



Centre for Health Ethics Law and Development

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## Respecting the Rights of Children in our Criminal Justice System

On 1 November 2024, there was public outcry, and rightly so, when some minors were arraigned before Justice Obiora Egwuatu of the Federal High Court, Abuja Judicial Division, on account of their alleged participation in the August #EndBadGovernance protests. The charges against them ranged from treason to terrorism, and arson, amongst others. Several videos showed rows of minors in the courtroom, one of the videos showed some of the children slumped as a result of apparent malnourishment. The public outrage has made it into most national newspapers and international media, with many expressing shock and dismay at the problematic issues showcased in this case.

At the Centre for Health Ethics Law and Development (CHELD), we are particularly concerned about the child protection and child health issues which arise from this case. In our view, there are several problematic issues with this case and its handling. Nigeria's Child Rights Act establishes, as does most of our jurisprudence, that all matters dealing with children, including children in contact or conflict with the law, must be dealt with reflecting the time-honoured principles of **"best interest with the law."** There are many concerns raised by the case as presented in the press, and questions about the actions of the relevant government agencies from the time of the arrest of these minors to their eventual arraignment, and their inconsistency with the provisions of our laws. First, the charges of terrorism and treason against the children appear to be excessive, given the circumstances under which they were arrested. Secondly, the long detention of the minors for a period of three months before their arraignment clearly is in breach of the constitutional provision to arraign a defendant before a court of law within 48 hours of arrest. These minors were arrested since August 2024 and left to languish in custody in blatant disregard for their fundamental rights as guaranteed under the Constitution of the Federal Republic of Nigeria. In the first place, the minors had no business being detained in a police station as the Child Rights Act 2003 and practice direction made thereunder are very clear on the criminal justice administration for minors. Detention should be a measure of last resort. Minors are not to be kept in custody with adults. They ought to be kept in juvenile detention if detention is determined to be the only or last resort, not a police station.

Thirdly, a condition precedent to the arraignment of a defendant is the defendant's capacity to understand the charges proffered against him or her. The Law also requires that the defendant is brought unfettered to the Court. Clearly, a child who has been starved for days is unlikely to be in the right mental state to comprehend the accusations levelled against him. She or he cannot be said to be brought unfettered to court as he is fettered by starvation. As the videos show, a child falls to the floor, wriggles in pain and makes a screeching sound while other children watch in horror. One wonders if those children by the reason of their horrifying experience in the courtroom have the right mental capacity needed for an arraignment.

Further, the minors were granted bail in the sum of 10 million naira each with two sureties in like sum. One of the sureties is required to be a level 15 civil servant. This bail term appears to be onerous and one that cannot be satisfied by poor and malnourished children who may not have guardians or whose families are unlikely to have connections with a civil servant.



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The right to bail is a constitutional right of every citizen of Nigeria. Section 35(1) of the Constitution guarantees the personal liberty of every Nigerian, children inclusive. And in furtherance of that right, any person arrested or detained who has not been tried after a period of three months from the date of arrest or detention is to be released either conditionally or unconditionally. The children ought to have been released unconditionally, or be given fair bail terms to secure their conditional release. Under the Administration of Criminal Justice Act 2015 (ACJA) where a court makes a recognizance order, a child shall not be required to execute that order. The ACJA requires that a parent, legal guardian or other fit person, with or without sureties enter the recognizance on the child's behalf. Clearly, sureties are not a mandatory requirement for a child's bail.

Finally, the long adjournment period while perhaps helpful to comply with the onerous bail terms, puts these children in harm's way and negates the best interests of the child, given the apparently deleterious conditions.

Justice is said to be a three-way street: justice to the complainant, justice to the defendant and justice to the society. It is no justice to these minors who are the defendants in this case that their arrest, detention and arraignment are inconsistent with their rights as guaranteed under our domestic laws and international legal protections. Subjecting these children to inhumane treatment raises doubts on the credibility of our criminal justice system and the willingness of the government to uphold the rights of a child. It also offends the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, two international treaties signed by Nigeria. The Convention on the Rights of the Child, in particular, provides that children who are accused of breaking the law should not be killed, tortured, treated cruelly, put in prison forever, or put in prison with adults.

We call upon the government to demonstrate its stance on the rule of law and protection of the human rights of its citizens by ensuring further actions taken in this matter are consistent with our laws on criminal justice and these international conventions on the rights of children. We must, however, acknowledge the swift response by the Attorney-General of the Federation (AGF), Prince Lateef Fagbemi (SAN) to the recent events. Through a press release, the AGF indicated that he has instructed that the case file be transferred from the police to his office. He has further directed the Director of Public Prosecution of the Federation (DPPF) to take steps to secure an earlier date from the court against the adjourned date of January 2025.

We call upon the government to ensure that the sufferings of those children are alleviated and their rights upheld. To this end, we recommend that the following are done while we await the further steps to be taken on the case by the office of the Attorney General of the Federation:

- The best interest of the children be of paramount consideration in all further legal and administrative actions to be taken in the course of this case;
- That steps are taken to decide on more appropriate charges or to not pursuing the charges further, as appropriate;



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- Ensuring that prior to addressing the administrative requirements for dispensing with the charges, ensuring that children's present conditions are in tandem with human rights, including dispensing with custodial measures as appropriate, and respecting the right to food and healthcare in accordance with the Child Rights Act and Nigeria's international commitments. This would require adequate provision of food, beddings and medical supplies, psychological, medical and physical assistance that they might require while in custody.
- Strengthening the capacity of the Police on dealing with children in conflict with the law; and
- Demonstrate an overall commitment to protecting the best interests of the child and to implementing strictly the provisions of the ACJA, CRA and practice direction on children in conflict with the law across all justice sector institutions and law enforcement.

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(4th November 2024)