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PERPETRATION OF THE OFFENCE OF RAPE BY MINORS IN NIGERIA: A CALL FOR LEGISLATIVE RE-STATEMENT OF THE LAW

Michael A. AjaNwachuku^{} & Hemen Philip Faga^{**}*

The two criminal statutes applicable in the Northern and Southern regions of Nigeria tend to exculpate minors below the age of twelve years from liability for the offence of unlawful carnal knowledge or rape. This paper examines the provisions of the statutes and advocates for a purposeful interpretation of the provisions to achieve a balanced philosophy of criminal justice for the more matured category of minors who may have committed the offence of rape in Nigeria. The paper calls for the legislative amendment of the Criminal Code applicable in the southern region of Nigeria to reflect the culpability of certain minors who are sufficiently matured to understand the import of their actions, especially as the effect of such actions may continue to haunt their victims.

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INTRODUCTION

Specifically for the offence of rape, the Criminal Code¹ applicable in

^{*} Michael A. AjaNwachuku, Dean, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria.
Research fields: Human Rights with Specialization in Child's Rights Law.

^{**} Hemen Philip Faga, Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria.
Research fields: International and Comparative Law.

¹ The Enactment is Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria 2010. It applies in Southern Nigeria.

the southern region of Nigeria raises a presumption that a male child under the age of twelve years (minor) is incapable of having carnal knowledge.² This is without qualification to the state of maturity of the child. Conversely, the Penal Code,³ which applies in the northern region while making similar provisions, renders a child above seven years but below twelve years culpable for rape if it is proven that he has “attained sufficient maturity of understanding to judge the nature and consequence of such act”.⁴ The two codes thus, provide divergent approaches to the culpability of minors for the offence of rape in Nigeria. It appears that the real issue behind the culpability or otherwise of minors for the offence of rape is the age at which a person is to be criminally responsible for the purpose of punishment rather than the ability to commit the crime.⁵ This issue is much more relevant in the case of culpability for rape or unlawful carnal knowledge of a female by a male minor. What is the jurisprudence of the culpability or otherwise of male minors for rape in the two statutes? Is the physical development of the minor a factor in determining culpability? These are some of the knotty issues raised regarding the application of the provisions of the two statutes on the offence of rape by minors.

Even though in the contemplation of the Criminal Code, a male person below the age of twelve may be *doli incapax* (legally incapable of committing the offence of rape), it is submitted that such a person may be convicted of the offence of indecent assault and aiding and abetting rape or defilement.⁶ The punishment for these offences is far less than the punishment on conviction for unlawful carnal knowledge or rape.⁷

² *Ibid*, Section 30.

³ Cap. P3 Laws of the Federation of Nigeria 2010 (also Cap. 89 Laws of Northern Nigeria, 1963). It applies in Northern Nigeria.

⁴ *Ibid*, Section 50(b).

⁵ See Penal Reform International, The Minimum Age of Criminal Responsibility, *Justice for Children Briefing* No. 4, February, 2013. See also D. Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, (Ashcroft 2009). See generally, the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), adopted by General Assembly resolution 40/33 of 29 November 1985, (Rule 4 recommends that any minimum age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”).

⁶ Section 360 of Criminal Code Act *Op. Cit.*; Section 176 of the Criminal Procedure Act Cap. C41 Laws of the Federation of Nigeria, 2010; Okonkwo and Naish, *CRIMINAL LAW IN NIGERIA* 272 (London: Sweet & Maxwell, 1980). See also Daniel David Ntanda Nsereko, *CRIMINAL LAW IN BOTSWANA* 94 (Hague: Wolters Kluwer publishers, 2011). See the case of *R. v Angus* (1907) 26 NZLR 948, at 949.

⁷ By Section 358 of the Criminal Code, punishment on conviction for unlawful carnal knowledge or rape is life imprisonment. Where the conviction is for the offence of indecent assault, the punishment as provided for under section 360 of the Criminal Code Act and the combined effect of Section 176 of the Criminal Procedure Act and section 221 of the Criminal Code Act, is two years imprisonment.

This paper makes a case for the amendment of the Criminal Code to punish male minors (persons above the age of seven but below twelve years) for unlawful carnal knowledge if they have attained sufficient maturity of understanding to appreciate the nature of the act. It is argued that the law must qualify the culpability of persons in this age category based on the cognitive mental ability of the minors on a case-to-case basis as it is provided in the Penal Code applicable in the northern region of Nigeria, rather than outright foreclosure of the possibility of culpability. The paper also raises the issue of whether a minor below the age of twelve years is physically capable of committing rape or unlawful carnal knowledge of a female in view of the physiological and anatomical development of persons of that age.

I. LEGAL PROVISIONS OF THE OFFENCE OF RAPE OR UNLAWFUL CARNAL KNOWLEDGE IN THE TWO STATUTES RELATING TO PERSONS BELOW THE AGE OF TWELVE

A. *The Criminal Code*

The Criminal Code exculpates a child from punishment for an act that constitutes unlawful carnal knowledge or rape in these words: “A male person under the age of twelve years is presumed to be incapable of having carnal knowledge”.⁸ This is a presumption of law and not of fact, so that a male child may in fact be capable both physically and mentally of having carnal knowledge and may in fact, have had carnal knowledge, yet the law presumes that he is incapable of having carnal knowledge for the purpose of administering punishment. In Nigeria, the court has not pronounced on this presumption of law, as to whether it is rebuttable or not. However, a similar presumption under the Common law and other jurisdictions has been held to be irrebuttable.⁹

B. *The Penal Code*

Under the Penal Code, a male child below the age of twelve years is totally excused from committing any offence at all, which includes the offence of rape if his mental capacity has not developed enough to

⁸ Section 30 of the Criminal Code.

⁹ Law Reform Commission of Hong Kong Report, *The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse* (December 2010), available at: <http://www.hkreform.gov.hk>. See also Daniel David Ntanda Nsereko, *Op. Cit.*, note 6, at 94. See *R v. Jordan & Cowmeadow* (1839) 9 C & P 118 (“The common law presumption that a boy under 14 is incapable of sexual intercourse cannot be rebutted, even though it be proved that he has arrived at the full state of puberty”).

appreciate the nature of the offence. Section 50 provides that:

No act is an offence, which is done:

(a)

(b) by a child above seven years of age but under twelve years of age *who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.*

Neither this section nor the interpretation section in the Penal Code defines the word ‘offence’. However, Section 28 of the Penal Code provides that the word ‘offence’ “includes an offence under any law for the time being in force”. This means that a child is exculpated from committing any offence stipulated not only in the Penal Code, but also in any other law applicable in the northern region of Nigeria, which includes the offence of rape. In fact, one can resort to the Criminal Code to decipher the meaning of an offence. Section 2 of the Criminal Code provides that:

an act or omission which renders the person doing the act or making the omission liable to punishment under this Code, or under any Order in Council, Ordinance, or Law, or Statute, is called an offence.

Section 282 of the Penal Code criminalises the offence of rape and defines it as sexual intercourse with a woman by a man in the following circumstances (a) against her will, (b) without her consent, (c) with her consent, where it was obtained by putting her in fear of death or hurt, (d) with her consent where the man misrepresented himself as her husband, (e) even with her consent where she is below fourteen years of age. The offence of rape is complete on mere penetration of the female genital organ by the man’s sexual organ.¹⁰

II. NEED TO AMEND THE CRIMINAL CODE TO EXPAND THE CRIMINAL RESPONSIBILITY OF MINORS BELOW TWELVE YEARS FOR THE OFFENCE OF UNLAWFUL CARNAL KNOWLEDGE

A juxtaposition of the provisions of the Criminal and Penal Codes relating to the culpability of minors for the offence of rape reveals some interesting similarities and inconsistencies. To start with, both Section 30 of the Criminal Code and Section 50 of the Penal Code are amongst general provisions that input or remove criminal responsibility by operation of the law against an individual for acts or omission committed by them, which constitutes a crime under the statutes. The jurisprudence of the conferment of

¹⁰ Section 282(2).

criminal responsibility on an individual or class of individuals is purely determined by the state of mind of the offender and public policy.¹¹ The drafters of the law may presume that certain class of persons lack the requisite state of mind to complete the ingredients of an offence (*mens rea*) and therefore, even if they possess the physical ability to cause the action or omission that constitutes the crime, they are legally excused from punishment.

Secondly, both statutes provide that a child of above seven years but below twelve is not criminally liable.¹² While the Criminal Code delimits this blanket provision to hold such a child responsible if “it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission”, however, it makes an exception in the case of rape.¹³ Thus, a male minor offender below twelve years may notwithstanding the provisions of Section 30 of the Criminal Code, be held criminally liable for any offence other than unlawful carnal knowledge (rape).¹⁴ Section 50(b) of the Penal Code on the other hand, is completely averse to the above provision of the Criminal Code because it does not make any exception in the case of rape. A child of above seven years but below twelve is only exculpated from liability if it is proven that “he has not attained sufficient maturity of understanding to judge the nature and consequence of that act”. The Penal Code thus, impliedly raises a rebuttable presumption that a child of that age bracket possesses sufficient mental ability to commit any crime unless it is proven otherwise. The presumption of *doli incapax* in respect of acts or omission of minors has a long history under the common law to protect children between the ages of 8 and 14 from the harsh effect of criminal law.¹⁵ However, this common law

¹¹ Chapter 5, Sections 22 to 36 of the Criminal Code and Chapter two, Sections 43 to 67 of the Penal Code. On the issue of public policy to determine criminal responsibility, see Sentencing Advisory Council, *Maximum Penalty for Sexual Penetration with a Child under 16*, Consultation Paper (Australia), at 5 (March 2009).

¹² Section 30 of the Criminal Code and Section 50(b) of the Penal Code.

¹³ Section 30 *ibid* (which provide: “A male person under the age of twelve years is presumed to be incapable of having carnal knowledge”). See Ikenga K. E. Oraegbunam, *Mens Rea Principle and Criminal Jurisprudence in Nigeria*, 2 NNAMDI AZIKIWE UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND JURISPRUDENCE 225—239 (2011).

¹⁴ It is argued that the provision also precludes the conviction of such a male minor for any other offence that involves sexual intercourse such as attempted rape and defilement. See Daniel David Ntanda Nsereko, *Op. Cit.*, note 6, at 94.

¹⁵ See the Namibia High Court case of *The State v. Bernard Guibeb and six others*, Case No: CC 41/97 1998/08/19, at 2, <http://www.saflii.org/na/cases/NAHC/1998/8.html>. See also British Medical Journal, *Medico-Legal*, at 1170—1171 (27 April 1963): “It seems to have its origin in English law in the ancient writings of Hale, who probably took it from the writings of Justinian. Before the time of Justinian there were two schools of thought among the jurists on this matter. The Proculians held that all boys became pubes at the fixed age of 14; the Sabinians said that it depended on the physical maturity of the individual. Justinian adopted the former rule, giving as his reason the indecency of the inspection of the body”.

position has not only been criticised in contemporary legal systems because of its anachronistic perception,¹⁶ but indeed, several jurisdictions have already completely overturned it in their territories.¹⁷ In fact, even the very notion of exonerating a child from liability for any crime including the offence of rape “if it is proven that he lacks the power to understand the nature and consequence of the act” is criticised as not only out of tune with contemporary circumstances of civilisation and enlightenment, but also discriminatory.¹⁸

Thirdly, the use of the phrase “incapable of having carnal knowledge” by the Criminal Code to exempt a male child of below twelve years from liability for the offence of unlawful carnal knowledge raises the reasonable interpretive presumption that the drafters of the statute considers a child of that age bracket not necessarily mentally incapable, but physically so. This is a more meaningful and purposeful interpretation of section 30 of the Criminal Code given the fact that a child of that age bracket, in the contemplation of the section, could commit any other offence except the offence of unlawful carnal knowledge. If a child who is proven to have the requisite mental capacity could commit the offence of murder or indecent assault,¹⁹ why would the same child not have the mental capacity to commit the offence of unlawful carnal knowledge? The answer could only be that the drafters of the law believe that such a child lacks the physical ability or capacity to commit the offence. This is not necessarily true. It is scientifically proven that a male child of the age of eleven years may sometimes reach puberty, a period when their desire for sex is dramatically heightened.²⁰ It is therefore necessary to enquire to know if a male minor of less than twelve years has actually reached puberty. However, puberty is not

¹⁶ See the English case of *C (A Minor) v. Director of Public Prosecution* (1996) A.C. 1. However, see D. Cipriani, *Op. Cit.*, at 110 (noting that about 55 countries still retain and maintain the practice or procedure of *doli incapax* in varying degrees).

¹⁷ See for instance, Section 34 of the English Crime and Disorder Act (1998); Section 88 of the Ugandan Children’s Act Cap. 59 (1996), Section 62(1) of the Australian Crimes Act (1958) and Sections 7-11 of the South African Child Justice Act 75 (2008). In respect of the age in which a minor is considered criminally responsible for rape, many countries have also abolished age limits or reduced them considerably. See for instance, the English Sexual Offences Act (1993); Section 57 (read with Sections 1(2) and 1(3)(d)(iv)) of the South African Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. See generally, Law Reform Commission of Hong Kong Report, *Op. Cit.*, note 9, at 4—5.

¹⁸ Glanville Williams, *TEXTBOOK OF CRIMINAL LAW* 638 (2nd ed. London: Steven & Sons, 1983). (noting that eventually well brought children who are taught principles of morality at an early stage may be found liable, having understand the nature of crime more than children who were not exposed to such training).

¹⁹ Okonkwo and Naish, *Op. Cit.* See generally note 6, *Op. Cit.*

²⁰ See WebMD, *Earlier Puberty: Age 9 or 10 for Average US Boy*. <http://www.webmd.com/children/news/20121020/earlier-puberty-age-9-10-average-us-boy?page=2> (last visit July 15, 2016).

an essential element of crimes involving sexual intercourse, because the attainment of puberty only guarantees the emission of semen and not the ability to achieve an erection, which is required to realise penetration.²¹ This was severely criticised by Professor Glanville Williams in the context of the common law presumption that a boy under 14 is physically incapable of having sexual intercourse thus:

The other person who cannot be convicted of rape is a boy under 14, the reason advanced being that he is irrebuttably presumed not to have reached the age of puberty. This fiction is doubly silly. First, puberty may be attained before 14, and secondly, puberty is not necessary for rape. Rape requires only penetration, not fertilisation, so that it is only an ability to have an erection, not an ability to emit semen that is physically necessary for the crime.²²

The fourth issue relates to the interpretation of the requirement that the child must have “attained sufficient maturity of understanding to judge the nature and consequence” of the act that constitutes the offence. The Criminal Code refers to this requirement simply as that, the child must have “capacity to know that he ought not to do the act or make the omission” that constitutes the offence. How would the court determine that the child has sufficient maturity of understanding to judge the nature and consequence of the act, or the capacity to know that he ought not to do the act or make the omission? The objective test is the most probable yardstick to judge the level of mental capacity of a child to understand the nature of an act, which constitutes an offence. However, as the mental capacity of human beings vary from one person to the other, it would be quite difficult to arrive at a “reasonable child’s standard” of the same age and background, to determine the mental capacity of a particular child. Other factors like the genetic composition of the child could interfere with the objective reasonable man or reasonable child’s standard in determining culpability. Therefore, in the case of rape, we doubt the utility of the objective test to determine the mental capacity of the child of below twelve years to commit the offence of rape under Section 50(b) of the Penal Code or any other offence under Section 30 of the Criminal Code. Thus, we recommend that the objective test could be supplemented with both the subjective test and medical examination to ascertain the mental capacity of the child.

As we have noted above, it is quite preposterous for the Criminal Code to subject children of above seven years but below twelve to criminal

²¹ Daniel David Ntanda Nsereko, *Op. Cit.*, note 6, at 94 (noting that in modern times, boys tend to mature physically and psychologically earlier than in the past and therefore they could achieve erection and penetration even under the age of 12).

²² Glanville Williams, *Op. Cit.*, note 18, at 237.

responsibility for every offence committed by them other than the offence of unlawful carnal knowledge or rape. Mentally, it is proven that a child of less than twelve years can develop and exhibit the mental capacity to commit heinous crimes like any other adult.²³ A good example is the case brought before the European Court of Human Rights in *T v. United Kingdom* and *V v. United Kingdom*²⁴ (jointly considered) where T and V were ten years old when they abducted and killed a two-year old boy. At age 11, they were tried in public in an adult court before a judge and jury (although some allowances were made for their age). They were convicted of abduction and murder, and sentenced to an indefinite period of detention. The European court concluded that the attribution to the applicants of criminal responsibility for their acts did not violate Article 3 of the European Human Rights Convention, but that they were denied fair hearing under Article 6 because they were unable to participate effectively in the trial. Again, in New South Wales Australia, in 1999, the court convicted an 11-year old boy of manslaughter for throwing his six-year old companion into a river.²⁵ In the US state of Michigan, a six-year old girl was shot dead by her six-year old classmate in an elementary school in March 2000.²⁶

We reason that if perhaps, the drafters of the Criminal Code believed that a male child of less than twelve years is physically incapable of committing the offence of rape, that belief is obsolete in view of the series of cases in different jurisdictions that have shown that children of ten or eleven years are capable of having sexual intercourse.²⁷ This proves in our

²³ See Gregor Urbas, *The Age of Criminal Responsibility*, in TRENDS AND ISSUES IN CRIME AND CRIMINAL JUSTICE 2 (Adam Graycar ed. Canberra: Australian Institute of Criminology, 2000). See also L. Kohlberg, *STAGE IN THE DEVELOPMENT OF MORAL THOUGHT AND ACTION*, (New York: Holt, Rhinehart and Winston, 1969); M.A. Morash, *Cognitive developmental theory: A Basis for Juvenile Correctional Reform?* 19(3) *Criminology* 360—71 (1981).

²⁴ (Joint judgment) 30 E. H. R. R. (2000).

²⁵ See Gregor Urbas, *Op. Cit.*, at 3.

²⁶ See M. Riley, "I ain't your friend," *the little boy said...then he shot her*, SYDNEY MORNING HERALD 1 (March 2, 2000).

²⁷ David Finkelhor *et al*, *Juveniles Who Commit Sex Offenses Against Minors*, JUVENILE JUSTICE BULLETIN 2-4 (US Department of Justice, December 2009). (Using statistics to show that in 2004 alone, in the United States, approximately 89, 000 juvenile sex offenders were apprehended by the police, 93% of them being male offenders. Of these, 5% were younger than nine years old, while 16% were younger than twelve years old. 24% of the offences committed were rape, while 13% were sodomy). See also H. N. Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000). Available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrlr.pdf> (last visit Jan. 12, 2016) (noting that 14% of male juvenile sex offenders are below twelve years old). H. N. Snyder and M. Sickmund, *Juvenile Offenders and Victims: 1999 National Report*, (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 1999). (noting that statistics from earlier times clearly highlight the fact that juveniles continue to constitute a substantial

opinion that male minors of that age category may indeed, possess the physical capacity to commit rape if circumstances permit. In many jurisdictions, this is known as statutory rape, where a minor of at least two or three years older tends to rape a younger minor.²⁸ For instance, in a 1999 Cambodian case, a 7-year old girl was ruthlessly gang-raped by a group of boys 11-13 years. The girl named Thany was invited by another girl of her age Dara to play at her house. Thany was reluctant because as it later turned out, Dara's 13-year old brother had raped Thany on at least three prior occasions. On this occasion, Thany's mother unknowingly allowed her to go. After playing at Dara's house for a while, Thany offered to leave, at which time, Dara called to her brother that Thany was getting away. The brother came, caught Thany, covered her mouth and dragged her to some nearby palm trees. He ordered Dara to go and fetch a mat and three kramas (scarves). He then called over two of his friends, aged 11 and 12 who together forced Thany to lie down on the mat. They tied a scarf around her mouth and tied her hands to a piece of wood that they laid across her chest. Then each boy proceeded to rape Thany, two times each. While this was going on, Dara was sitting a short distance away watching and keeping look out.

Thany was traumatised by the ordeal and suffered injuries to her genital area. She was referred for medical and psychiatric treatment by a non-governmental organisation LICADHO, which also intervened to get the police to arrest the boys. On investigation, it was discovered that the three boys had been watching pornography at a local video bar, and it appears they copied actions they had seen on video. Eventually, the three boys were returned back to their families with no punishment. The victim's family however, accepted \$2,300 in compensation.²⁹ Several other cases of male minor rapists are reported in other jurisdictions. In the UK where the presumption no longer applies, two 11-year old boys were convicted before

proportion—more than one-third—of those who commit sexual offenses against minors). See also H. N. Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000). Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrl.pdf> (last visit Jan. 12, 2009).

²⁸ See for instance Sections 15 and 16 of the South African Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. See also A. Glosser, K. Gardiner and M. Fishman, *Statutory Rape: A Guide to State Laws and Reporting Requirements*, (The Lewin Group, 2004). Available at: <http://www.hhs.gov/opa/pubs/statutory-rape-statelaws.pdf>; David Finkelhor, *ibid*, at 5 (noting that juvenile sex offenders target younger minors).

²⁹ Licadho, RAPE AND INDECENT ASSAULT IN CAMBODIA, Report No.CL/14.06.2001, at 12 (2001), available at: <https://www.licadho-cambodia.org/reports/files/45Summarized%20rape%20report.pdf> (last visit July 20, 2016).

a jury of attempting to rape an eight-year old girl.³⁰ In Hong Kong, two 13-year old boys were convicted in June 2009 of indecently assaulting a 12-year old girl. It was clear that sexual intercourse had taken place between the first defendant and the victim but the defendant could only be charged with indecent assault, rather than rape, because of the application of the presumption.³¹

In addition to the persuasive effect of the above cases to the reconsideration of the legal position in the Criminal Code, it is noteworthy that the consequences of child rape do not disappear simply because the perpetrator is a minor. Rape victims especially, child rape victims, go through series of negative experiences in the short and long run,³² which include the following:

a) Short-term post-traumatic stress disorder and other emotional and psychological disorders, including:³³

i) Children under six: feelings of defencelessness, difficulty in sleeping, loss of appetite, loss of acquired developmental skills (i.e., bed-wetting) and disruption in normal development, which have lasting impact and lead to dysfunction and distress well into adulthood.³⁴

ii) Children six to 12: difficulty concentrating, feelings of guilt or helplessness, aggressiveness, psycho-somatic complaints like headaches and stomach aches, behavioural problems, including physical aggression, non-compliance, and oppositionality.³⁵

iii) Children 12 to 18, who have the capacity to understand the effects of sexual abuse on their lives: feelings of severe guilt and pessimism about the future, become rebellious, and are prone to antisocial behaviour. They also suffer from anxiety symptoms, depression and suicide attempts,³⁶ and their academic

³⁰ The boys were 10 at the time of the offence and had been charged with rape. See report of 18 August 2010 at http://www.bbc.co.uk/news/uk_england_london_10693953. See LAW REFORM COMMISSION OF HONG KONG REPORT, *Op. Cit.*, note 9, at 7.

³¹ LAW REFORM COMMISSION OF HONG KONG REPORT, *ibid.*, at 7—8.

³² See M. P. Inyang & L. C. Nwakwaola, *Rape and the Girl Child*, 14(1) IOSR JOURNAL OF DENTAL AND MEDICAL SCIENCES 54—55 (2015).

³³ Licadho, *Op. Cit.*, note 29, at 8.

³⁴ R. Leeb, T. Lewis & A. J. Zolotor, *A Review of Physical and Mental Health Consequences of Child Abuse and Neglect and Implications for Practice*, 5(5) AMERICAN JOURNAL OF LIFESTYLE MEDICINE 454—468 (2011). See generally, John A. M. Agbonika, *The Law and the Scourge of Rape in Nigeria*, 6(1) AFRICAN JOURNAL OF LAW AND CRIMINOLOGY 58—61 (2016).

³⁵ W. N. Friedrich et al, *Child Sexual Behaviour Inventory: Normative, Psychiatric, and Sexual Abuse Comparisons*, 6 CHILD MALTREATMENT 37—49 (2001). See also S. V. McLeer et al, *Psychopathology in Non-Clinically Referred Sexually Abused Children*, 37 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 1326—1333 (1998).

³⁶ J. G. Noll et al, *A Prospective Investigation of the Impact of Childhood Sexual Abuse on the Development of Sexuality*, 71 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 575—586 (2003).

performance generally deteriorate.³⁷

b) Long-term effects include personality changes, lack of trust, pessimism about the future, stunting of moral development, anxiety, hyperactivity, loss of confidence, and distrust of adults.³⁸ Other serious long term consequences include:

- i) Over sexualised and abnormal sexual behaviour going into adolescent and adulthood.³⁹
- ii) History of drug use and abuse.⁴⁰
- iii) Development of mental health problems, including depression, psychiatric disorders and suicide attempts.⁴¹
- iv) Higher risk of development of other general health problems, including eating disorders and obesity, fibromyalgia, severe premenstrual syndrome, chronic headaches, irritable bowel syndrome, reproductive and sexual health complaints, including excessive bleeding, amenorrhea, pain during intercourse and menstrual irregularity.⁴²

CONCLUSION

From our discussions above, we recommend the amendment of the Criminal Code to do away with the absolute presumption of incapability of a male minor below the age of twelve years to commit the offence of unlawful carnal knowledge or rape. The position under the Penal Code is

³⁷ N. D. Reyome, *Teacher Ratings of the Academic Achievement Related Classroom Behaviours of Maltreated and Non-Maltreated Children*, 31 *PSYCHOLOGY IN THE SCHOOLS* 253—260 (1994); I. V. Daignault & M. Hebert, *Profiles of School Adaptation: Social, Behavioral, and Academic Functioning in Sexually Abused Girls*, 33 *CHILD ABUSE & NEGLECT* 102—115 (2009). See generally, Hilary Chukwuka Achunike & Rimamsikwe Habila Kitaue, *Rape Epidemic in Nigeria: Cases, Causes, Consequences and Responses to the Pandemic*, 2(1) *INTERNATIONAL JOURNAL OF RESEARCH IN APPLIED, NATURAL AND SOCIAL SCIENCES* 37—38 (Jan 2014).

³⁸ Saba Raghda, *Case Presentation of Sexual Abuse*, Transculture Psychological Organization (TPO), 4 (Phnom Penh, Dec. 15, 1998).

³⁹ R. G. Girardet et al, *Epidemiology of Sexually Transmitted Infections in Suspected Child Victims of Sexual Assault*, 124 *PEDIATRICS* 79—84 (2009); J. G. Noll, P. K. Trickett & F. W. Putnam, *A Prospective Investigation of the Impact of Childhood Sexual Abuse on the Development of Sexuality*, 71 *JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY* 575—586 (2003).

⁴⁰ T. L. Simpson & W. R. Miller, *Concomitance between Childhood Sexual and Physical Abuse and Substance Use Problems: A Review*, 22 *CLINICAL PSYCHOLOGY REVIEW* 27—77 (2002).

⁴¹ A. E. Waldrop et al, *Risk Factors for Suicidal Behavior Among a National Sample of Adolescents: Implications for Prevention*, 20 *JOURNAL OF TRAUMATIC STRESS* 869—879 (2007); A. Day, K. Thurlow & J. Woolliscroft, *Working with Childhood Sexual Abuse: A Survey of Mental Health Professionals*, 27 *CHILD ABUSE & NEGLECT* 191—198 (2003); K. Kendler et al, *Childhood Sexual Abuse and Adult Psychiatric and Substance Use Disorders in Women: An Epidemiological and Cotwin Control Analysis*, 57 *ARCHIVES OF GENERAL PSYCHIATRY* 953—959 (2000).

⁴² B. F. Fuemmeler et al, *Adverse Childhood Events are Associated with Obesity and Disordered Eating: Results from a U.S. Population-based Survey of Young Adults*, 22 *JOURNAL OF TRAUMATIC STRESS* 329—333 (2009); J. M. Golding, *Sexual Assault History and Women's Reproductive and Sexual Health*, 20 *PSYCHOLOGY OF WOMEN QUARTERLY* 101—121 (1996).

preferable because it allows the court to determine if the child has sufficient maturity of understanding to judge the nature of the act, without necessarily assuming that children in the age bracket would be incapable of committing the offence of rape.⁴³ The issue of punishment of the male child for rape, however, must continue to follow the practice of not sentencing children to the same prisons as adults⁴⁴ or sentences of death.⁴⁵ The philosophy of rehabilitation must strictly regulate the punishment of child offenders, including child rapists.⁴⁶

⁴³ This is the position canvassed by the UN Committee on the Rights of the Child: “the modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour”. See UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 32.

⁴⁴ See for instance Section 69 of the Penal Code, which provides “No sentence of imprisonment shall be passed on a person who in the opinion of the court is under fourteen years of age”. See also Sections 204, 212(3) and 218 of the Child’s Rights Act, Cap.C50 LFN 2010 and 26(2) of the Child and Young Persons Act, Cap.32 Laws of the Federation of Nigeria, 1958 (hereinafter CYP A). See OMCT & CLEEN Foundation, “Rights of the Child in Nigeria”, Report on the implementation of the Convention on the Rights of the Child by Nigeria, (A report prepared for the Committee on the Rights of the Child 38th Session—Geneva, January 2005), at 20—26; D. Bishop, *Juvenile Offenders in the Adult Criminal Justice System*, 27 CRIME AND JUSTICE 81—168 (2000).

⁴⁵ See Section 221(1) (c) of the Child’s Rights Act, *ibid*; Section 12 of the CYP A, *ibid*, (which provides: “Sentence of death shall not be pronounced or recorded against an offender who had not attained the age of seventeen years at the time the offence was committed, but in lieu thereof the court shall order the offender to be detained during the President’s pleasure”). See also Section 319(2) of the Criminal Code (South), which contains identical provision.

⁴⁶ See Section 236(2) of the Child’s Right Act, *ibid*, (which reads: “A child offender in an institution shall be given care, protection and all necessary assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require, having regard to this age, sex, personality and in the interest of his development”). See also Section 18 of the Criminal Code and Section 71 of the Penal Code. See Penal Reform International, *Op. Cit.*, note 5, at 1—5 (recommending the appropriate aim of punishment for juvenile offenders).