international criminal standards have impacted these persons in two general ways; through an affirmation of values underlying the recognition of accused person's rights and by setting a model for international sentencing and correctional policies, and indeed the operation of the entire criminal justice system of nations. Indeed these standards and norms of international criminal justice have provided a collective vision of how criminal justice system should be structured and have helped to significantly promote more effective and fair criminal justice structures in three dimensions. Firstly, they can be utilized at national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms, secondly, they can help countries to develop sub-regional and regional strategies and thirdly, globally and internationally, the standards and norms represent "best practices" which can be adapted by states to meet national needs.

However, the development of a system of international standards of criminal justice has struck the outmoded notions of national sovereignty and the absolute prerogative of states. It would have been unrealistic to expect that progress would occur in a straight line. To address today's more difficult environment, recent achievements must be secured and the system must be refined so these standards will be maintained. People in the Nigerian criminal justice system are systematically denied a range of human rights. Stakeholders throughout the Nigeria criminal justice system are culpable for maintaining this situation. It is saddening that the Federal Government has failed to implement the recommendations of many study groups and presidential committees over recent years concerning the criminal justice sector. Only few of the promises made by

the Nigerian Government have been carried out and this has led to the current problems being experienced in the country. It is time the Nigerian government faces up to its responsibilities in this sector of the society. Ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable. The role of the United Nations and the International Community in the Nigerian criminal justice sectors should be solidarity, not substitution

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