

**LEGAL ODDITIES ON SPECIAL PROTECTION OF CHILD OFFENDERS:
AN EXAMINATION OF OFFENCES BY A CHILD OFFENDER VIZ A VIZ SECTION 1(2)(A) OF VIOLENCE
AGAINST PERSONS (PROHIBITION) ACT 2015 AND CHILD RIGHT ACT (2003)**

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ABSTRACT

This work impact on the effect of juvenile sentencing under section 1(2)A) of the VAPP Act as a breach of the fundamental minimum age principles for criminal responsibility of a child offender. The intent of enacting laws and sections of law that deals on child offender is not to punish but to correct, through a special court, rehabilitation juvenile system and later on access their development on whether or not to be integrated back into the society. The regular(normal) court system lack the cares and sensitivity of handling child prosecution as it requires due protocol that will not hinder the development of a child later on in life; as a crime is not a product of an individual alone but a compound effect of both individual, environment and society. As such due care must be exercised by law while handling a child offender cases i.e. careful consideration of whether the child is a first-time offender, psychological and behavioral status among various factors. This secure the interest of the society, law and best interest of a child offenders in other to meet the virtue of section 1 of the Child Rights Act (2003) which the VAPP Act breached and will be examined within this work.

KEYWORD: Child Offender, Minimum Age Criminal Responsibility, Rape Offence, Criminal law, Child Rights Act, VAPP Act.

INTRODUCTION

Law exists to regulate human and its environment. Hence, governments are primarily in place to make and ensure compliance of the law and help achieve its objectives.

The foundation of Nigeria's legal system is rooted in the English common law tradition, an inheritance from the British colonial rule. This tradition was introduced through a process of legal transplant, where English law² was formally adopted into the country's legislation. The modern Nigeria legislative system being the National Assembly and the State House of Assembly³ are empowered by the constitution to make laws for the peace, order and good governance of the state.

However among the duties of the legislative arm of government includes enactment of new legislation, adequately review or repeal of these inherited statutes, particularly in areas such leading to the continued existence of laws that creates legal oddities.

Legal oddities are unusual or anachronistic laws and legal situations that are often rarely enforced, and serve as a quirks of a country's legal system. They range from old, outdated statutes to modern legislation. The term also include laws or sections of laws that may not likely be valid or creates contradiction to other law in term of implementation yet still in existence.

In Nigeria, some laws have this oddities existing as part of a law and this crest for questions of their implementation or adjudication in the legal system. Some this law includes: The Criminal Law, Violence Against Persons (Prohibition) Act 2015, The Child's Rights Act, 2003, among others. This work seeks to envisage some of these legal oddities still existing as a law in the Nigeria Legal System.

VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015⁴

An Act⁵ to "eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and for related matters".⁶ The VAPP Act was enacted as a result of many gender-based violence and human right abuse happening in Nigeria, including rape, maiming of spouse, forceful ejection from home, forced isolation, acid bath, and killing.

Legal oddity in this enactment exist under section 1(2)(a) which raise a question on the minimum age for criminal responsibility of a child.⁷

Section 1:

² Including common law, doctrines of equity, and statutes of general application in force in England on January 1, 1900

³ S. 4 (2) and (7) of the 1999 Constitution of Nigeria (for the federal and state level respectively)

⁴ Also referred to as VAPP ACT or VAPPA 2015

⁵ Signed to law by President Goodluck Jonathan on the 25th May 2015.

⁶ FIDA, International Federation of Women Lawyers Nigeria. "Violence Against Persons (Prohibition) Bill 2015" (PDF). FIDA.

⁷ A child is any person below age 18 as provide in section 29(4) (a) is the 1999 Constitution of Nigeria; see also s.494 Administration of Criminal Justice Act (2015)

1) A person commits the offence of rape if-

(a) he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else; (b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

(2) A person convicted of an offence under subsection (1) of this section is liable to imprisonment for life except –

(a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;

Section 1 of the act define the offence of rape, while subsection 2 of the same section defined punishment of the offence and categories of person's that could be criminally responsible for such.

Criminal Responsibility is the mental fitness and ability of an accused to understand his\her actions and conduct at the time of committing such offence.⁸ For this determine the verdict of Guilty or Not Guilty to an alleged offence or crime.

Minimum Age for criminal responsibility has to do with the least age attainment before a child could be subject to Criminal trial and further examination of the responsibility⁹ for such act committed. This minimum age has been recognize vastly in areas of law including international law.¹⁰

In Nigeria the Criminal¹¹ and Penal¹² code for the South and North respectively provide under various sections, immunity for children on criminal responsibility. The ACJA¹³ under section 452¹⁴ respect the minimum age principles which lays emphasis on the procedure for trying child offenders upon which it confers The Child Rights Act¹⁵ jurisdiction and coverage for trying child offenders.¹⁶

⁸ M. C. ONUGBULAM; Minimum Age for Criminal Responsibility in Nigeria and the Implications of Section 1(2)(a) of Violence Against Persons (Prohibition) Act 2015 (ESUT Public Law Journal - Volume 5 Issue 1, 2024)

⁹ (Mens Rea and Actus Reus)

¹⁰ Article 26 of Rome Statute (excluding person under age 18 from ICC Jurisdiction; also criminal jurisprudence of most if not all African country protections children from criminal responsibilities

¹¹ S. 30 of The Criminal Code Act. Cap. C38 Laws of the Federation of Nigeria (LFN) 2004

¹² S. 50 of The Penal Code Cap. 89 Laws of Northern Nigeria 1963, applicable to Northern Nigeria

¹³ Administration of Criminal Justice Act (2015)

¹⁴ 452. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply. (Procedure for trying child offenders.)

¹⁵ (2003)

¹⁶ Ibid. see also s.371 ACJA

It is prior to note that this principle does not necessitate that a child offender in Nigeria law should not be subject to trial in court or have his¹⁷ liberty deprived, however the aim is for child offender's protection by not undergoing criminal trial but through a Juvenile Justice System at the best interest of the child.¹⁸

The view above were reinforced by the jurisdiction of Family court at both Magistrate and High court level¹⁹ and also were restricted from using terms like "CONVICTION" and "SENTENCE" in relation to a child offender in the court²⁰ for the best interest of the child.²¹ Similarly cases in various legal jurisdiction has condemned this act of sentencing or imprisonment of a child; such as the case of **Raduvha v Minister of Safety and Security & Another**²² at the CONSTITUTIONAL COURT OF SOUTH AFRICA²³ between Raduvha Joyce (15yrs old at time of arrest) and Minister of Safety and Centre for Child Law (amicus Curiae). Judgments was given by Bosielo AJ (unanimous) on the 11th August, 2016.

...arrest and detention of a child arrest under section 40(1)(j) of The Criminal Procedure Act 51 of 1977; rights of a child in Section 28(1)(g) and 28(2) of the Constitution by Police did not consider child's best interests discretion to Arrest must comply with the Bill of Rights detention of a child Must be a measure of last resort appeal upheld with costs against the Minster of Safety.

In lieu, the VAPP Act as a specialized enactment dreaming vastly on sexual violence against person's tend to violates this special protection of a child offender within the minimum age principle.

Section 1(2) (a):

(a) where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;

Whereas s.221 of Child Rights Act (2003) also known as (CRA) says: **(Restriction on punishment)**

(1) No child shall be ordered to be-

(a) Imprisoned; or

(b) Subjected to corporal punishment or

(c) Subjected to the death penalty or, have the death penalty recorded against him.

On examination of these two provision of the law, one can sense a conflict in law. Such is visible on the usage of the term "IMPRISONMENT"; whereas the CRA provides for alternative under s.250 (4).²⁴ Even though the

¹⁷ 'His' as used herein throughout this essay is inclusive of the female gender.

¹⁸ S. 1 of Child Rights Act (2003) also known as (CRA)

¹⁹ Ibid. s.149

²⁰ Ibid. s.213

²¹ Ibid. s.277 (for the meaning of "COURT")

²² [2016] ZACC 24 [CENTRE FOR CHILD LAW - Amicus Curiae]: see also S v Danster [2013] JOL 30662 (ECP) Reported in: Judgments Online, a LexisNexis Electronic Law Report Series Case No: CA&R 433 / 12; Judgment Date(s): 05 / 12 / 2012

²³ {case CCT 151/15}

²⁴ S.250 (4) A Children Correctional Centre shall be a place in which child offenders may be detained and given such training and instructions as will be conducive to their formation and re-socialisation, and the removal or reduction, in term, of their tendency to commit anti-social acts and such other acts which violate the criminal law.

sentencing be the VAPP act is a variable sentencing subject to maximum of 14 years, however such violates the spirit of the CRA by imposing imprisonment term to child below age 14, an act which the CRA forbid for the interest of the child.

This raise a question of which law supersede whenever such issues on child offenders arise.

THE CRA AND VAPP ACT WHICH SUPERCEDE IN RESPECT TO MATTERS SEXUAL RELATED OFFENCES AGAINST A PERSON BY A CHILD OFFENDERS VIS-A-VIS SECTION 1(2) (A) OF THE VAPP ACT

Observation from writer's and debates has been noticed that CRA is being referred to as a procedural law in line with ACJA on children related offence²⁵, so therefore since the Administration of Criminal Justice Act is a procedural law hence CRA is also and as such the VAPP Act being a substantive law shall supercede as a general rule. However, the writer opinion is that the CRA is neither standalone procedural law nor purely substantive law but rather it is a combination of the duo. The CRA is primarily a substantive law²⁶ because it establishes the rights, duties and penalty. Meanwhile it also contains element that governs how these rights and duties are enforced procedural.²⁷

Upon careful examination of the jurisdiction of the CRA and VAPP act, the writer is of the view that the Child Rights Act (CRA) supercede as the act enshrined the court²⁸ with "General Jurisdiction" and "Unlimited Jurisdiction" to hear and determine²⁹:

- (a) Any civil proceeding in which the existence or extent of a legal right, power duty, liability privilege interest, obligation or claim in respect of a child is in issue; and*
- (b) Any criminal proceeding 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.³⁰*

Therefore it is right to conclude that the CRA comes before the VAPP Act even if it does not come after it generally (in respect of child related offence).

CONCLUSION

The exploration of Nigeria's "legal oddities" reveals a profound truth of more than curiosities. This has left Nigeria with a legal framework that actively undermines human rights, erodes civil liberties, and stifles socioeconomic development. The continued existence of anachronistic laws governing matters from reproductive rights to juvenile justice is a significant barrier to national progress. The ultimate goal is not just the elimination of outdated statutes but a fundamental reform of the institutions, processes, and culture of law itself. By addressing the ghosts in the statute book and rebuilding the institutions that enforce them,

²⁵ ACJA s.452. (1) Where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply. (Procedure for trying child offenders)

²⁶ Ibid. s.31

²⁷ Ibid. s.205, s.215 etc.

²⁸ Ibid. S.277 (for the meaning of "COURT")

²⁹ In both civil and Criminal matters

³⁰ Ibid. Section 151(1)

Nigeria can transform its legal system from a relic of the past into a dynamic and empowering framework for the present.

RECOMMENDATIONS

The writer recommend that the sentencing should be examined into, amend and make the VAPP Act subject to the CRA for child matters. Although similar provision could be seen in the VAPP Act but it is not effective in both parties (i.e. s.31 (8) of the VAPP Act).

The writer recommend VAPP Act to be subjected to CRA so that states yet to domesticate the Child's Rights Act in Nigeria³¹ could respect the special protection of child offender.

The writer recommend that in line with the issues discuss in this work, the current enactment³² might do justice to the stated issues.

Bibliography

Cases

Centre for Child Law (Amicus Curiae) v S v Danster [2016] ZACC 24, Case CCT 151/15.
S v Danster [2013] JOL 30662 (ECP).

Statutory Authorities

Constitution, Statutes, and Codes
Administration of Criminal Justice Act 2015.

Child Rights Act 2003.

Constitution of the Federal Republic of Nigeria 1999, ss 4(2), 4(7), and 29(4)(a).

Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, s 30.

Penal Code, Cap 89, Laws of Northern Nigeria 1963, s 50.

Rome Statute of the International Criminal Court 1998, art 26.

Violence Against Persons (Prohibition) Act 2015 (VAPP Act or VAPPA).

Books, Journals, and Academic Sources

M C Onuegbulam, 'Minimum Age for Criminal Responsibility in Nigeria and the Implications of Section 1(2) (a) of Violence Against Persons (Prohibition) Act 2015' (2024) 5(1) *ESUT Public Law Journal*.

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Digital Publications, Reports & Institutional Sources

FIDA Nigeria, 'Violence Against Persons (Prohibition) Bill 2015' (FIDA, PDF).

Ministry of Gender and Sexual Affairs, 'Bill Passed to Repeal and Re-enact the VAPP Act (2015)' (Webpage, 9 July 2024).

³¹ Which include Adamawa, Borno, Bauchi, Gombe, Kebbi, Yobe, Kano, and Zamfara in their respective regions; although a child rights act exists there in some form.

³² A publication in the Ministry of Gender and Sexual have in their current webpage that on 9th July, 2024, a bill has been passed to repeal and re-enact the VAPP Act (2015).

Explanatory Notes & Miscellaneous References

'A child is any person below age 18' (Constitution of Nigeria 1999, s 29(4) (a); see also s 494 Administration of Criminal Justice Act 2015).

'Also referred to as the VAPP Act or VAPPA 2015'.

'Common law, doctrines of equity, and statutes of general application in force in England on 1 January 1900'.

'His' as used herein throughout this essay is inclusive of the female gender.

Section-based commentary:

CRA 2003, ss 1, 149, 213, 277.

ACJA 2015, ss 31, 151(1), 205, 215, 371, 452.

CRA 2003, s 250(4) (Children Correctional Centre provisions).

'In both civil and criminal matters'.

'Mens rea and actus reus'.

Northern States applying the Sharia-influenced Penal Regime (Adamawa, Borno, Bauchi, Gombe, Kebbi, Yobe, Kano, Zamfara; with Child Rights laws in limited forms).

'Signed into law by President Goodluck Jonathan on 25 May 2015'.