

EU LAW SEMINAR 2

of Paedophilia, a Unique Form

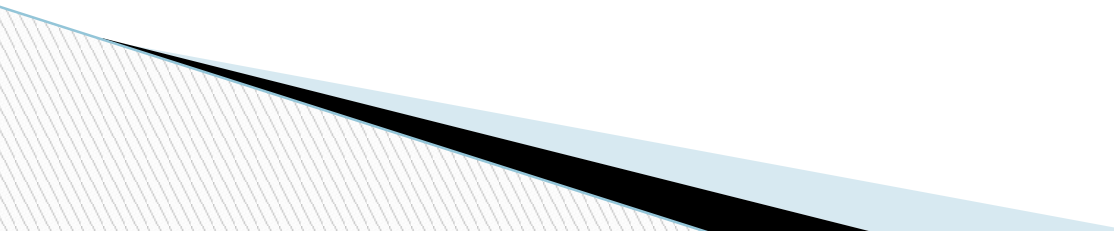
Rape :

Locating the Odds

Prof. F.A.R. Adeleke



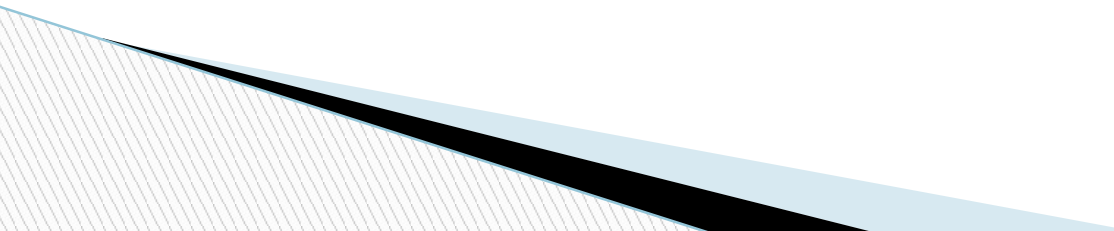
Classification of Rape

- Statutory Rape (issue of gender/Penetration)
 - Male or Female Rape
 - Digital Rape
 - Marital /Spousal Rape
 - Post Penetration Rape – Revoked consent
- 

Others

- ▣ **Corrective Rape -- Hate crime**
 - ▣ **Custodial Rape**
 - ▣ **Gang Rape**
 - ▣ **War Rape**
 - ▣ **Child Rape distinguished from Pedophilia**
- 

Uniqueness of Pedophilia

- ▣ **The phenomenon concerns Law and Science**
 - ▣ **Thus discussion will be from Legal and medical perspective**
- 

Law – Legal Logic & Objectivity



Medical - Diagnosis & Empathy

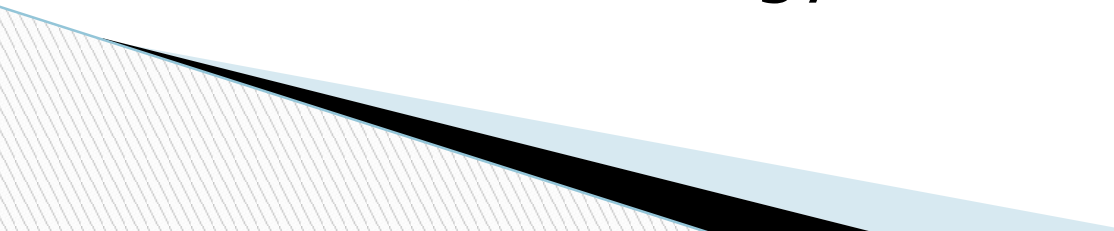


Generally speaking,


To engage in sexual contact with an underage is not only a crime, but a serious moral wrong and an anti-social behavior.

The issue does not stop with criminal jurisprudence alone,

The government to beam the searchlight on its prevention or amelioration via researches on the cause of the menace. Thus implicating medical, sociology and criminology studies.



Definition

- Pedophilia is a sexual attraction to pre-pubescent children.
 - Pedophiles are mostly males preying on Females.
 - Though it sometimes happen from females to males. Remember Joseph/Yusuf in holy books confirming female rape of male.
- 

Who qualifies to be a Pedophile?

An Adult having sexual intercourse with a child?

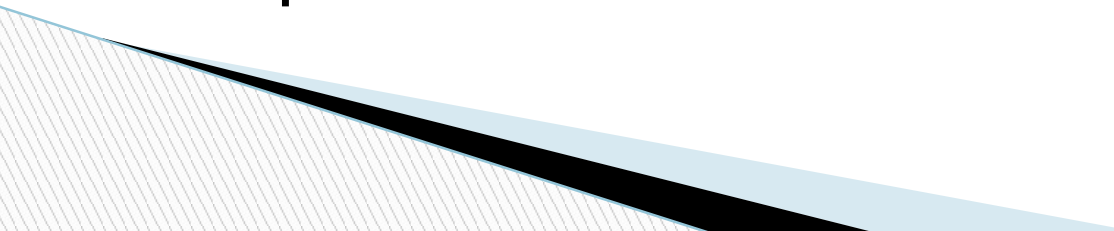
THIS IS NOT ENTIRELY TRUE

A child is not necessarily a minor

sexual intercourse with a minor crosses the boundary of morality thus is severely sanctioned by the law

Laws fail to mention Pedophile

S 137 of the Criminal Law of Lagos State - unlawful sexual intercourse with a child attracts imprisonment for life.

- S 31 of the Child Right Act makes sexual intercourse with a minor an offence and it amounts to rape with life imprisonment.
 - Articles 34 and 35 of the CRC require states to protect children from all forms of sexual exploitation and sexual abuse.
- 

DSM America Manual 4th Edition

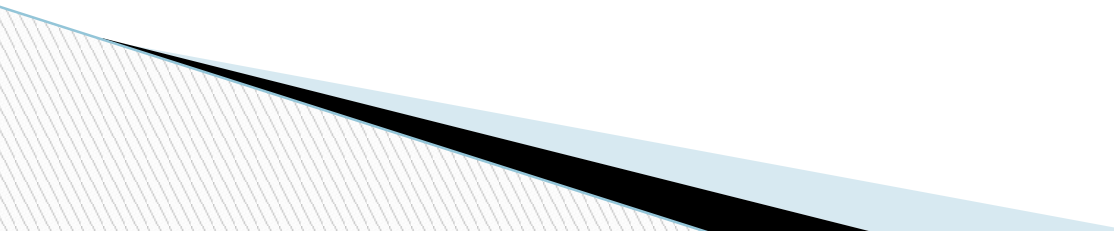
- To be categorised as a Pedophile, a person must experience at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, involving sexual activity with a prepubescent age 13 years or younger.
- Acting on these sexual urges, or the fantasies.
- Perpetrator must be at least age 16 years and must be at least 5 years older than the victim.
-

Exploring the blurred view

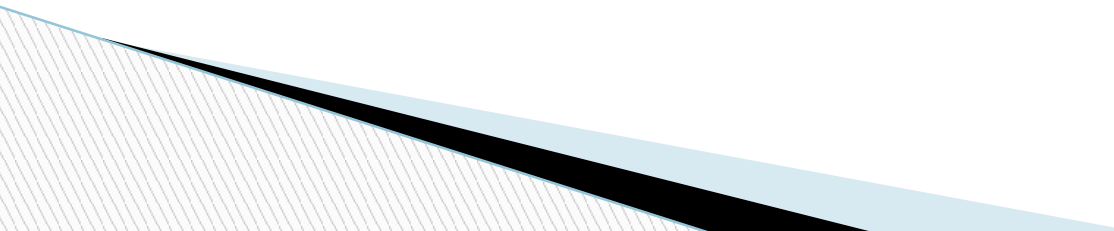
**Is Paedophilia a sickness deserving
medical attention**

or


a criminal act justifying punishment?



Is he normal?

- This is where the medical experts and psychologists have big roles to play. It is scientifically proven that pedophilia could be pathological even though it is a crime.
 - This means that an accused may be suffering from certain mental or biological defect resulting into uncontrollable impulse leading him to commit the crime.
- 

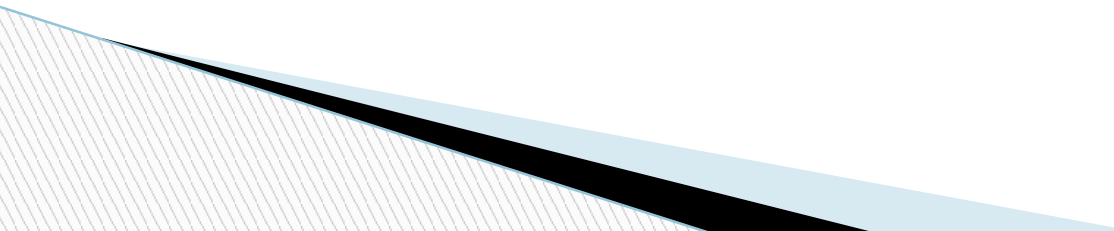
Medical Experts say

- The cognitive component may be impaired as a result he does not understand the social and moral disvalue of his behavior.
 - He does not know what he is doing or,
 - Know what he is doing but does not know that what he is doing is wrong
 - Cannot appreciate his behaviour
- 

If this psycho-medical assumption is true and established of him

- Then we need to query the rationale for punishing a pedophile. Such punishment will be contrary in all intent and purpose to our criminal jurisprudence. Remember that nobody can be punished for an act or omission which is independent of his will *i.e.* **actus reus non facit reum nisi mens sit rea.**

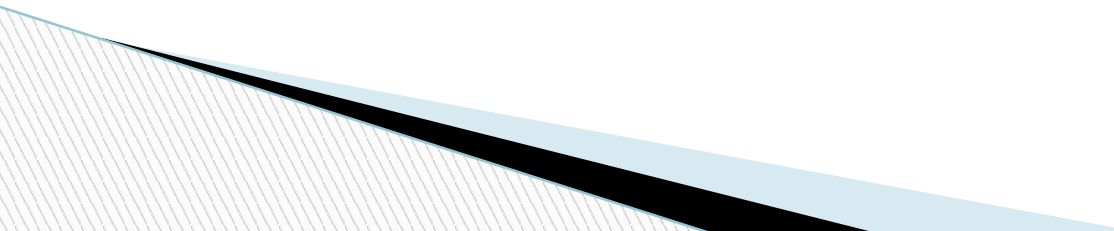
The Big Question

- Can he be criminally responsible for his actions?
 - Should he be punished for his action or be treated for his sickness?
- 

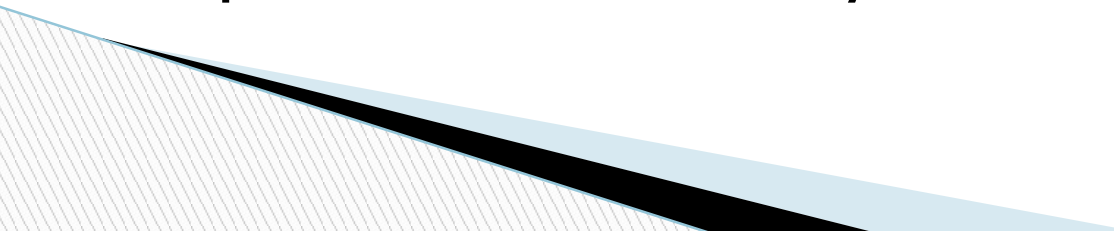
Note that:

- Confining pedophiles in correctional center does not change pedophilic desires or fantasies.
- Will be counterproductive . How then do we integrate them back into the society by way or in line with the principle of restorative justice?
 - This is not done in our society.

Lacuna in our Criminal Justice System

- Non-determination of criminal culpability of an accused sine qua non to his punishment to determine custody in Prison or Asylum?
 - Not subjecting them to medical diagnosis or psychological evaluation.
- 

Polygraph testing

- 'A polygraph machine measures and records a test subject's physiological responses, such as pulse rate, breathing, and blood pressure, to questioning by a test administrator.'
 - The theory is that a person will display different physiological responses when giving deceptive answers than when answering questions truthfully.'
- 

Useful when victim is too young or a baby

□

■ RULE OF EVIDENCE

- No scientific consensus about the admissibility and the reliability of polygraph evidence.
- However it could be used to contradict other evidence given by the accused, it could be used to corroborate other facts before the court etc.
-

- ▣ *R v Beland*, the Supreme Court of Canada rejected the use of polygraph results as evidence in court, finding that they were inadmissible.
- ▣
- ▣ In *United States v. Scheffer* (1998), the US Supreme Court left it up to individual jurisdictions whether polygraph results could be admitted as evidence in court cases..

- ▣ *United States v. Blakeney*, held that district court has discretion to admit polygraph evidence where its relevant and probative value outweighs its prejudicial effect.
- ▣
- ▣ *United States v. Johnson*, (evidence that defendant failed polygraph test prior to confessing to the crime is admissible to rebut defendant's subsequent claim that his confession was coerced).

Lacunae -- Labelling

- In the United States, the identities of people convicted or in connection with Pedophilia crimes are published in a searchable databases.
 - In 2009, South Africa made law allowing National Register for Sex Offenders (NRSO).
 - Containing record of names of those found guilty of sexual offences against children.
- 

Criminals identities need not be screened from public

United Kingdom, some offenders serving community service sentences wear high-visibility vests while they work to alert their status to members of the public.

The register assists employers dealing with children either in public or private sectors such as schools; crèches to check the person to be employed.

- However, the register is searchable upon obtaining a clearance certificate.

Need to know

▣ That:

- ▣ Confining pedophiles in correctional center does not change pedophilic desires or fantasies.

Will be counterproductive. How then do we integrate them back into the society by way or in line with the principle of restorative justice?


Appropriate Punishment

- In Nigeria we punish pedophiles with imprisonment. Does it work?
 - NO. No reduction in the statistics and data
- Castration should be employed as a penalty

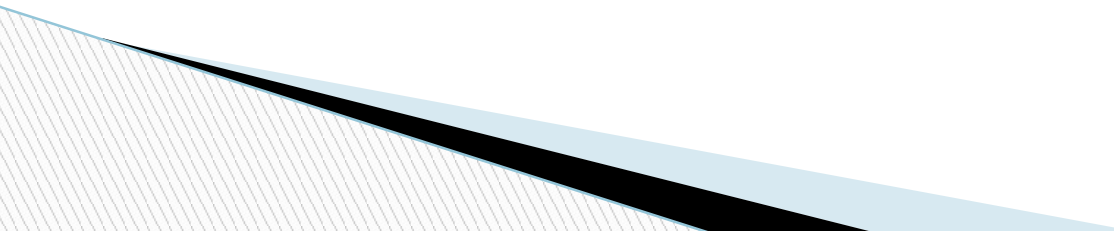
Surgical castration OR Chemical castration



Castration is better

- Examples of countries that punish pedophiles by chemical castration include Poland, Estonia Russia.
 - Certain States in United States like California, Georgia, Iowa, Texas, etc
 - Why not Nigeria?
- 

Chemical castration necessary

- Too high libido -- sexual compulsion.
 - This is also known as hypersexuality or out of control sexual behavior (OCSB).
 - Masturbating to pedophilic fantasies
 - Sexual predator on females minors
- 

Employ both Law and Medical



Surgical castration

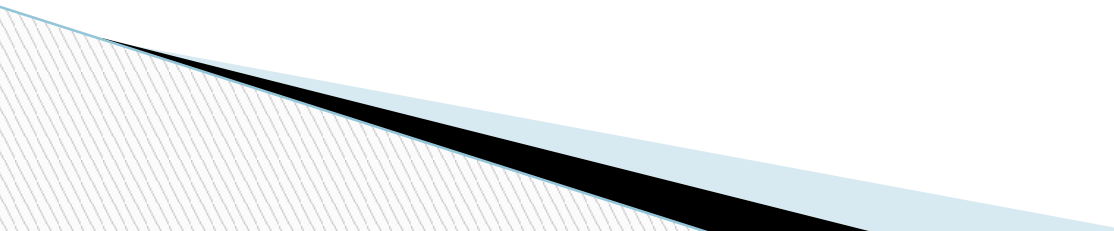
- The world against torture
- CAT as customary international law – jus cogens -- will it be allowed?

African Traditional Justice system

- ▣ Surgical Castration allowed

Temporary or permanent Impotence

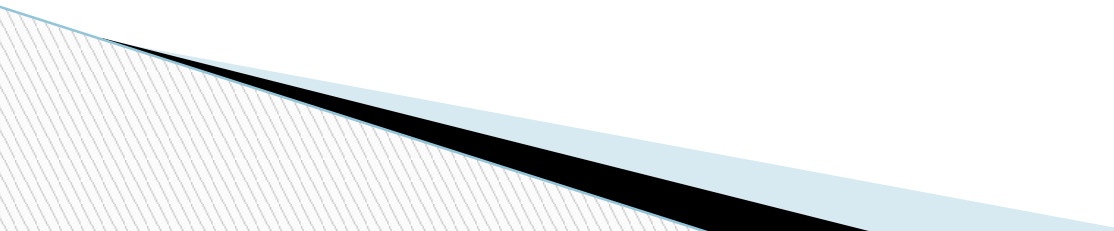
- ▣ Islamic Penal System -- Death for married Pedophiles

- Should Pedophiles be subjected to capital punishment.
 - This is more so where the minor sustained serious injury and permanent harm?
- 

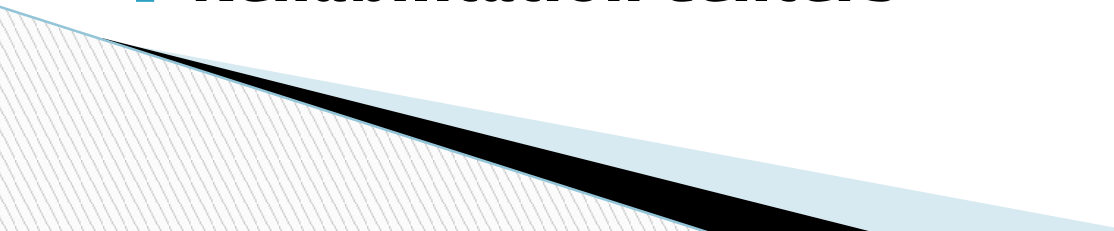
Can we operate totally as an island in the comity of Nations?



Recommendations

- ▣ **Chemical castration**
 - ▣ **Try African Value System -- Prevention**
 - ▣ **Traditional Justice System -- Punishment**
 - ▣ **Render Pedophiles impotent -- Reversible or Irreversible**
- 

Final Recommendation

- ▣ **Non pathological pedophiles**
 - ▣ **Render them Impotent -- Reversible or Irreversible**
 - ▣ **Death – depending on gravity of injury inflicted**
 - ▣ **Pathological pedophiles**
 - ▣ **Chemical castration**
 - ▣ **Asylum**
 - ▣ **Rehabilitation centers**
- 

Can these penalties be justified?

- ▣ **Very well. Taking note of and within the purview of:**
- ▣ **Criminal jurisprudence.**
- ▣ **Human Rights and Civil liberty.**
- ▣ **African socio cultural milieu and**
- ▣ **Religion**

Discussion for another day.



Conclusion

- WILL NIGERIA BUY THESE IDEAS OR PENAL POLICIES?

- All materials/Pictures online hereby acknowledged.

Thank
you