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AN EXPOSITION OF THE LAWS OF CRIME, AND THE HEALTH IMPLICATIONS IN CASES OF CHILD ABUSE IN NIGERIA.

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INTRODUCTION

Worldwide, children continue to be subjected to violence, abuse, neglect and deprivation. Padillo (1996) states that half of humanity are under the age of twenty five and one third under sixteen. Child abuse is a multidimensional issue with different facets and problems. It is a neglect of both international and national laws.

The aim of the law of crime is to maintain laws and order in the society and to protect the life, liberty and property of citizens. In Nigeria like other societies, the law of crime contains special provisions which deal with the child because of the vulnerability and immaturity of the child. Certain acts, or failure to do certain things for a child as prescribed by law may be termed child abuse. The law of crime is relevant to the issue of child abuse because abuse is connoted so long as a child's wellbeing is endangered irrespective of motive or socio cultural norms.

There is no doubt that many abused children have suffered a variety of effects relating to health which may be short termed or long lasting. Whatever the outcome of the studies on the effects of child abuse on the child, the law of crime should protect such a child.

This paper examines child abuse from the angle of the law of crime, and consider different legislations relevant to the law of crime and

child abuse. The effectiveness and problems encountered are highlighted and finally the implications of child abuse on the health of the child are discussed.

CHILD ABUSE

The term child abuse has different meanings. According to the African Network for the prevention and Protection against child Abuse and Neglect (ANPPCAN), child abuse is the intentional, unintentional or well intentional acts which endanger the physical health, emotional, moral and educational welfare of the child.

These acts include sexual abuse, child marriage, child labour, child battering, child trafficking, child abandonment, and malnutrition. Child abuse could be categorised as sexual abuse, physical abuse and emotional abuse.

Physical abuse include beating, hitting, deprivation of food and material or the misuse of a child in a way that the fragile body structure cannot bear such was the case of an eight month old baby who was alleged to be violently shaken and had his head slammed and he died five days later (The Guardian, 1998). Sexual abuse is the misuse or exposure of the body of a child in an immoral manner. It is any act of a sexual nature upon or with a child by an adult. Schechter and Roberge (1976) defines sexual abuse as the involvement of dependent, developmentally immature children and adolescents in sexual activities they do not truly comprehend to which they are unable to give informed consent, or that violates the social taboos of family roles.

For the purpose of this paper, different offences under the laws of crime in Nigeria and other issues under the laws of crime which are relevant to child abuse will be discussed.

THE LAWS OF CRIME CHILD ABUSE

In Nigeria, there is no single comprehensive law on children neither is there one on child abuse. The two major sources of criminal law are the Criminal Code Act (Cap 77 1990) applicable in Southern Nigeria and the Penal Code cap 89 1990 applicable in Northern Nigeria, the laws relating to crime are not restricted to these two legislations. The constitution of the Federal Republic of Nigeria (Cap 62 1979) is the Supreme Law in Nigeria and it did not make any specific provision for the rights of the Nigerian child. It is noteworthy, that some of the general constitutional rights are applicable and can be extended to the child. (Freeman, 1980). Section 17 (3) (F) of the constitution however provides that

"Children, young persons and the aged are protected from any exploitation whatever and against moral and material neglect".

Other legislations relevant to the laws of crime and which pertain to the child include The Children and Young Persons Laws (Cap 32, 1958) which made an elaborate provision on the Rights of the child in relation to the welfare and treatment of young offenders. Other legislations are the Criminal Procedure Acts (CPA) (Cap. 80, 1990), The Criminal Procedure (Northern States) Act (Cap 81, 1990) and the Evidence Act (Cap 112 1990.)

Apart from the above maintained legislations which are national and state laws, there are some relevant International Instruments to which Nigeria is a signatory, and some of the articles are relevant to the Law of crime. These include the United Nations Convention on the Rights and Welfare of the Child (1990), the African Charter on the Rights and Welfare of the Child (1986) and the Organisation of African Unity Charter on Rights of the child (1990). Unlike local legislations, under the international Instruments, there are no sanctions for infringing the provisions. Many of these international

instrument provide the broad framework and obliges ratifying states to undertake and pursue a national policy designed to eliminate child abuse.

In relation to the law of crime, a child that is abused can either be a victim of crime or an offender under the law of crime.

A CHILD AS A VICTIM OF CRIME

Child abuse can be as a result of a child falling victim of a crime. There are many provisions under the law of crime where the child is the victim of such a crime. Generally, the law of crime is neutral in relation to age. However, due to the immature age of the child, there are specific provisions in the law, meant for the protection of the child.

One area where the law of crime protects the child in particular is in offences against morality. Such provisions are found in sections 216, 218-227 and 223 of the Criminal Code and also under the Penal Code. There are cases of sexual abuse. Under these sections, the law frowns at anyone whether male or female who commits an offence against morality on a child or who unlawfully or indecently or encourages or allows or procures or detains or conspires with anyone to commit such immoral act. The offences under these sections include indecent treatment of boys under fourteen, defilement of girls of different age bracket, indecent treatment of girls, prostitution and abduction. For committing such offences, the punishment ranges from six months imprisonment to a sentence for life, canning and payment of fines. On the issue of canning, only a man below the age of seventeen can be canded (Section 17 of the criminal code), the punishments for such offences are similar both under the Penal Code and Criminal Code with slight differences. It is however difficult to understand the rationale for the distribution in punishment in certain offences which appear similar. For example, under section 216 of the Criminal Code, an offence committed against young boys under fourteen years attracts seven

years imprisonment while the defilement of a girl between eleven to thirteen years attracts two years imprisonment.

Under provisions relating to violence to person, the criminal Law envisages that a child may be disciplined and require reasonable chastisement for misconduct. A blow or force not amounting to a wound or grievous harm is justified in section 295 of the Criminal Code. This may be justified for correction by parents, masters and mistress, guardian or authorised person. Apart from this legal provision, correction by beating is culturally accepted in Nigeria. The term grievous harm is defined in section 1 of the criminal code as harm amounting to maim or which seriously or permanently injures health or likely to injure health or result in permanent disfiguration or permanent or serious injury to any external or internal injury. The law however does not tolerate unreasonable correction in kind or degree. A correction of a child resulting in grievous harm is physical child abuse. The story of Folashade and Toyin Abudu show how badly children can be treated. It was reported (C.L.O., 1996) that the two children who were suspected to be witches were tortured by a supposed prophetess who burnt their fingers with fire to make them confess to witchcraft practices. One of the children had one of the fingers amputated to save his life. This is a vivid case of child abuse and an offence under section 335 of the Criminal Code.

Abandonment of a child or exposure of a child under seven years in such condition that grievous harm likely be caused is a crime that attracts five years imprisonment.

A child has certain rights and the law imposes certain duties on persons that may be responsible for such a child. In sections 300 to 302 of the Criminal Code, anyone having charge of a child, a head of the family with a child under the age of fourteen and a mistress of a servant under sixteen are by law compelled to provide necessaries of life and necessary food clothing or lodging to the

child or servant respectively. Necessaries are articles and services fit to maintain the particular person in the station of the life in which he moves. They are those things without which an individual cannot reasonably exist. Failure to performed such duties is child abuse and it is also a crime with a maximum punishment of three years imprisonment.

Infanticide, is a crime under section 327 of the Criminal Code and a form of child abuse. It is when a mother of a child under twelve months causes death of the child either wilfully or by omission when her mind was disturbed because she has not fully recovered from the effect of giving birth to the child or by reason of lactation. It is submitted that this provision of the law should be reviewed. Such a mother is in need of medical help and should not be considered as an offender because of the state of her mind at the time of committing the crime. Moreso when the offence carries a punishment of life imprisonment. (Tsitsoura, 1985)

Abduction, kidnapping, slave dealing and child stealing are offences that may result in physical, sexual or emotional child abuse. (R v Timmins, 1866). They are crimes under sections 361, 362, 369 and 371 of the Criminal Code, and are prohibited in article 35 of the United Nations Convention on the Rights of the child and Article 29 of the O.A.U. charter. In Nigeria there are many cases of children being kidnapped, abducted, stolen and sold into slavery into neighbouring countries. The Daily Times (1991) reported that some Nigerian children were rescued and repatriated by the Nigerian embassy in Libreville and these children were from Ahiazu-Mbaise Local Government in Imo State. In January 1994, the Daily Time again reported that some children from the same Local government were intercepted as they were being smuggled to Gabon. This issue was said to be of great concern to the Federal Government that the State government would be charged for expenses incurred in repatriating the children in the future (CLO 1996.). Child prostitution is a serious form of sexual, physical and

emotional abuse and a crime that thrives in Nigeria. It is not a phenomenon existing only in the Western world. In a report in The Champion (1996) it was reported that a man hunt was mounted at Murtala Mohammed Airport Lagos for a business man who "imported" ten children between the ages of ten and twelve from Republic of Benin into Nigeria on board of Air Gabon. A more pathetic case of a child of thirteen years old was reported in Womens Right Monitor (1995), she was lured into prostitution at a popular harem in Lagos and was thrown out when she become pregnant.

The above discussions reveals how vulnerable children are, therefore easily falling victims of crimes. It is clear that legislation means little where it is not vigorously enforced.

CHILD ABUSE AS A RESULT OF A CHILD BEING AN OFFENDER

The laws of crime contain provisions on child offenders. There are instances of child offenders being subjected to abuse. Under every penal system, there are rules of exemption from criminal responsibility. Under the English common law, a child under seven years is not criminally responsible for any act or omission. (T v DPP, 1989). The position has now changed and the age increased to ten. A child below seventeen years cannot be sentenced to death. The preamble of the UN Convention and the Universal Declaration of Human Rights states that childhood is entitled to special care and assistance. Article 3 of the Declaration states that in all actions concerning children whether by public, private, social welfare institution, court of law or legislative bodies, the best interest of the child shall be the primary consideration. Therefore, when there is an infringement of the laws of crime by a child, there are special steps that must be taken by persons handling such a child and such matters. This is known as the Juvenile Justice System. No country in the world, treats young offenders at par with adult offenders. The aim of the Juvenile Justice is to emphasis the well being of the

juvenile (Article XVII (1) of the African Charter on the Rights and Welfare of the Child); (Article 37 of the UN Convention of the Rights of the Child). These provisions are contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice known as the Beijing Rules. The rules are not formally binding on states and it is recognised that some of the rules may be difficult to achieve in view of social, economic, cultural and political and legal conditions. However, member states should seek to attain the standard.

In the juvenile justice system, the child offender may pass through three stages and a violation of any of his rights may be child abuse. The stages are discussed below.

Pretrial Stage

Before a child faces any trial for infringing the law, such a child has pretrial rights. Rule 10(3) of the Beijing Rules provides that

“Contact between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile promote the well being of the juvenile and avoid harm to him or her”

Unfortunately this is not the case. Children who run foul of the law are manhandled by police men who have no special training in handling juvenile cases. A child offender who is apprehended does not enjoy the right of getting the parents notified immediately after his arrest or within the shortest time. There is no provision under the Nigerian Law which provides specifically for this. The best provision that is in the law is a general provision that when a person is arrested, the officer in charge of a police station should report to the nearest magistrate. In relation to a child offender, the earliest time a provision is made for the notification of the parents or guardian is when the issue of bail arises. The violation of the right of a child at this stage is child abuse.

Trail Stage

Undue publicity which accompanies court trial may result in psychological and emotional damage to a child. A child is susceptible to stigmatisation and criminological research into labelling process has provided evidence of the detrimental effects resulting from the permanent identification of young persons as delinquents or criminals (Ehonwa, 1993)

In section 415 of the Criminal Procedure Act, the trial of a juvenile offender except where tried jointly with an adult should be in a regular court but a juvenile court properly constituted. The court trial is shielded away from public glare with only the legal practitioner representing the child, and any person directly concerned being present in the court.

Disposition Method

After the trial, the word punishment is not usually used for child offenders. This is in line with the aim of the juvenile justice system which is to reform and integrate the child. In the disposition methods, the words “conviction” or “sentence” are strong words which are not used in cases involving a child. (section 414 C.P.A). Instead, the word “order” is used. The law generally provides against imprisonment as a disposition method and suggests other methods such as probation fine, corporal punishment or otherwise. As a last resort, if a child is imprisoned such a child should not be allowed to associate with adult offenders because of the tender age and the belief that such a child is capable of being reformed. At this stage, the rights of a child offender is often times infringed. Child offenders in many studies are found in prisons with adult offenders because of shortage of juvenile institutions where they should be. More pathetic cases are instances of children who are not offenders, but were born in the prison or were brought to the prisons with their mothers who were sentenced to terms of imprisonment. It is unfortunate that there are no special provision under the law of crime for

such children

One of the disposition methods discussed above is flogging. Flogging is a method worthy of note and which may be relevant to the issue of child abuse. Flogging is a primitive, inhuman form of punishment under the law of crime. Under this law, only males below the age of seventeen can be flogged. According to McEwen (1972), the two reasons for this form of punishment are to instil fear and to inflict pain and act as deterrent. It is said that if flogging is not properly or judiciously applied it has adverse effects which may do more harm than good. The adverse effects include making the child incorrigible, bitter and resentful. The only advantage is that it is quick, does not waste time and man power and it cost little.

There is a purported correlation between child abuse and aggressive/violent behaviour or crimes. It is believed that persons who were abused or neglected as children would become murderers or perpetrators of other crimes of violence if they survive.

There is the possibility that a physical, sexual or emotional abuse on a child, which is recognised as a crime under the law, can lead to the child doing an act which amounts to a crime. There is an interwoven relationship between child abuse and the health implications arising from such abuse and crime. Abuse of a child either physically or sexually may result into one or more of the following. An unwanted pregnancy, may result into abortion. Abortion is a crime. An abused child may attempt to commit suicide on herself or may even attempt or actually murder or cause harm to the abuser. These acts are all crimes. The way a child is handled and treated pose a serious threat to current health issues. As the most fragile member of the society, a child is most vulnerable. It is therefore important to consider the effect of such abuses on the health of the child.

CHILD ABUSE AND HEALTH IMPLICATION

The impact of any form of abuse be it sexual, physical or emotional can be very significant especially with regard to a child whose smaller body weight and developing organs put her at greater risk. Studies of the effect of sexual abuse has been since 1937 (Bender and Blau). In the past, many of the studies indicated that some or all the abused children suffered no ill effect (Bender and Gruett 1952). These studies have been criticised as being inaccurate by current scientific standard and a review of such studies show otherwise.

Studies have shown a variety of diseases and effects relating to health on children. The disease include skin diseases, malnutrition due to shortage of food, gonorrhoea, syphilis, HIV virus, ruptured wombs, visico vagina fistula (VVF). These effects include depression, guilt, learning difficulties, sexual promiscuity, runaway behaviour, somatic complains such as stomach aches, hysterical seizure, phobias, nightmare, suicidal behaviour, retardation of growth and intelligence, extreme physical, psycho-socio abuse which have life long and life threatening consequences. Such abuses or traumatized children grow to be unbalanced adults who are of no value to the nation. Long lasting effects of an abuse in childhood can result in drug addiction in adulthood, interpersonal relationship, mistrust of men, sexual dysfunction. A child's contact with its environment socially, emotionally and physically all add up to shape the personality of the child's life. A child taken into prison with the mother, is being reared in an environment which will make such a child adapt to an improper environment. The fact that records are not properly kept at the various prisons or institutions in Nigeria make it impossible to determine whether or not the trauma of childhood imprisonment has an crimogenic influence on children.

PROBLEMS IN ENFORCING CRIMES AGAINST CHILDREN

There are some problems which makes it difficult to enforce or reduce incidence of child abuse. Some of these are listed below:

- i Differences in perception and false perception. It is falsely believed that there is less danger of infection from AIDS with younger partners.
- ii Cultural problems: This constitute a problem of defining child abuse. For example, the degree of spanking which constitute child abuse is not defined. This makes it difficult to determine the point at which normal child rearing and discipline turn to abuse legislation will become difficult to enforce and policy makers may encounter serious problem to any child programme that is introduced. (Afamefuna, 1986).
- iii International networking in child abuse: This problem is a global one as children are increasingly being bought and sold across national borders by organised network. Therefore enforcement becomes difficult.
- iv Funding: This is a problem being faced by organisations embarking on programmes directed at reducing cases of abuse. The success of such a programme is dependent on adequate funding (Recorder, 1997).

RECOMMENDATIONS AND CONCLUSION

A few recommendations are highlighted in solving the problems of child abuse in relation to the law of crime.

- i Making a National Child Welfare Policy to take care of cases involving children.
- ii Beefing up of security at the borders to prevent international network and trafficking of children.
- iii Provision of rehabilitating centres for victims of child abuse.

- iv Organising continued education for judicial personnel involved in child issues.
- v Organising special training for police men in handling child offenders.
- vi Provision of stringent punishments for violating rules concerning child protection.
- vii Introduction of measures towards alleviating poverty
- viii Setting up of a home visitation programme by qualified welfare officers.

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