

Legal Issues on The Jurisdiction of Cybercrimes and Juvenile Offenders in Nigeria: The Imperative of A Paradigm Shift

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Introduction: Juvenile offender is a child of not more than specified age who has violated criminal laws and engaged in disobedient, indecent or immoral conduct and is in need of treatment, rehabilitation or supervision defined by Statute.¹ In Nigeria, studies have shown that as at 2013, there were about 1306 juvenile offenders held in custody for offences ranging from property offences rated at 30.72%, offences against person, offences against the State, moral offences, and victimless offences.² In addition, there is upsurge in unrestrained access to technology and complex cybercrimes³ such as website cloning, financial fraud, identity theft, credit card theft, cyber theft, cyber harassment, fraudulent electronic mails, cyber laundering and virus/ worms/ Trojans.⁴ However, because of the special procedure for the treatment of children under the Nigerian criminal justice system, dealing with this class of offender is somewhat problematic.⁵

The essence of criminal justice system is to maintain justice, law and order in society and to ensure effective management of offenders. Administration of criminal justice is therefore measured by appraising the status of every unit in the system, and how effective they discharge their respective duties towards realising its goals in the society.⁶ The juvenile justice system in Nigeria is an offshoot of the general criminal justice system and may be regarded as one of the legal frameworks within the criminal justice system of a society. It has evolved over the years based on the contention that juveniles who commit criminal acts generally should be treated

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¹Black's Law Dictionary (Centennial ed. 1981-1991) p.428.

² See an Operational Research Report on Challenges of Borstal Institutions, Remand Homes, Reformatories and Approved Schools in Nigeria submitted to the Federal Department of Social Welfare, Federal Ministry of Women Affairs and Social Development, Abuja, Nigeria by Alamveabee E. Idyotough, June, 2013.

³Longe, O.; Ngwa, F.; Wada, F. & Mbarika, V. (2009). Criminal uses of ICT in sub-Sahara Africa: Trends, concerns and perspectives. *Journal of Information Impact*. 9, (3), pp 155-172

Cybercrime can be described as any criminal activity having taken place via the internet, smart phone or other electronic means. Cybercrimes include digital piracy like stealing data, online bullying and harassment which includes threatening, blackmailing, and circulating sexually explicit messages/videos through text messages, MMS or e-mails, viewing online pornography, and computer hacking. See <http://www.cybercrime.gov/>; <http://www.techterms.com/definition/cybercrime>.

⁴Olugbodi, K. (2010). Fighting Cyber Crime in Nigeria. Retrieved September 10, 2015 from http://www.guide2nigeria.com/news_articles_About_Nigeria

⁵ Ordinarily courts are prohibited from trying Child offenders in public or open court with the public in attendance irrespective of the crime allegedly committed. But on the contrary, a child offender who committed a crime with an adult is usually tried in the public.

⁶MorenikeFrancis, 'Juvenile Justice in Nigeria: Dilemma of a Criminal Justice System', available at <http://www.ijn/hmt/> Accessed on 25th November, 2015.

differently from adults⁷ because of their mental immaturity, emotional instability, tender and vulnerable age, weak physique, proneness to vices and violence and inability to look after themselves in order to shape their personalities into socially – acceptable persons.⁸ It is important to state at the onset that the terms “child”, “juvenile” and “young offenders” are used interchangeably in this study to refer to the subject of concern which is children that are “in conflict with the law or beyond parental control”.⁹

Instructively, there is no universally acceptable definition of a juvenile. This is evidenced from the laws of different nations where different age brackets are stipulated.¹⁰ The domestic laws of all countries lay down a minimum age below which a person is exempted from prosecution and punishment. The rationale for such exemption is the absence of *mens rea*, which does not admit the criminalization of acts/conducts of those who at the time of commission of the crime cannot distinguish between right and wrong.¹¹ Article 40(3)(a) of the United Nations Convention on the Rights of the Child provides that:

State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law

Under the Nigerian law, a juvenile is either a child or young person under fourteen years of age or who falls within fourteen and seventeen years of age.¹² Instructively, a child under the age of eighteen years who gets himself/herself into trouble with the law may ordinarily have his/her case heard in the Juvenile or Family Court but this is not the case in cybercrimes in Nigeria as the trial of juvenile offender is vested in the Federal High Court by implication, juvenile offenders are not given special treatment.¹³ This contradicts the rationale behind the provisions of the Nigerian Criminal Procedure Act, the Children and Young Persons Act and Sections 149 and

⁷ Cynthia Roberts H, *Juvenile Delinquency: Causes and Effect*, (Yale-Haven Teachers Institute, 1986) available at <http://www.yale.edu/yhnt/curriculum> Accessed on 2nd May, 2015.

⁸ Alemika E.E.O. and Chukwuma I.C., ‘Juvenile Justice Administration in Nigeria: Philosophy and Practice’ (Centre for Law Enforcement Education, Lagos, 2001)

⁹ Roy N., Justice Denied: The treatment of children in conflict with the law. (Final Report, Save the Children UK Juvenile Justice Global Review 2001). http://www.crin.org/docs/save/ijmodern_concepts.pdf-similar. Accessed on 14th February, 2011

¹⁰ 7 years in India, 10 years in England, Wales and Northern Ireland, 8 years in Scotland, 13 years in France, 14 years in Germany, Austria, Italy and many European countries. (Sources: UNICEF and Melchiorre 2002 in Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law (Save the Children UK). Available at www.crin.org/docs/save/ijmodern_concepts.pdf-similar. Accessed on 20th December, 2010

¹¹ Doherty, O., *Criminal Procedure in Nigeria* (Blackstone Press Lagos, 1990). p57. See also Smith, J.C. and Hogan, B., *Criminal Law* (Butterworth, London, 1983) 98.

¹² See Section 2 of Children and Young Persons Law, Cap C 10 Laws of Lagos State 2004. Section 2(k) of the Juvenile Justice Act 2000 defined a juvenile or child to mean a person who has not completed the eighteenth year of age. A boy or girl under 18 years of age is a juvenile or child. In the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the age definition of a juvenile is made dependent on each respective legal system so as to accommodate the different economic, social, political, cultural and legal systems of member states. See appendix...Beijing Rules 2.2(a).

¹³ See Section 50 of the Cybercrime (Prohibition, Prevention, etc.) Act, 2015

151 of the Child Rights Act, 2003 which established Family and Juvenile Courts both in High and Magistrate Courts and gives them exclusive jurisdiction for the purpose of hearing and determining matters relating to children. Against the above background, this study examines the legal issues affecting juvenile cyber offenders, the propriety of Federal High Court as against Juvenile or Family Court that supposes to try juvenile cybercrimes. The author posits that vesting cybercrime juvenile offender in Federal High Court poses threat to the primary objective of rehabilitation, reformation and reintegration of juvenile offenders into the society. This study also examines the challenges in legislations on juvenile justice in Nigeria and other African countries and argued that lesson should be learnt from South African legislation on cybercrimes.

Review of Incidences of Juvenile Cybercrimes in Nigeria: In Nigeria, there are no available statistics on the usage of social media by the youths. However, study have shown that on the average, young people spend 12 hours daily, engaging in some forms of media use, particularly texting, ping, chatting, music, surfing the net and social networking, while a third of them use social media in the bathroom.¹⁴ Arguably, it has been observed that social networking sites expose people especially children to predators, increase vulnerability to computer viruses, lower worker productivity, and promote narcissism and short attention spans.¹⁵ Similarly, studies have shown that access to pornography in Nigeria has increased, especially within underage children, and in most cases parents do not usually have control over the media contents accessed by their children.¹⁶ Olaide and Adewole have noted that a sizeable number of cyber criminals in Nigeria fall within the youthful age.¹⁷ Another statistics has shown that Nigeria's youth (15 -24) literacy rate stands at 78.15%.¹⁸ The high rate of youth literacy equally has implication on s young persons' propensity and exposure to the usage of Information Communication Technology (ICT). Thus, Nigerian youths just like their counterparts in other climes are increasingly adapting to the digitally savvy lifestyle and are socially connected on line. In addition, Sesan gave a 2007 internet crime report which listed Nigeria third in terms of online crime activity and the prevalence of cybercrime among a sizeable number of young Nigerians.¹⁹ To give credence to the above assertion is the view expressed by Omorogbe thus:

"Because reliable statistics are hard to come by in Nigeria, it is hard to estimate the number of younger Nigerians that own a smartphone, but it is believed that there are close to 25 million smartphone users in the country, out of which some 65 per cent are youth. Majority of phone users in the country have received unwanted calls or messages

¹⁴Uduma U (2013). 'Youth and the Internet: The Dangers and the Benefits'. LEADERSHIP Newspaper June 16, Retrieved from <http://leadership.ng/news/160613/youth-and-internet-dangers-and-benefits> on July 9, 2013.

¹⁵ProCon (2013). 'Are Social Networking Sites Good for Our Society?'. Retrieved from <http://socialnetworking.procon.org/> on July 8, 2013.

¹⁶Research conducted by DrAgber (Head, Theatre Arts Department, University of Abuja) cited in Uduma U (2013). 'Youth and the Internet: The Dangers and the Benefits'

¹⁷Olaide and Adewole (2004), Cyber Crime Embarrassing for Victims. Retrieved from <http://www.heraldsun.com.au> Accessed on September 2015.

¹⁸World Bank (2010). 'Literacy rate, youth total (% of people ages 15-24) in Nigeria'. Retrieved from <http://data.worldbank.org/country/nigeria> on July 8, 2013.

¹⁹Sesan, G. (2010), The New Security War. Retrieved from http://www.pcworld.com/article/122492/the_new_security_war.htm#tk=mod-rel.

on their phone from someone pretending to be someone else. Issues such as hate crimes, religion, appearance or sexual orientation as well as rumour mongering have been spread freely with the smartphones.”²⁰

Methodology: The method adopted in this study is both analytical and qualitative. The study makes a content analysis of the existing legal framework to identify the jurisdictional issues in cybercrimes in Nigeria and South Africa. The qualitative method involved doctrinal approach. The doctrinal approach employed in this research is through reliance on materials in the libraries and other existing databases. These materials comprises of primary and secondary sources of information which include provisions on the various provisions of law governing the jurisdictional issues in cybercrimes in Nigeria and South Africa; statutory laws - like the Cybercrime (Prohibition, Prevention, etc.) Act, 2015, the Child Rights Act, 2003, Penal and Criminal Codes, Republic of South Africa Cybercrimes and Cybersecurity Act, 2015 and the Republic of South Africa Child Justice Act, 2008. Materials from the secondary sources utilised include textbooks, journals, and materials downloaded from the internet.

Research Legal Framework in Nigeria: This section examines whether the provision of Section 50(1) of the Nigerian Cybercrime (Prohibition, Prevention, etc.) Act, 2015 vis-à-vis the provisions of Sections 149 and 151 of the Child Rights Act, 2003, Section 6 of the Children and Young Persons Act, 1958 and the Criminal Procedure Act, 1960 are not in conflict and if the answer is in the affirmative, whether the conflict has not hinder the achievement of the primary objective of rehabilitation, reformation and reintegration of juvenile offender into the society. By Section 50(1) Cybercrime (Prohibition, Prevention, etc.) Act, 2015 provides:

“The Federal High Court located in any part of Nigeria regardless of the location where the offence is committed shall have jurisdiction to try offences under this Act...” (Underlining emphasis mine)

Section 151(1) (b) of the Child Rights Act, 2003 provides:

“Subject to the provisions of this Act and in addition to such other jurisdiction as may be conferred on it by any other law, the Court shall have unlimited jurisdiction to hear and determine-

(b) any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child.” (Underlining emphasis mine)

The word “shall” connotes a word of command or mandate as decided by the superior Court in Nigeria in the case of *Sadoh Integrated Farms Ltd. v. N.D.I.C.*²¹

By Section 6 of the Constitution of the Federal Republic of Nigeria, Federal High Court is one of the conventional Courts in Nigeria that hears and determine matters involving adult offenders while Sections 149, 156 and 205 of the Child Rights Act and Section 6 of Children and Young

²⁰ Omorogbe, A. (2012). Electronic Bullying Among Middle School Students. *Journal of Adolescent Health*, Vol. 41, p. 22-30.

²¹ (2014) All FWLR (Pt. 758) 971 at 982.

Persons Act established juvenile and Family Courts which deal with the issue of juvenile trials. The provisions for instance guarantee the right of the child to be tried in a separate court and to the exclusion of the public.

By Section 415 of the Nigerian Criminal Procedure Act, 1960, a Court inquiring into the charge against a child should sit either in a different court building or court room as against the ordinary court room where adult cases usually take place. In furtherance with attendant of juvenile in court, Sections 417 to 440 of the Criminal Procedure Act, prohibit the Court from allowing the juvenile to associate with an adult charged with any offence.

Research Legal Framework in Republic of South Africa

Section 25(1) of the Republic of South Africa Cybercrimes and Cybersecurity Act, 2015 provides:

"A Court in the Republic trying an offence in terms of this Act has jurisdiction..."

By community reading of Chapter 4 of the Act, a Court in the Republic include Magistrate Courts as well as the High Court of South Africa. That provision lay credence to the preamble to the South Africa Child Justice Act 75 of 2008 which states: "ACT to establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences..."

The purport of Section 25(1) of the Republic of South Africa Cybercrimes and Cybersecurity Act, 2015 is to allow matters relating to children to be heard and determined at the Magistrate Court.

Findings: The basic fact is that juvenile justice system (which is for youth) is significantly different from the criminal justice system for adults in many respects.²² For instance, the juvenile justice system is designated for children and youth and considers offences committed by children under the age of eighteen as delinquent acts rather than crimes as it is legally used for adult criminals. In line with this specialty, juvenile justice demands separate courts, and hearing is not open for the public in attendant.²³ Therefore, the juvenile court adjudicatory hearings in contrast to criminal trials of adult, is designed to be informal and directed at achieving the well-being of the child offenders. Consequently, while the criminal justice system for the adult is focused on punishment for adult offenders, the juvenile justice system focuses more on care, treatment, rehabilitation and supervision with emphasis on rehabilitation instead of punishment, prevention rather than retribution.

The language of trial and sentencing is another unique identifiable distinction between the juvenile and adult justice systems. For instance, the word "guilty" or "not guilty" would not be employed while sentencing a child but rather "court committal" or "facts sustained" or "facts not sustained" are used.²⁴ The technical and legal word employed by the juvenile court for children or young person found to have committed an offence charged is "the child is involved or not involved", rather than finding him "guilty" or "not guilty".

²² See Rendleman, D.R. 'Parens patriae From Chancery to Juvenile Court' (1971) 23, South Carolina Law Review 23:205-59 in Yemi Akinseye-George, *Juvenile Justice in Nigeria* (Centre for Socio-Legal Studies, Abuja, Nigeria, 2009). See Parts XIII and XX of the Child Rights Act, 2003.

²³ See Section 156 of the Child Rights Act, 2003.

²⁴ See Section 213(2) of the Child Rights Act.

The crux of the traditional juvenile court hearing is to dispose of the crime committed by the youth rather than the determination of his/her guilt or innocence. The juvenile courts are more concerned with how best to reform the deviant's behaviour rather than the determination of guilt. The reasons for this can be deduced from the decision in the case of *Roper v. Simmons*²⁵ which postulated that youths or young persons are less culpable than the average adult offender because they lack maturity and responsibility, they are more vulnerable and susceptible to outside influences, particularly negative peer influences, are not as well formed in character and personality as adults, and have a much greater potential for rehabilitation than adults. More importantly it was emphasised that the reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of an irretrievably depraved character.

The superior Court in Nigeria has decided in line with the above decision in the case of *Kachi v. State*²⁶ when the Court postulated thus:

"Young offenders should be given opportunity for correction, reformation and rehabilitation to be restored into society as useful law abiding citizens. Thus, prosecutors and adjudicators should not claim ignorance of or deliberately sidetrack the provisions of the Child Rights Act, 2003 in the course of administration of criminal justice in respect of a child or juvenile."

The purposes of those provisions are to protect the privacy of the young offenders, avoid to harm being caused to the child by undue publicity or by the process of labelling. Also to protect him or her from the effects of stigmatization that may result from public trial. Those provisions also seek to prevent the criminal contamination or indoctrination of young offenders by adult criminals. Besides, such measures are desirable for the protection of young offenders from abuse and exploitation by adult criminals.

This study finally revealed that exposure of children to formal criminal processes especially in the case of cybercrimes may have an adverse effect on subsequent attempts at juvenile offenders' rehabilitation and reintegration into the society.

Conclusion: The paper concluded that vesting trial cybercrime committed by juvenile in Federal High Court is in conflict with the rationale behind provision for special trial of juvenile in Juvenile Court or Family courts in Nigeria. Arguably, the problem of juvenile delinquency is becoming more complex and cybercrime prevention programmes do not contemplate or well equipped to deal with the existing realities. Developing countries are no doubt engaged in activities aimed at preventing juvenile crime but the overall effect is weak because the mechanisms in place reflect a preference for judicial rather than social approach. A shift from the reactive to proactive approach is pertinent in order to obtain the desired result. It was also made known that though accountability and self-responsibility are issues of protection for the Internet, parents, as guardians, should take care of the safety of their children who are young users of the

²⁵ 543 U.S. 551(2005).

²⁶ (2015)9 NWLR (pt. 1464) 213

Internet. This is more so in Nigeria where the law differentiates between crimes that can be committed by an adult and by a juvenile.

It is also suggested that the jurisdictional procedural process of juvenile offenders in cybercrimes vested in the Federal High Court need to be amended and jurisdiction to trial juvenile cybercrime should be transfer to Family or Juvenile Court which is well positioned and designed for children who are in conflict with the law. In the alternative and pending the legislative amendment to the relevant law, the Federal High Court judge should endeavour to transfer juvenile cyber offenders to those Family and Juvenile Courts for proper adjudication. This will enhance the reintegration of juvenile cyber offenders into the society and the "the best interest of the child" principle will be achieved.

