

RETHINKING THE PUBLICATION OF NAMES AND PHOTOGRAPH OF CYBERCRIME SUSPECTS IN CYBERSPACE IN NIGERIA: LESSONS FROM THE USA AND SOUTH AFRICA.

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Abstract

The increase in the commission of cybercrimes, especially internet fraud, at the domestic and international levels, has put Nigerian cybercrime investigators in the global searchlight. This is arguably due to questions of competency and efficiency in enforcing the implementation of cybercrime legal frameworks and curtailing the upsurge of cybercrimes by Nigerians. Oftentimes, cybercrime investigators, after the apprehension of cybercrime suspects, resort to displaying their names and photographs in cyberspace before the conclusion of an investigation. While drawing lessons from the USA and South Africa, this paper argues that this act of the cybercrime investigators is a cyberspace parade and trial, which is unlawful and a breach of the fundamental human rights of cybercrime suspects. The aim of this paper is to evaluate the legal implications of cyberspace parade and trial in Nigeria and the main objective is to demonstrate that cyberspace parade and trial is unlawful. This paper adopts the doctrinal research design and data is sourced from primary and secondary sources. The paper found that the practice of cyberspace parade and trial is unlawful and unconstitutional. Considering the foregoing, it is recommended that a federal law banning cyberspace parades and trials should be enacted.

Keywords: Human Rights, fair hearing, privacy, cybercrime investigation and prevention, cyberspace parades and trials.

1. Introduction

Internet fraud or cybercrime involves the application of technology infrastructure to defraud victims or take advantage of them for commercial gain, and it is a non-violent crime.

¹ It could be in the form of romance scams, business email compromises (BEC) scams, advance fee fraud, investment fraud, obtaining by false pretences, scams, bitcoin/cryptocurrency fraud, etc. Undoubtedly, there is an increase in the involvement of Nigerians in the perpetration of cybercrime and internet fraud at the domestic and international levels.² Reports from the United States of America (USA) show that several Nigerians have been arrested, prosecuted, and convicted in the USA for internet fraud-related offences.³ In the same vein, in 2024, Nigeria was ranked 5th globally among the countries with the greatest threat of cybercrime (internet scams).⁴ The involvement in internet fraud impacts negatively on the reputation of Nigeria and this fact was noted by the courts in *Federal Republic of Nigeria v. Hassan Adesegun Adewale*.⁵

Nigerian Cybercrime investigators, to curtail the proliferation of internet fraud/cybercrimes adopted certain cybercrime investigation measures or cybercrime enforcement strategy that arguably infringes on the rights of suspects. Some of these strategies involve the display of the names, details and pictures or photographs in cyberspace of cybercrime suspects before

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¹ N.U. Richards & F.E. Eboibi, 'Cybercrime perspectives to the ENDSARS protest in Nigeria' (2022) *African Security Review*, (2023) 32(1), 1.

² Ibid.

³ Federal Bureau of Investigation, Internet Crime Complaint Center, 2020 Internet Crime Report, 17. Available at <https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf> accessed 20 September 2022.

⁴ M. Bruce, J. Lusthaus, R. Kashyap, N. Phair, and F. Varese 'Mapping the global geography of cybercrime with the World Cybercrime Index' (2024) *PLoS ONE* 19(4) doi:10.1371/journal.pone.0297312

⁵ Suit No: FNC/1B/52C/2019, Judgment delivered on 27 May 2019 by Justice J.O. Abdulmalik. Federal High Court, Ibadan (Unreported).

the conclusion of an investigation.⁶ Cybercrime investigation institutions in Nigeria such as the Economic and Financial Crimes Commission (EFCC), take pictures of suspected internet fraudsters and display, post or publish them with their identity on their websites and social media channels before the conclusion of an investigation.⁷ The EFCC, just like proponents of similar measures of booking photos, perp walk, and mug shots in the US and Europe,⁸ considers its actions as legal and standardized law enforcement strategy. It argues, amongst others, that the institution only takes and publishes photographs or parades cybercrime suspects in cyberspace upon being profiled and incriminating evidence is found or recovered from the investigations or against the suspects. Moreover, it appears the EFCC considers it as an avenue to communicate and acquaint the public with their work, arguably to deter people from cybercrime or internet fraud and to facilitate guilty pleas and cooperation in current investigations.⁹

Consequently, this paper seeks to answer the following questions: is it lawful for Nigerian cybercrime investigators to take photographs of cybercrime suspects and display/publish the same in cyberspace? Are there implications for taking photographs of cybercrime suspects and displaying/publishing the same in cyberspace? From a comparative perspective, what can be done to prevent cybercrime investigators from taking the said photographs and displaying them in cyberspace? In seeking answers to these questions, the paper argues that when a cybercrime suspect is arrested by cybercrime investigators and the photograph is taken and posted on cyberspace, i.e., website, social media (Facebook, Instagram, Twitter, etc.), before the conclusion of an investigation or before the suspect is charged before a court of competent jurisdiction (otherwise referred to as a cyberspace parade and trial), it is a breach of the human rights of the suspect. Arguably, no domestic or comparative law from developed and developing economies approves any form of arbitrary cyberspace parade and trial. On the contrary, it is a misuse of the freedom of expression in cyberspace, which

⁶ Oyindamola Olubajo, 'SPECIAL: How EFCCs illegal media parade damages reputation of innocent Nigerian youths, 12 October, 2021, available at <<https://gazettengr.com/special-how-efccs-illegal-media-parade-damages-reputation-of-innocent-nigerian-youths/>> accessed 27 September 2022.

⁷ Ibid.

⁸ Ernest F. Lidge III, 'Perp Walks and Prosecutorial Ethics', (2006) 7(55) *Nevada Law Journal*, 56-72

⁹ Olubajo, (n 6).

distorts the administration of criminal justice and negates or violates the rights of suspected internet fraudsters.¹⁰ Also, it negates the cybercrime suspect's right to a fair trial and presumption of innocence until proven guilty as guaranteed by international conventions and section 36(5) & (6) of the Constitution of the Federal Republic of Nigeria.¹¹

Furthermore, considering that some publications in cyberspace are inaccurate¹² and could be reposted and retweeted, especially with the increasing usage of the internet and social media.¹³ Reactions and opinions on the posted photographs of the cybercrime suspects by other persons, undermine the fair trial of suspects, as it could also prejudice the minds of judges before adjudicating on the matter¹⁴ and erode the presumption of innocence¹⁵ guaranteed by CFRN, s.35(6). Even when the suspects have been cleared of the alleged crime, they arguably do not remove or bring down the posts displaying pictures of those found innocent or who were not charged to court. This set of Nigerians are allowed to go through mental torture, psychological trauma and public humiliation,¹⁶ plausible loss of employment, discrimination, neglect and isolation from members of the society and family members.

The paper is set out by laying a background to the subject of discourse. It examines the increasing involvement of some Nigerians in global internet fraud, which raises the question of Nigerian cybercrime investigators' competence and effectiveness in enforcing cybercrime legal frameworks. Secondly, it critically highlights the increasing instances of cyberspace parades and trials by cybercrime investigators, with particular reference to the EFCC, and

¹⁰ LAV Robis, 'Balancing the Freedom of Expression and the Right of the accused to the Presumption of Innocence and Fair Trial: Is Social Media a Game Changer' (2015) 60(2) *Ateneo Law Journal* 398-399

¹¹ CFRN, 1999 (as amended).

¹² William Geoffrey Kastin, 'Presumed Guilty: Trial by the Media - The Supreme Court's Refusal to Protect Criminal Defendants in High Publicity Cases' (1992) 10(1) *New York Law School Journal of Human Rights*, 135

¹³ Rachel Gimson, 'Captured Red Handed: The Impact of Social Media on the Evolving Concepts of the Criminal Defendant and the Presumption of Innocence,' 78, available at <<http://sro.sussex.ac.uk/id/eprint/67121/>> accessed 28 September 2022

¹⁴ Ariana Tanoos, 'Shielding the Presumption of Innocence from Pretrial Media Coverage' (2017) 50(3) *Indiana Law Review* 997.

¹⁵ Zia Akhtar, 'Social Media Access, Jury Restraint and the Right to a Fair Trial' (2020) 8(2) *University of Baltimore Journal of Media Law & Ethics*, 4.

¹⁶ Olubajo, (n 6).

gives instances of alleged internet fraudsters arrested and whose pictures were displayed on the institution's website and social media channels prior to the conclusion of an investigation. Thirdly, it examines the legal implications of cybercrime investigators' display and publication of pictures of alleged internet fraudsters in cyberspace. Fourthly, the paper looks at what is obtainable in other jurisdictions such as the USA and South Africa and suggests a federal regulation banning the display of pictures of alleged internet fraudsters in cyberspace by cybercrime investigators before the conclusion of investigation and trial.

2. Review of Displayed/Published Apprehended Cybercrime Suspects' photographs in cyberspace by cybercrime investigators in Nigeria.

The EFCC and its officials regularly engage in the practice of cyberspace parade and trial by taking pictures of arrested cybercrime suspects and publishing the same, including their names and alleged crime, on its official website and social media channels (Facebook, Twitter, Instagram) prior to the conclusion of investigation and trial. For instance, between 2020 and 2022, the EFCC arrested over 1,200 suspected internet fraudsters and published their photographs, personal details, including some digital gadgets (laptops, computers, mobile phones) belonging to these suspects in cyberspace through its official handles (website, Facebook, Twitter, Instagram) prior to the conclusion of the investigation and formal charge before a court of competent jurisdiction.¹⁷ The parade of suspected cybercriminals before conviction by the EFCC is also visible on its social media handles.¹⁸ Even the welcome page on the EFCC website is saturated with photographs of suspected internet fraudsters.¹⁹ This is even though not everyone arrested by the EFCC would eventually be charged before a court of competent jurisdiction at the conclusion of the investigation. For instance, 12 suspected internet fraudsters were arrested in Calabar, Cross River State. At the conclusion of the investigation, 10 out of the 12 were formally charged to

¹⁷ See the EFCC website < <https://www.efcc.gov.ng/news> > accessed 20 October 2023.

¹⁸ Facebook: <https://www.facebook.com/officialefcc> ; Twitter: @officialEFCC, Youtube: @OfficialEFCC and Instagram: <[bit.ly/3olzD2F](https://www.instagram.com/officialefcc) . accessed 20 October 2023.

¹⁹ Ibid.

court and convicted.²⁰ Two of the suspects earlier displayed on the internet were arguably not part of the other 10 persons charged and convicted by the court, as findings from the investigation may not have linked them to the commission of any crime. In another instance, 10 suspected internet fraudsters were arrested and their photographs displayed by the EFCC, but one of them was not charged to court at the conclusion of the investigation, despite his photographs having been displayed by the EFCC.²¹ It is argued that the display of the photographs of cybercrime suspects without a statement expressly stating that the suspects are presumed innocent of the crime until a court finds them guilty would suggest to any reasonable person that they are guilty of the crime alleged against them even without a trial.

Based on the preceding, cyberspace parade and trial are nothing but an unacceptable practice which is aimed at punishing and shaming alleged internet fraudsters prior to the conclusion of investigation and trial in a court of competent jurisdiction. Apart from negating the right to presumption of innocence, it is an instrument of preferentialism where it has been alleged that cybercrime investigators often do not display the photographs of influential suspects on their websites and social media handles but that of the poor.²² Moreover, it is difficult to see the relevance and impact of cyberspace parades and trials in the fight against the proliferation of internet fraud in Nigeria, as the practice does not seem to have deterred internet fraudsters from perpetrating internet fraud, especially as cybercrimes are still on the increase.

3. Negative implications of the practice of cyberspace parade and trial on victims

The publication of the pictures and details of apprehended suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and possible arraignment before a court of competent jurisdiction by cybercrime investigators, especially the EFCC, has a

²⁰ EFCC, Fake 'Foster Scott', 9 Other Internet Fraudsters Jailed in Calabar, 1 April 2020, available at <<https://www.efcc.gov.ng/efcc/news-and-information/news-release/5683-fake-foster-scott-9-other-internet-fraudsters-jailed-in-calabar>> accessed 9 March 2023.

²¹ EFCC, 'EFCC Arrests 10 For Alleged Internet Fraud In Lagos' 9 January 2021, available at <<https://www.efcc.gov.ng/news/6386-efcc-arrests-10-for-alleged-internet-fraud-in-lagos>> accessed 9 March 2023.

²² John Chuks Azu, 'How Media Trial Affects Suspects' Cases' 8 August 2021, available at <<https://dailytrust.com/how-media-trial-affects-suspects-cases>> accessed 5 October 2022.

grave and negative impact on the lives of the suspects, as it affects the alleged internet fraudster's psychology, credibility, character and reputation.²³ Oftentimes, the suspect is ostracized from his immediate and extended family, community and society due to his battered reputation in cyberspace despite having not been found guilty of the crime. There is the likelihood of these consequences being extended to members of the family of the alleged internet fraudster, their wife and children (if any) and anyone in any way connected to them.²⁴ Publishing the picture in cyberspace for the general public to access without restrictions tarnishes the image of the alleged internet fraudster, as it denotes that the person shown in the picture has been confirmed or adjudged to be an internet fraudster. The cyberspace court of public opinion inflicts a reputational penalty on an alleged internet fraudster with the possibility of it persisting many years after the release of the internet fraudster or conclusion of the matter.²⁵ Even when the cybercrime investigator releases the alleged internet fraudster without a formal charge before a court of competent jurisdiction, his reputation has already been damaged in an irreparable fashion. Again, if for any reason the alleged internet fraudster is arraigned before a court of competent jurisdiction on a charge of internet fraud and the court finds him guilty at the end of the trial, the internet fraudster would have been made to face double penalty and sentence (double jeopardy); the first being for subjecting him or her to cyberspace parade and trial and secondly, the sentence passed by the court.²⁶

Moreover, even when they are released for being innocent of allegations of internet fraud or discharged and acquitted by a court of competent jurisdiction after a trial, the alleged internet fraudster whose pictures have been published in cyberspace will find it difficult to socialize in the society, community and amongst family members based on the guilty stigma arising

²³ Adetayo Omotoyosi, 'OPINION: Damage media parade is doing to Nigerian youths' 8 July 2021, available at < <https://www.vanguardngr.com/2021/07/opinion-damage-media-parade-is-doing-to-nigerian-youths/>> accessed 5 October 2021.

²⁴ Lidge III (n 8) 58.

²⁵ Robis (n 10) 399.

²⁶ Thisday, 'The Legality or Otherwise of Public Parade of Suspects by Security Agencies' (Part 1) available at <<http://www.thisdaylive.com/index.php/2021/07/27/the-legality-or-otherwise-of-public-parade-of-suspects-by-security-agencies-part-1/>> accessed 5 October 2022.

from the cyberspace parade and trial.²⁷ In essence, the practice resonates with communal mockery, a kind of public penalty that translates into perpetual stigmatization from the community's perspective, even if the internet fraudster is eventually released at the conclusion of the investigation or acquitted. The corollary is that the alleged internet fraudsters presumption of innocence is immaterial and his reputation in the court of public opinion is adversely affected.²⁸

The practice of cyberspace parade and trial can translate into loss and denial of job opportunities, including scholarships at the domestic and international levels arising from the reputational damage on an alleged internet fraudster. This is exemplified by Omotoyosi²⁹ comment on the apprehension of Pankeeroy for internet fraud by the EFCC that:

popular Instagram comedian Pankeeroy who was arrested for alleged computer-related fraud. His arrest trended on social media making room for public condemnation even though the court is yet to find him guilty. After a month in detention, the comedian regained his freedom. Pankeerovs legal representative later dismissed the allegations against the comedian saying that no petition was written against him and he was not found guilty of any crime. But what many failed to see is the damage, media trial has done to the reputation of Pankeerov. Many brands might want to work with him but due to his arrest which is a form of scandal may decide to stay put.³⁰

When the practice is weighed against the backdrop of the conventional recruitment practice of some Nigerian and international companies, the negative impact becomes more obvious. Some of these companies specifically request applicants to state in their applications or employment application forms (as the case may be) if they have, prior to their application, been subjected to arrest by law enforcement agents. In this regard, should a background

²⁷ Azu (n 22).

²⁸ Tanoos, 2017 (n 14) 1012.

²⁹ Omotoyosi, (n 23).

³⁰ Ibid.

investigation be carried out by the proposed employer, alleged internet fraudsters whose pictures and details are published on the EFCC website and social media channels are likely to be denied the available employment opportunities even when they were later exonerated of the allegations.

In a related development, the practice establishes external effects which results in psychological trauma and mental torture against alleged internet fraudsters.³¹ The experience of Mr Jonathan, cybercrimes suspect upon his released by the EFCC is apt in this regard when he disclosed how awful he feels each time he thinks about his published picture in cyberspace as an internet fraudster surfaces. According to him:

When I got outside, it was then I saw my pictures online as a Yahoo boy. They released me because they didnt see anything on my phone. I feel bad because if I am going and I see people looking at me, my mind goes to my picture, and I think they probably saw my picture on the internet. I cant walk freely again... Sometimes, I just want to stay home and not go anywhere.³²

4. Legal protection of Cybercrimes Suspects against cyberspace parade and trial in Nigeria

Several laws regulate the operations of cybercrime investigators in Nigeria. Unfortunately, some of these laws have been relied on to justify the practice of cyberspace parade and trial.³³ However, a critical look at some of these laws shows that cybercrime investigators are not empowered to engage in the practice, *albeit*, arbitrarily. For illustration, Sections 6, 7 and 46 of the EFCC Act 2004 empowers the EFCC to investigate and prosecute perpetrators of economic and financial crimes, including internet fraud. In addition, the comprehensive law on cybercrime in Nigeria, the Cybercrimes (Prohibition, Prevention etc) Act 2015 (Cybercrimes Act) prohibits and prevents the perpetration of cybercrimes and gives all law

³¹ Olubajo (n.6); Warren Freedman, 'News Media Coverage of Criminal Cases and the Right to a Fair Trial' (1961) 40(3) *Nebraska Law Review*, 401.

³² Ibid.

³³ Ibid.

enforcement agents the powers to detect, prosecute and punish perpetrators of cybercrimes. Sections 7(2), 14, and 22, amongst others, prohibit internet fraud perpetration. Also, section 4 and Part VII of the extant Nigeria Police Act 2020 vest the Nigerian Police with the general function and powers of arrest, protection of lives and properties, and prevention, detection and prosecution of crimes. Specifically, Section 68, under Part VII of the Police Act 2020, which reiterates Section 15 of the Administration of Criminal Justice Act 2015, mandates cybercrime investigators to take record of suspects' details including their name, occupation, residential address, particulars of alleged crime and for identification purposes, the suspects' height, photograph and fingerprint impression.

Contrary to the assertion and reliance of the above legal provisions in justification of cyberspace parade and trial by cybercrime investigators, those provisions do not in any way permit cybercrime investigators to engage in the practice. It must be noted that this practice infringes on the fundamental human rights of the cybercrime suspect. These rights include, amongst others, the right to privacy, the presumption of innocence, and fair hearing. The right to privacy denotes the right to protect the personal details and information of a person from unauthorized use or use in a manner that may be prejudicial to the personal interest of the person. A mandatory and arbitrary taking of a person's photograph and uploading it on cyberspace violates the right to presumption of innocence and privacy.

In Nigeria, fundamental rights are protected in chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) (CFRN 1999). Specifically, Section 36(1) provides to the effect that every person charged with a criminal offence is entitled to a fair hearing within a reasonable time before a court of competent jurisdiction. While Section 36(5) of CFRN 1999 provides that all criminal suspects are presumed innocent until proven guilty. In the same vein, section 37 of CFRN 1999 protects the right to privacy of all Nigerian citizens.

Undoubtedly, the cyberspace parade and trial by cybercrime investigators contravenes' section 36(5) of the CFRN, which guarantees alleged internet fraudsters the right to be presumed innocent until they are proven guilty beyond reasonable doubt. It must be noted that this presumption survives the investigation, arrest, and arraignment of the alleged internet fraudster for the crime alleged to have been committed. The presumption is still

intact in the course of giving evidence in the trial, the address by counsel and until a court finds the internet fraudster “guilty”. The taking and posting of an alleged internet fraudster picture on cyberspace before the conclusion of the investigation could result in the emergence of different opinions concerning the innocence or guilt of the suspected internet fraudster. These opinions are in the absence of a genuine and real presentation of evidence and facts which ordinarily should have been the basis for a well-informed opinion on the crime in question.

Cyberspace parade and trial negate the fair trial rights of those whose pictures are taken and published on cyberspace by cybercrime investigators, as enshrined in section 36 of the CFRN. A fair trial requires the presiding judicial personnel or judge to be independent and impartial.³⁴ This impartiality and independence could be affected by the parade and trial of cybercrime suspects who have already been adjudged to be internet fraudster or cybercriminal in cyberspace even before they are brought before a competent court for trial.³⁵ Moreover, the neutrality of presiding officers of the courts could inadvertently be affected by the published pictures and public opinions concerning alleged internet fraudsters in cyberspace during the trial. This could have some implications on the outcome of the trial and the right of the cybercrime suspects to a fair trial.³⁶ These practices prejudice the alleged cybercriminal by the investigation agencies and tends to encroach on the duty of the court to pass a verdict of guilt or acquittal and denies the alleged cybercriminal the right to fair hearing.³⁷

The foregoing shows that apart from cyberspace parade and trial being illegal, it is a violation of the human rights of cybercrime suspects. It is therefore argued that the act of cyberspace parade and trial could make cybercrime investigators liable in criminal prosecution for assault and civil redress. In the United States case of *Gow v. Bingham*³⁸ at the time Gow was arrested by the police and subsequently charged to court, there was no law

³⁴ Kastin, (n 12) 135.

³⁵ Ibid.

³⁶ Marder, NS (2014) 'Jurors and Social Media: Is a Fair Trial Still Possible' 67(3) *SMU Law Review* 626-628.

³⁷ *Ndukwem Chiziri Nice v. AG, Federation & Anor* (2007) CHR 218 at 232.

³⁸ *Supra*.

that empowered police to take photographs, impression and measurements of those in custody for record purposes. Gows photograph, measurements and imprint were taken by the police despite the absence of law in that respect. In determining the legality or otherwise of the police practice, the court noted that in the absence of any legislative authority, the acts of the police were unlawful and that a police custom of taking photographs of those in their custody is not a justification for the exercise, especially as it is a breach of the persons human rights which can only be violated by a legislative enactment. The court further noted that the act of the police is criminal and consequently liable for criminal assault and damages in civil redress.

*Gow v. Bingham*³⁹ supports the argument that Nigerian cybercrime investigators cannot rely on its conventional practice of cyberspace parade and trial as justification since there is no legislative enactment in support. Nevertheless, section 15 of the Administration of Criminal Justice Act 2015 (ACJA) and section 68 of the Police Act 2020 empower cybercrime investigators to take record of suspects immediately after they are arrested including their names, photographs, fingerprint impressions and other means of identification. Therefore, the question is whether section 15 of ACJA and section 68 of the Police Act are justifications for cyberspace parade and trial? Unfortunately, the answer is in the negative. Although the provisions provide for taking suspects' photographs and details for record purposes only, it did not empower cybercrime investigators to arbitrarily publish them in cyberspace, which is a breach of the suspects' human rights and consequently unconstitutional.

It might be argued that cybercrime institutional frameworks such as the EFCC and its operatives have the constitutional right to freedom of expression as guaranteed under section 39 of the CFRN. However, this right must be in agreement with responsibilities and duties and possibly be constricted to guarantee high regard for the human rights and reputation of other persons, in this case, alleged internet fraudsters.⁴⁰ For instance, cybercrime investigators are obligated under section 34(1)(a) of the CFRN to respect the dignity of alleged internet fraudsters. Taking the pictures of alleged internet fraudsters prior to the conclusion of the investigation and trial and publishing the same in cyberspace, with its

³⁹ 107 N. Y. S. 1011 (1907).

⁴⁰ Robis (n 10) 399.

attendant humiliation and psychological trauma, is nothing but arbitrarily subjecting the internet fraudster to torture or inhuman or degrading treatment' which contravenes section 34(1)(a) of the CFRN.⁴¹ The United States Court of Appeals for the Sixth Circuit in *Detroit Free Press Inc. v. U.S Department of Justice* (2016)⁴² concerning the similar practice of mug shots in the US stated thus:

The internet and social media have worked unpredictable changes in the way photographs are stored and shared. Photographs no longer have a shelf life, and they can be instantaneously disseminated for malevolent purposes. Mugshots now present an acute problem in the digital age: these images preserve the indignity of a deprivation of liberty, often at the (literal) expense of the most vulnerable among us.

Again, Section 37 CFRN guarantees the right to privacy. The publication of alleged internet fraudsters' photographs, names and digital gadgets prior to investigation and finding of guilt by a court of competent jurisdiction contravenes this provision. The alleged internet fraudsters have privacy interests in the photographs, their details and digital gadgets. In *Von Hannover v. Germany*⁴³ the European Court of Human Rights (ECtHR) recognized that the publication of the complainants photograph in the press is not of general interest and hence held the said publication to be a breach of the complainants right to privacy. Most recently in the case of *Google Spain and others v. Gonzles*⁴⁴ as a sequel to the publication of the respondent's data on cyberspace, the Court of Justice of the European Union directed its removal on the ground that privacy right outweighs public interest irrespective of the type of information.

Furthermore, the Nigerian Data Protection Act⁴⁵ (NDPA) was enacted to among other things, safeguard the right to privacy encapsulated in Section 37 of CFRN. Article 1(3) and (4) of the NDPA provides to the effect that every person is entitled to the protection of their

⁴¹ Olubajo, (n 6)

⁴² No. 14-1670, 2016 WL 3769970 (6th Cir.2016).

⁴³ (2004) cited in Robis (n 10).

⁴⁴ Ibid.

⁴⁵ 2023.

fundamental human rights subject to the derogations in the processing of their personal data. Relevant authority's owe a duty of care to ensure that the right to privacy of suspects is not breached in the course of processing their personal data including criminal records.⁴⁶ This implies that there is an obligation on investigating agencies to ensure that any personal data including photographs of suspects which forms part of their criminal records should be handled in a manner that does not infringe on the privacy and dignity of the suspect.⁴⁷ It is argued that the posting of photographs of suspects on cyberspace by cybercrime investigators requires the consent of the suspects⁴⁸ because it is a deviation from the original purpose of obtaining the photographs which is criminal investigation. Also, the display of photographs of suspects on cyberspace impliedly, is sharing the personal data of suspects with third parties without their consent.⁴⁹ This is more so as data must be processed in a manner that does not violate any extant law or international law.⁵⁰

In essence, nobody should be denied the enjoyment of his right to privacy, the presumption of innocence, and fair hearing without due process of law. Therefore, the exercise of the cyberspace parade and trial practice by cybercrime investigators, which invades the fundamental rights of alleged internet fraudsters to privacy, the presumption of innocence, and fair hearing, must be expressly provided for by a law for the same to be lawful. In the absence of any law approving the practice, it is evident that the alleged legitimacy of its exercise by cybercrime investigators is in doubt. Arguably, it is a violation of the rights of alleged internet fraudsters to take and publish their pictures in cyberspace on mere allegations of perpetrating internet fraud. The foregoing is fortified by the decision of the Federal High Court, in *Kennedy Izuagbe v. EFCC*⁵¹ where the court in an action by the plaintiff challenging the publication of his name on the official website of the EFCC and declaring him a "wanted person" in the absence of the leave or order of the court, held that the action of the EFCC is unlawful and a breach of the fundamental rights of the plaintiff.

⁴⁶ Art 2(a) and 2(b)(4) NDPA).

⁴⁷ Ibid, art 41(1).

⁴⁸ Ibid, art 18(1)c.

⁴⁹ Ibid art 41(9).

⁵⁰ Ibid, art 20(1)I and ii.

⁵¹ 2021, suit no. FHC/L/CS/2127/2021, Judgment by Justice Lewis Allagoa, Federal High Court, Lagos (Unreported).

Similarly, in *Ottoh Obono v. Inspector General of Police*,⁵² the Federal High Court per Aneke J. held that the practice of parading suspects alleged to be involved in crimes before the media is unconstitutional and illegal.

5. Lessons from USA and South Africa

Enacting specific legislation to ban cyberspace parade and trial will follow a legislative process which will further discourage cybercrime investigators from continuing in their illegality. As the experience of the US shows, there is a need for the Attorney General of the Federation to direct institutions and personnel involved in cybercrime investigation and prosecution to desist forthwith from engaging in the practice. Interestingly, in the US, while prosecutors and investigators were involved in perp walks, mug shots and booking photos, the US Circuit Court of Appeals, Second Circuit in *United States v. Kelly*⁵³ noted that all United States attorneys and marshals are instructed by the Attorney General not to make *public photographs*, Bertillon measurements or fingerprints prior to trial (emphasis added). From this perspective, the directive should specifically request all cybercrime investigators and prosecutors not to publish photographs of cybercrime suspects in cyberspace before the conclusion of the investigation and trial.

Although, subsequently in *Detroit Free Press, Inc. v. Department of Justice (Free Press I)* (1996)⁵⁴ the US Court of Appeals for the Sixth Circuit decided that persons accused of crimes have no privacy interest in booking photos which allowed the public publication of booking photos. After twenty years and two circuit court contradictory decisions, the US Court of Appeals for the Sixth Circuit in *Detroit Free Press, Inc. v. Department of Justice (2016)*⁵⁵ overruled its earlier decision as being untenable. It stated that a person enjoys a significant privacy interest in his or her booking photo, which works against the publication of booking photos of criminal defendants. This decision was somewhat influenced by the development of technology or information and communication technology, hence the court stated that:

⁵² Decision of the Federal High Court, Sitting in Calabar, 18 July 2011, suit no. FHC/CA/CS/91/2009.

⁵³ 55 F.2d 67 (2d Cir. 1932).

⁵⁴ 73 F.3d 93 (6th Cir.1996) at 97.

⁵⁵ 2016, (n 42).

...modern technology only heightens the consequences of disclosure - in today's society the computer can accumulate and store information that would otherwise have surely been forgotten ...a disclosed booking photo casts a long, damaging shadow over the depicted individual. In 1996, when we decided *Free Press I*, booking photos appeared on television or in the newspaper and then, for all practical purposes, disappeared. Today an idle internet search reveals the same booking photo that once would have required a trip to the local library's microfiche collection. In fact, mug shot websites collect and display booking photos from decades old arrests...

This decision greatly impacted US criminal prosecutors' approach to investigation, especially concerning booking photos, mug shots and perp walks. The US Department of Justice has arguably stopped these practices following the said decision. Comparatively, Nigerian cybercrime investigators and prosecutors need to draw lessons from the US and stop the publication of photographs and personal details of suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and trial.

Another impact of the *Detroit Free Press, Inc* (2016) decision is the enactment of a law by the US State of California called AB 1475, which outrightly bans sheriff's office or police departments from publishing booking photos of individuals alleged to have committed non-violent offences on social media. It is an amendment of the California Penal Code which has to do with law enforcement by adding section 13665. The law was approved by the Governor of California on 23 July 2021 and filed with the Secretary of State 23 July 2021. Section 1 recognizes that the publication of booking photos on social media is against the rights to a fair trial, the presumption of innocence and a breach of Californians right to privacy without an equivalent interest to public safety. It also notes the recent use of social media channels (Instagram, Twitter, Nextdoor and Facebook) by law enforcement agents to communicate with the general public and to publish booking photos of suspects. It recognizes the implications of these acts, from a similar perspective of cyberspace parade and trial. Consequently, section 13665(2) of the California Penal Code prohibits or bans the sheriff's

office or police department from sharing or publishing booking photos of suspected persons arrested for committing nonviolent crimes. Among other exceptions, the section provides that such an image can only be published upon valid order given by a court of competent jurisdiction. A breach of the section by law enforcement agents mandates the removal of the published photo within 14 days upon request by the person affected or his or her representative. Interestingly, section 3 makes this law apply retroactively to any image published on social media.

In addition, Section 69 of the South African Police Service Act of 1995 prohibits law enforcement agents from taking and publishing photographs or sketches of alleged suspects in cyberspace prior to being formally charged before a court of competent jurisdiction.⁵⁶ The publication of a photograph or sketch must be with the written consent of the national or provisional commissioner. For the purpose of the section, photograph means any picture, visually perceptible image, depiction or any other similar representation of the person concerned.⁵⁷ Concerning a photograph, publish, means to exhibit; show, televise, represent or reproduce; and also take means the performance of any act which by itself or as part of a process or as one of a sequence of acts renders possible the production of a photograph.⁵⁸ Moreover, a violation of the section attracts a punishment of a fine or term of imprisonment not exceeding 12 months upon finding the perpetrator guilty.⁵⁹

While the preceding California and South African Laws are recommended for adaptation by the Nigerian Federal Government to regulate the practice of cyberspace parade and trial, it is interesting to note that a combination and consideration of both laws in legislating on the subject matter would provide the necessary legal content to curb the practice in Nigeria. For instance, the California Law did not differentiate between taking and publishing a photograph, which the South African Law seems to have done. Again, the California Law subjects the publication of a photograph to an order of a competent court of jurisdiction,

⁵⁶ Jyothi Laldas, 'Posting suspects photo on WhatsApp could land you in trouble,' available at <<https://www.news24.com/witness/news/kzn/posting-suspects-photo-on-whatsapp-could-land-you-in-trouble-20210220>> accessed 10 March 2023

⁵⁷ S.69(1), South African Police Service Act of 1995.

⁵⁸ Ibid.

⁵⁹ Ibid s.69(2) & (3).

which the Nigerian Government is strongly advised to adopt. While the South African Law subjects same to an executive or administrative body (national or provisional commissioner) which could arguably be abused in Nigeria if adopted due to corruption and nepotism. The provision for the consequences of violation of both the Californian Law and South African Law should be retained by a proposed Nigerian Law regulating cyberspace parade and trial. This implies prosecuting law enforcement agents, where found guilty, should be made to pay a fine and term of imprisonment of 12 months based on the lessons from the South African Law. In addition, the perpetrator shall be ordered by the court to remove the said photograph and other details of the alleged internet fraudster from the institution's website and social media channels within 14 days upon request based on the lessons from the California Law. Importantly, the Nigerian regulation should be made to apply retroactively to photographs published On cyberspace, just like the California Law.

In Nigeria, there is an urgent need to introduce a comprehensive legislation to outlaw the practice of displaying the photographs and details of alleged cybercriminals in cyberspace. The closest effort in this direction is section 9(a) of the Lagos State Administration of Criminal Justice (Amendment) Law, 2021, which bans the parade of suspects by law enforcement agents in the media. Unfortunately, except other Nigerian States pass a similar law, the practice will arguably persist in other states. A further drawback is that internet fraud or cybercrime is a federal offence within the legislative powers of the National Assembly. Consequently, what is required is a federal law that should apply in all 36 states of the federation banning the practice of cyberspace parade and trial of cybercrime suspects.

6. Conclusion

In a bid to curb the increasing perpetration of internet fraud by Nigerians at the domestic and international levels, the Nigerian cybercrime investigators and prosecutors, often, publish photographs and details of arrested suspected internet fraudsters in cyberspace prior to the conclusion of the investigation and formal charge before a court of competent jurisdiction. A practice that is mostly and commonly practiced by the EFCC and evidenced on its website and social media channels. While the quest to curb internet fraud is a good development, resorting to unlawful means and practices, such as cyberspace parade and trial with its

attendant negative implications is a breach of the fundamental rights of suspected internet fraudsters, which is unacceptable. Despite attempts to use the judiciary to halt the continued deployment of the practice, it has not yielded any positive results as cybercrime institutions and investigators have risen in defence of the legality of the practice in Nigeria. Interestingly, the experiences of the US State of California and South Africa have shown the need to regulate the practice. Hence, this paper advocate for the adaptation of California Law (AB 1475) and the South African Police Service Act of 1995, which prohibits the taking and publication of photographs or sketch of persons arrested for alleged involvement in crimes. The paper notes the introduction of the recent Lagos State Administration of Criminal Justice (Amendment) Act in Lagos State, which bans the parade of suspects in the media by the police. However, considering that cybercrime or internet fraud is a federal offence there is the need to enact a federal law to regulate and consequently ban the practice of cyberspace parade and trial. This could be done by amending the ACJA to expressly outlaw cyberspace parade and trial and the amendment of the Cybercrimes Act to expressly ban the publication of the details of cybercrime suspects on cyberspace. In the interim, the Attorney General of the federation should issue a directive to all investigating and prosecuting agency to henceforth stop the publication of the details of cybercrime suspects on cyberspace.