

# **Widening the Gender Gap: Interrogating the Exclusion of Female Offenders in Borstal Institutions in Nigeria**

*By*

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# Introduction

- From outset, this paper uses young/juvenile and child offender interchangeably to refer to those children who are in conflict with the law, beyond parental control or children in need of care and protection.
- An egalitarian society that is free of crimes gives all its offenders equal opportunity that is needed for rehabilitation irrespective of gender/sex and age
- This is so because rehabilitation as one of theory of punishments is a basic core objective of criminal justice system of any nation.
- The traditional hardline approach for punishment of young offenders over the years changes due to its negative effects on the young offenders and the agitations of humanitarian and penal reformers.
- This brought into fore the administration of child justice of every nation, Nigeria in particular as a welfare-based approach.
- Child justice system thereafter introduces/establishes Borstal Training institutions as one of the custodial institutions for rehabilitation of young offenders

# Statement of the Problem

- The operation of Borstal institutions in Nigeria is discriminatory and has narrowed the gender gap as the institutions exclude the rehabilitation of young female offenders
- Confinement of young female offenders at squalid Prisons/Correctional centres/Remand homes makes no impression as they are graduating through a succession of short sentences into a fixed career of habitual crime in Nigeria
- Young female offenders are being deprived of the salutary impact of a rehabilitative custodial environment like their male counterparts at the Borstal institutions

## Objectives of the research

- This study examines the effects/implications of the missing rehabilitative opportunity on young female offenders in Prisons/Correctional centres/Remand homes
- The study examines why young female offenders are excluded from the rehabilitative opportunity at Borstal training institutions in Nigeria.
- The analysis in this study is consequential because the discrepancy in the rehabilitative strategy will help to divulge the underlying causes of young female offenders' continuing involvement in crimes and how to reduce it to the barest minimum.

## Research questions

- (i) Are Borstal institutions able to effectively rehabilitate the male gender to become law abiding, socially and morally responsible who are capable of conducting a crime-free life?
- (ii) How can adequate rehabilitation through Borstal institutions benefit the female gender towards social and moral reintegration?
- (iii) To what extent can Borstal institutions minimize the commission of crime by young female offenders in Nigeria?

### **Design, instrument and administration**

- ❖ Quantitative and qualitative descriptive design are adopted to generate rich descriptive data from the primary and secondary sources.
  - ❖ Questionnaire
  - ❖ In-depth interviews
- ❖ This socio-legal approach attempts to elicit information from the respondents about their perceptions on Borstal training institutions in Nigeria as well as the impact of keeping female juvenile offenders at the Prisons/Correctional centres/Remand homes instead of Borstal training institutions like their male counterparts

# Methodology and design of the study (Contd.)

**Study setting** -----four zones within the six geo-political zones of Nigeria

- ❖ Abeokuta in Ogun State (South-west)
- ❖ Ilorin in Kwara State (North-central)
- ❖ Kaduna in Kaduna State (North-west)
- ❖ Bauchi in Bauchi State (North-east)
  - ❖ Justification for those zones
    - ❖ Ogun, Kwara and Kaduna states have domesticated CRA and ACJA and all the three Borstal institutions are situated in these states. Also, those states have Family Courts
    - ❖ Bauchi state is yet to domesticate CRA but has enacted ACJL. This state is still using the old Children and Young Persons' Law and it operates Juvenile Court

The details of the distribution of respondents by geographical zone and cities are presented in Table 1 below

ZONE,	STATES	CITY	Sample size
SOUTH-WEST	OGUN	ABEOKUTA	100
NORTH-CENTRAL	KWARA	ILORIN	100
NORTH-WEST	KADUNA	KADUNA	100
NORTH-EAST	BAUCHI	BAUCHI	100
TOTAL			400

Source: Author's field survey 2022



## Methodology and design of the study (Contd.)

### Population, sampling and recruitment

Table 2 below shows the details of the frequency and percentage of returned questionnaire with state and cities

STATES	CITY	Frequency	Percentage
OGUN	ABEOKUTA	100	33.3
KWARA	ILORIN	115	38.4
KADUNA	KADUNA	55	18.3
BAUCHI	BAUCHI	30	10
Total		300	100

Source: Author's field survey 2022

# Methodology and design of the study (Contd.)

- **Table 3 below shows the details of the respondents and their demography**

Socio-demographic background	Frequency	Percentage
Sex		
1. Male		
2. Female	155	51.7
Total	145	48.3
	300	100
Age		
1. 14 ≤ 20 years		
2. 21 ≤ 45 years	50	16.7
3. 46 ≤ 65 years	145	48.3
4. 66 years and above	60	20
Total	45	15
	300	100
Occupation		
1. Police/State	45	15
2. Prison/Correctional/Borstal training institution officer	90	30
3. Judiciary	35	11.7
4. Social welfare	35	11.7
5. Remand home	45	15
6. Delinquent child	50	16.6
Total	300	100
Educational Qualification		
1. No formal education		
2. Primary school	30	10
3. Secondary school education	20	6.7
4. Tertiary education	50	16.6
Total	200	66.7
	300	100

Source: Author's field survey 2022

# Methodology and design of the study (Contd.)

## **Ethical approval and Limitation**

- ❖ Ethical approval was obtained from the University of Ilorin Research Ethical Review's Board in 2021
- ❖ Respondents were carefully selected using well-defined criteria.
- ❖ The author made significant effort to ensure that the respondents who volunteered to participate gave their consent after the study information leaflet was explained to them and their freedom to withdraw from the study emphasised
- ❖ Privacy issues were taken into consideration as total confidentiality of the respondents' information was maintained and
- ❖ They were completely anonymous with respect to their responses.
  
- ❖ **Limitation**
- ❖ The author experienced limitations as to finance and space
- ❖ The results of this study cannot be generalized to all the states in Nigeria especially in those states that neither domesticate ACJA nor CRA.
- ❖ Although, the author believes that a rigorous process was followed in terms of the translation of the data.

# Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate

- Nigerian Borstal institutions were traced to England Borstal institution which was established in 1902
- The Borstal system seeks to turn around the youths mostly from
  - ❖ ages sixteen to twenty-one by instilling in them habits of industry, self-respect, and self-control through the technique of manual labour, games, physical training, mental education, the incentive of useful and interesting trade and carefully planned series of rewards
- ❖ Borstal institution derives its legitimacy from the proviso to section 35(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
- ❖ The constitutional proviso suffices in a situation where a child is adjudged delinquent and the court considers his/her confinement at Borstal institution as his/her best interest.
- ❖ The purpose of this proviso is for the education, rehabilitation, reformation and reintegration of the child back into the society as a law-abiding citizen
- ❖ Borstal institution provides for both educational and vocational training
- ❖ Regrettably, none of the literature considered the experiences of young female offenders or even the question of the effects of their exclusion from the welfare-based approach of Borstal institutions.
- ❖ Section 3(1)(b) of the Borstal Institutions and Remand Centres Act, 2004 used the word “offenders” who could be male or female offender
- ❖ This subsection does not exclude female juvenile offenders from rehabilitation and reformation at the Borstal institutions.

# Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate (Contd.)

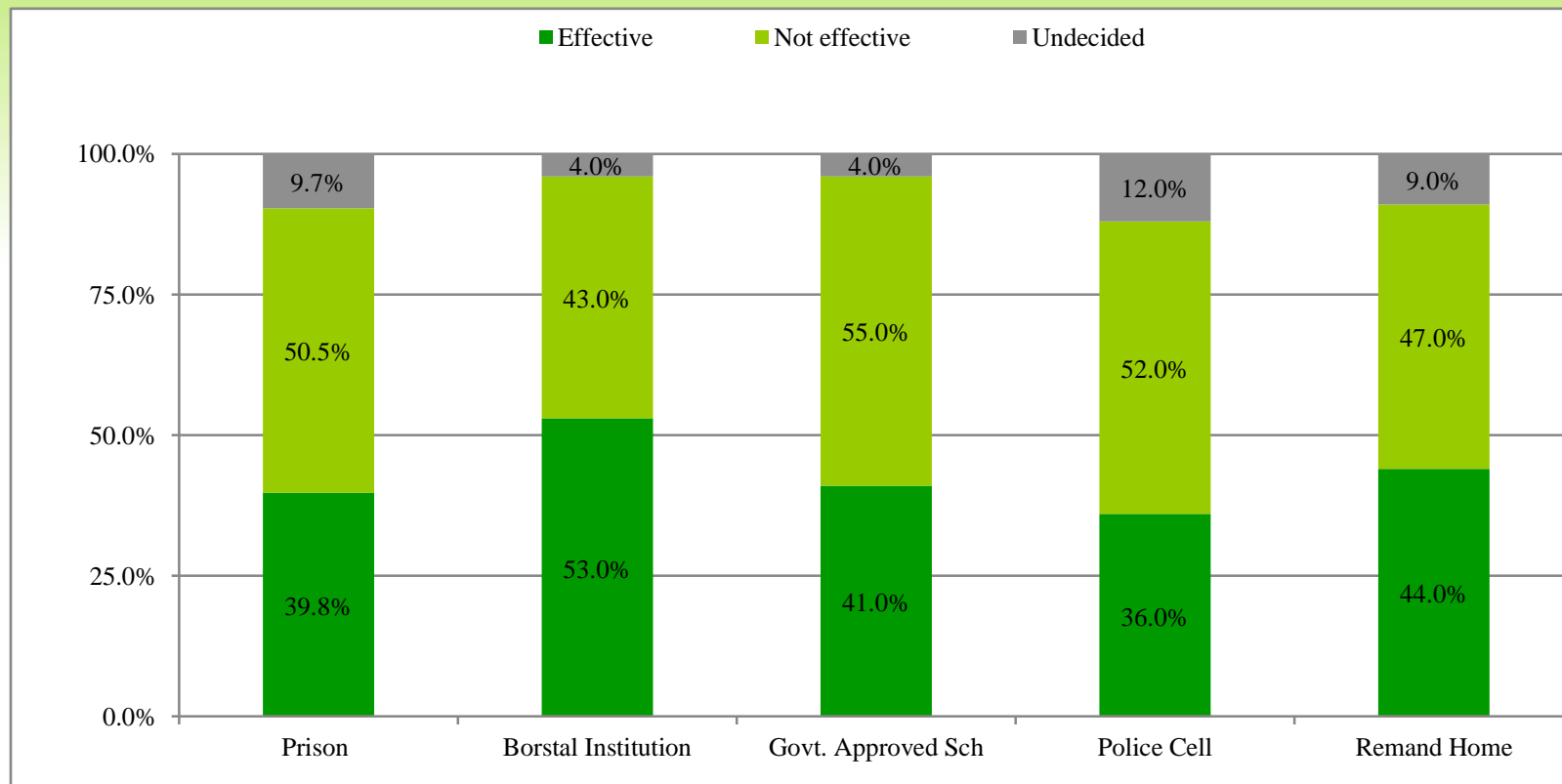
- Section 1 of the Child Rights Act, 2003 specifically enjoins the best interest of the child which must be of paramount consideration in any matter relating to the child
- However in reality/practice, Borstal institutions have been confined to boys/male offenders
- This shows that the word “offenders” “persons” or “his” used in the Borstal Act was construed narrowly to exclude the rehabilitation of young female offenders
- The interpreters of the provisions of Borstal Act do not avert their minds to the fact that virtually all criminal legal instruments are sex blind because the legal instruments do not have regard for sex.
- The laws focus on criminals and not sex of the criminal and Borstal Act is expected to be applied for both sexes
- Arguably, the interpreters of the provisions of the law do not avert their minds to the postulation of Simon when he said that:
  - ❖ there is no difference between females and males in terms of morality and that there is nothing particularly inherent in human biological sex that predisposes men or women towards crime. When succinct opportunities for criminal activities abound, both male and female are likely to perpetrate crime
- There is this belief in olden days that female genders are victims of crimes and not agents of crimes (Silvestri & Crowther-Dowey, 2008)
- However, due to an increase in the rate of crimes committed by young female offenders, many countries have reformed their child justice system. Example are the Juvenile Justice and Delinquency Prevention Act of 1992 and Juvenile Justice Reform Act, 2018 in the United States of America.
- Till date, Nigeria still operates the Borstal Institutions and Remand Centres Act of 2004

# Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate (Contd.)

- Studies have shown the rates of criminality of young female offenders in Nigeria
  - ❖ young female offenders make up more than 10% of the population of prisoners at the Prison/Correctional institutions where adult offenders are confined. (NACA and UNODC, 2019)
  - ❖ few of the inmates at Prisons had crime history as juveniles and at least 20% of Kuje Prisoners under study were children (Akinseye-George, 2009)
  - ❖ a quarter of those that re-offended are juveniles and that it is juvenile delinquent children that usually graduated into adult criminals (Abrifor et al., 2012)
  - ❖ female offenders have re-offending for more than six times and sentenced to Prison in Nigeria (Nigerian Prison Service. Annual report, Abuja, 2009)
  - ❖ the number of young female offenders has risen by 17% in the past four years compared to just 4.5% of males. (Jacobson Available at <https://www.smh.com.au/news/national> accessed July 15, 2019)
  - ❖ Mingling of young female offenders with adult offenders at the Prison/Correctional centres increase their perpetration of crimes. (NACA and UNODC, 2019)
  - ❖ Borstal institutions in Nigeria have rehabilitative programs and have been effectively rated high among the custodial institutions in Nigeria for young offenders. (Abdulraheem-Mustapha, 2019). See Figure 1
  - ❖ from April 11, 2011, to June 30, 2017, *Boko Haram* deployed 434 bombers to 247 different targets during 238 suicide-bombing attacks. At least 56% of these bombers were women, and at least 81 bombers were specifically identified as children or teenagers. (Warner and Matfess, 2017)

# Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate (Contd.)

- In March 14, 2017 at least six persons were confirmed killed by four teenage girls who detonated explosives worn around their bodies at the outskirts of Maiduguri (Premium Times March 15, 2017)
- **Figure 1 Respondents' views on the effectiveness of custodial institutions in Nigeria**



Source: Author's fieldwork survey 2022

# Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate (Contd.)

- Female crimes in recent times have included “drug trafficking, armed robbery and white-collar crimes in government offices. (Chukuezi, 2009)
- It is pertinent to note that the Nigerian government has devised means of reducing the perpetration of crimes by both young male and female genders with the introduction of restorative justice system which calls for reconciliation and restitution.
- Among the extant laws promulgated by the Nigerian government are:-
  - ❖ Children and Young Persons Act (CYPA), 1946
  - ❖ The Child Rights Act (CRA), 2003 and
  - ❖ Administration of Criminal Justice Act (ACJA), 2015.
- Interestingly, three out of the four states chosen for this study have domesticated CRA and ACJA thereby having their respective Child Rights Laws and Administration of Criminal Justice Laws respectively while the fourth state operates CYPA
- Section 223 of the CRA and section 15 of Children and Young Persons Act allows disposition of children cases by given alternatives to custodial or institutional placement where the court is satisfied that an offence has been committed
- However, the same section 223 (1)(c)(iii) (f) and (2) of CRA enjoins the court to commit the child to custody if there is no other way of dealing with the child
- And if the adoption of restorative justice in discharging the child will be a threat to the society or
- If the offence committed by the child is a capital offence that carries the maximum sentence or
- If committal of the child offender will be his/her best interest.



## Legal framework for the operation of Borstal Training Institutions in Nigeria: The Continuing Debate (Contd.)

- The question now is:
  - ❖ can Prisons/Correction centre/Remand home be the custodial institution for the rehabilitation of the child especially when the child is a female offender?
  - ❖ considering the fact that these mentioned institutions have no rehabilitative program to be offered but instead increase the criminal tendency of the child.
- Note:-
  - ❖ Confinement of young female offenders at Prisons/Correction centre/Remand home negates the provision of section 35(1)(d) of the 1999 Constitution
  - ❖ Also, Remand home under section 3(1)(a) of the Borstal Institutions and Remand Centres Act seems to be used as temporary or passage for remand pending the final determination of juvenile cases without any form of rehabilitative model.
- Interestingly, the combine effects of sections 371 and 452(1) of ACJA specifically direct the court to apply the provisions of CRA in any criminal proceeding against the child
- In any discussion relating to restorative justice under ACJA, reference can still be made to section 460(1)(2) of the Act which allows for diversionary measures such as “performance of specified service in the community or place as the court may direct.”
- The rationale for this optional sentencing model is provided in section 460(4) of ACJA to wit: “rehabilitation of prisoners by making them to undertake productive work” is one of the rationales
- However, section 460(3) of ACJA provide a caveat to the effect that:
  - ❖ a convict shall not be sentenced to suspended sentence or to community service for an offence involving the use of arms, offensive weapon, sexual offences or for an offence which the punishment exceeds imprisonment for a term of three years.

# Presentation of Results and Discussion of Findings

• **Table 4: Perceptions of the Respondents on the Exclusion of Young Female Offenders at Borstal Institutions in Nigeria**

Perception of the Respondents	Frequency	%	Perception of the Respondents	Frequency	%
Do you agree that one of the basic objectives of criminal justice system is rehabilitation?			There is need to amend the Laws establishing Borstal Institution to reflect the mind of the Legislatures?		
Yes	250	83.3	Yes	297	99
No	48	16	No	2	0.7
Undecided	2	0.7	Undecided	1	0.3
Total	300	100	Total	300	100
Is rehabilitation meant for all offenders irrespective of sex?			The masculinity phrase used in the Borstal Act should accommodate girls/young female offenders?		
Yes	297	99	Yes	250	83.3
No	2	0.7	No	48	16
Undecided	1	0.3	Undecided	2	0.7
Total	300	100	Total	300	100
Is there need to be custodial institution for rehabilitation?			The Law establishing Borstal institutions should provide equal rehabilitating treatment for both male/boys and female/girls offenders?		
Yes	290	96.7	Yes	297	99
No	8	2.7	No	2	0.7
Undecided	2	0.6	Undecided	1	0.3
Total	300	100	Total	300	100
Can rehabilitation of offenders be maximally achieved in a non-custodial service?			Is the existing law to regulate the operation of Borstal institution adequate and effective?		
Yes	110	36.7	Yes	50	16.7
No	180	60	No	245	81.7
Undecided	10	3.3	Undecided	5	1.6
Total	300	100	Total	300	100
Committal of young female offenders at Remand homes is?			Refusal of some states to domesticate CRA and ACJA adversely affect the rehabilitation of young female offenders?		
Good	50	16.7	Yes	250	83.3
Bad	245	81.7	No	48	16
Undecided	5	1.6	Undecided	2	0.7
Total	300	100	Total	300	100

# Presentation of Results and Discussion of Findings (Contd.)

Committal of young female offenders at Remand homes is?			Refusal of some states to domesticate CRA and ACJA adversely affect the rehabilitation of young female offenders?		
Good	50	16.7	Yes	250	83.3
Bad	245	81.7	No	48	16
Undecided	5	1.6	Undecided	2	0.7
Total	300	100	Total	300	100
Committal of young female offenders at Prisons/Correctional centres is?			Is the availability of only three Borstal institutions enough to cater for rehabilitation of all young offenders?		
Good	50	16.7	Yes	50	16.7
Bad	245	81.7	No	245	81.7
Undecided	5	1.6	Undecided	5	1.6
Total	300	100	Total	300	100
Committal of only boys/young male offenders at Borstal institutions is?			Can diversion or non-custodial measures solve any child delinquency?		
Good	18	6	Yes	50	16.7
Bad	280	93.3	No	245	81.7
Undecided	2	0.7	Undecided	5	1.6
Total	300	100	Total	300	100
Committal of child offender should be in the best interest of the child?			Do we need Borstal institutions in Nigeria for delinquent children?		
Yes	290	96.7	Yes	275	91.7
No	9	3	No	20	6.7
Undecided	1	0.3	Undecided	5	1.6
Total	300	100	Total	300	100
Committal of young female offenders at Prisons/Correctional centres/Remand homes increases their criminal tendency?			Which of the custodial institutions offered educational and vocational training?		
Yes	275	91.7	Remand homes	7	2.3
No	20	6.7	Borstal institutions	290	96.7
Undecided	5	1.6	Prisons/Correctional centres	1	0.3
Total	300	100	Government Approved Schools	2	0.7
			Total	300	100

# Presentation of Results and Discussion of Findings (Contd.)

Borstal institution is the only custodial institution that offers educational and vocational training to child offenders? Yes No Undecided Total	296 3 1 300	98.7 1 0.3 100	Are Borstal institutions adequately funded? Yes No Undecided Total	50 245 5 300	16.7 81.7 1.6 100
Committal of child offender at Borstal institution help in reducing the commission of crimes? Yes No Undecided Total	296 3 1 300	98.7 1 0.3 100	Are the roles and functions of Nigerian Prisons/Correctional service as relate to custodial of child offenders at Borstal institutions well spelt out in the laws? Yes No Undecided Total	50 245 5 300	16.7 81.7 1.6 100
Is there need for Borstal institutions for girls/young female offenders? Yes No Undecided Total	298 1 1 300	99.4 0.3 0.3 100	Is observance of the law establishing Borstal institutions likely to reduce the incidence of child delinquency? Yes No Undecided Total	296 3 1 300	98.7 1 0.3 100
Mingling of young female offenders at Prisons/Correctional centres is? Good Bad Undecided Total	5 292 3 300	1.7 97.3 1 100	Is non-availability of Borstal institution for girls/young female offenders contribute to their re-offending? Yes No Undecided Total	298 1 1 300	99.4 0.3 0.3 100
Do you agree that young female offenders are now involving in capital offences? Yes No Undecided Total	5 292 3 300	1.7 97.3 1 100	Do you agree that committal of young female offenders to custodial institution in capital offences the best? Yes No Undecided Total	250 48 2 300	83.3 16 0.7 100
Committal of only boys/young male offenders at Borstal institutions is discriminatory? Yes No Undecided	298 1	99.4 0.3	Do you agree that there should be aftercare for young offenders after their release from custodial institutions? Yes No	298 1	99.4 0.3

# Presentation of Results and Discussion of Findings (Contd.)

- **Table 5: Experiences of Boys/Male and Girls/Female offenders at Borstal Institutions/Prisons/Correctional Centres/Remand homes in Nigeria**

Perception of the Respondents	Frequency	%	Perception of the Respondents	Frequency	%
Do you prefer Borstal institution than Prisons/Correctional centre/Remand home?			Do you need Borstal institutions for girls/female offender?		
Yes	298	99.4	Yes	298	99.4
No	1	0.3	No	1	0.3
Undecided	1	0.3	Undecided	1	0.3
Total	300	100	Total	300	100
Your answer above is because of the availability of educational and vocational training at Borstal institutions?			Is your mingling with adult offenders at Prisons/Correctional centres likely to increase your criminal intent?		
Yes	250	83.3	Yes		
No	48	16	No	50	16.7
Undecided	2	0.7	Undecided	245	81.7
Total	300	100	Total	5	1.6
				300	100

**Source: Author's Fieldwork survey 2021 and 2022**

## Presentation of Results and Discussion of Findings (Contd.)

- ❖ The results are re-affirmed by the author in one of the juveniles' matters defended in the Kwara state Family court in Case No. MCIA/524/2021 between C.O.P vs. AMED JELILAT after sustaining the guilt against the young female offender, the Family Court explored one option of confinement that is available for her which was committal of the girl offender to Remand home because of non-availability of Borstal institution for girl/female offender despite the existence of Borstal institution in Kwara state
- ❖ **Interview Phase**
  - **one of the respondents said:**
    - ❖ I pity those young female offenders brought to us at Prisons because there is no way they will not become harden. Although, there is a wing for female offenders but the wing is within the premises of Prison and there are no way those young female offenders will not mingle with the adult offenders either with the adult female offenders inside the wing or with adult male offenders. (Interview conducted by the author with Correctional officer at Kwara State on November 30, 2021)
  - **One of the directors in-charge of the Remand home at the Ministry of Social Welfare and Development lamented in an interview that:**
    - ❖ "Remand home is not the best rehabilitation centre for the child offender whether male or female because there we do not have what it takes to rehabilitate them." (Interview conducted by the author with Social welfare officer at Kaduna Remand home dated March 10, 2022)
  - **The view expressed by Borstal boys are:-**
    - ❖ I am very happy that I am able to continue my education here and I will read hard to pass my WAEC and JAMB so that I will enter University. My dream is to read Computer science. (Interview conducted by the author with Borstal boy at Kwara State on November 30, 2021)
    - ❖ I have learn how to do capentary work here and I pray that I get money to establish my workshop when I come out of Borstal. (Interview conducted by the author with Borstal boy at Kaduna State on March 10, 2022)
  - **One young female offender at Bauchi Remand home was interviewed about her acheivement, she expressed sadly that:**
    - ❖ I am just here. No school, nothing nothing but just to eat, play and sleep. (Interview conducted by the author with a girl offender at Bauchi State on March 8, 2022)

# Conclusion and Recommendations

- ❖ There is an increasing number of young female offenders in Prisons/Correctional institutions in Nigeria.
- ❖ Young female offenders are totally left out of the reformatory initiative of Borstal institution thereby further complicating their plights as offenders.
- ❖ This has severe implication on the nation which seeks to enhance the status of female children. More specifically, bringing an end to the intergenerational cycle of family crime.
- ❖ There is still dearth of literature on the practice of male gender domination and gender disparity at the Borstal institutions in Nigeria.
- ❖ Also, there is no existing scholarly work that has examined the effects/implications of the missing rehabilitative opportunity on young female offenders in Prison/Correctional institutions in Nigeria.
- ❖ This study therefore contributes to the understanding of the emergence of young females as active agents in the perpetration of crimes in Nigeria.
- ❖ The study is relevant and significant not only to the researchers in this area but to stakeholders in the child justice system.
- ❖ **Recommendations are:-**
  - ❖ the establishment of more Borstal institutions that will cater for young female offenders.
  - ❖ Adequate funding for Borstal institutions in Nigeria
  - ❖ Amendment of the extant laws to accommodate young female offenders at Borstal institutions.

Thank you for being an  
attentive audience!