

Stalking in the Criminal Legal System- Nigeria in Perspective*

Abstract

Stalking involves a pattern of overtly criminal and /or apparently innocent behaviour that makes victims fear for themselves or others. The problem of this work is that many people especially women who are stalked are helpless as they do not know that there are laws that protect them or that there is anything they can do against those that stalked against them. The work employed the doctrinal approach. The findings of the work is that stalking is protected under the Nigerian law but there are few instances of people reporting same that results to court cases. More research is suggested in this area of study especially in encouraging report and prosecution.

Keywords: Stalking, Criminal, Prosecution, Assault, Behaviour

1. Introduction

The National Institute of Justice¹ defined Stalking as the action of “any person who purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his immediate family...” And has knowledge that the specific person will be placed in a reasonable fear...is guilty of a crime of stalking. The behaviour included in most definitions of stalking range from direct contact with the victim (following him or her, waiting outside of the home or workplace, physical assault directed toward either the target or a third party) to behaviours that may never result in face-to-face contact (e.g. repeated telephone calls, sending letters, gifts or unwanted objects, or surveillance/harassment through the internet and e-mail)²

Stalking behaviours are interrelated to harassment and intimidation and may include following the victim in person or monitoring him/her. The term stalking is used with some differing definitions in psychiatry and psychology as well as in some legal jurisdictions as a term for a criminal offense^{3,4}. Stalking is a criminal activity consisting of repeated following and harassing of another person. Stalking is a distinctive form of criminal activity composed of a series of actions that taken individually might constitute legal behaviour. For example, sending flowers, writing love notes, and waiting for someone outside her work place are actions that on their own are not criminal. When these actions are coupled with an intent to instill fear or

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¹ National Institute of Justice. Project to develop a model anti-stalking code for states. Washington Dc. 1993. Retrieved July 23, 2003, from <http://www.ojp.usdov.gov/ocpa/94 Guides/Dom viol/welcome.html>. Accessed 4 February, 2022.

² A Packard, ‘Does proposed Federal Cyber Stalking Legislation meet Constitutional Requirements?’ *Community Law and Policy* 5, 505-285 3000.

³ ‘State and Federal Stalking Laws’. The Berkman Klein Center for Internet & Society at Harvard University 5 July, 2019.

⁴ 18 U.S Code. 2261A Stalking. Legal information Institute. Retrieved 5 July 2021.

injury, they may constitute a pattern of behaviour that is illegal. Although, anti-stalking laws are gender neutral, most stalkers are men and most victims are women⁵.

Stalking first attracted widespread public concern when a young actress named Rebecca Shaeffer, who was living in California USA, was shot to death by an obsessed fan who had stalked her for two years. The case drew extensive media coverage and revealed how widespread a problem stalking was to both celebrity and non- celebrity victims. Until the enactment of anti-stalking laws, police had little power to arrest someone who behaved in a threatening but legal way.

Stalking can be defined as the willful and repeated following, watching or harassing of another person⁶. Unlike other crimes which usually involve one act, stalking is a series of actions that occur over a period of time.

2. Categories of Stalking

Meloy⁷ and Wright *et al*⁸ gave a comprehensive categorization of stalking. It will be noted that similar to domestic violence, stalking is not limited to certain types of individual, racial, ethnic or cultural backgrounds, educational levels or socio-economic status. Stalkers come from different backgrounds and have different personalities and approaches to their behaviours. Social science researchers have developed various ways of classifying or categorizing stalkers.

Underlying Motives.

One widely accepted typology of stalkers is based on the stalkers underlying motives. These types of stalkers have essentially general classification. Therefore individual stalkers may not exactly fit in one single category but instead may exhibit characteristics with more than one category as given by Meloy and they are as follows:

- **Simple Obsessional:** This is the most common type of stalker. The stalker is usually a male and the focus of stalking is an ex-wife, ex-lover or former boss. In intimate relationship the stalking frequently starts before the break. The stalking can sometimes result from the stalker feeling that he or she has been mistreated by the victim.
- **Love Obsessional:** In this type of stalking, the stalker is a stranger or a casual acquaintance to the victim. Nonetheless, the stalker becomes obsessed and begins a pattern of behaviour as a means of making the victim aware of his or her existence. High profile examples of these types of stalking include when celebrities or public figures become the target. However, this type of stalking can be focused on 'average' citizen as well.
- **Erotomania:** In this type of stalking, the stalker incorrectly believes that the victim is in love with him or her and that, but for some external barrier or interference, the two of them would be together. Given that perceived 'love' between the stalker and the victim, the stalker can also pose a risk to those person close to the victim since they may be viewed as 'being in the way'.

⁵ H Bernadetter, *Stalking, Harassment, and Murder in the Workplace: Guideline for Protection and Prevention* (Westport, conn. Quorum Books, 2000).

⁶ M Pathe, P E Mullen, 'The Impact of Stalkers on their victim' *British Journal of Psychiatry London, England: Royal College of Psychiatrist*. 170: 12=17, doi: 10. 1192/bip.170.1.12 PMD 9068768.

⁷ J Meloy, *The Psychology of Stalking: Clinical and Forensic Perspectives*. (New York, Academic Press, 1998).

⁸ J Wright and A Burgess *et al* , 'A Typology of Inter Personal Stalking' *Journal of Interpersonal Violence* 11 (4) 487-502.

- **False Victimization Syndrome:** This involves an individual who either consciously or subconsciously seeks to play the role of a ‘victim’. As such, the individual may invent a detailed tale in which he or she claims to be a stalking victim. In reality however, they would be victim is sometimes the actual stalker and the alleged stalker is actually the real victim. This is an ‘extremely rare form of stalking’

3. Stalking and the Nigerian Law

In Nigeria, the Violation against Person Act 2015, made stalking a crime. It provides specifically in Section 17 that a person who stalks another commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or a fine not exceeding Five Hundred Thousand Naira (₦500,000.00) or both. An attempt to even stalk another person attracts a jail term not exceeding one year or a fine not exceeding Two Hundred Thousand Naira (₦200, 000.00) or both⁹. Section 17 (3) makes liable any person who incites another person to commit stalking to imprisonment not more than one year imprisonment or a fine of Two Hundred Thousand Naira (₦200, 000.00). To aid a stalker makes the perpetrator an accessory after the fact and such a person is liable to a jail term not exceeding a year imprisonment or a fine not exceeding One Hundred Thousand Naira (₦100, 000.00)

The Cyber Crime (Prohibition, Prevention) Act 2015 also provides against stalking. Section 24 (1) of the Act provides as follows:

“Any person who knowingly or intentionally sends a message or other materials by means of computer system or network that is grossly offensive, pornographic or of an indecent, obscene or mincing character or causes any such message, matter to be sent or he knows to be false, for the purpose of causing annoyance, inconvenience , danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill-will or needless anxiety to another or causes such a message to be sent ” is guilty of an offence upon conviction carries a greater penalty of Seven Million Naira (₦7,000,000.00) or imprisonment for a term not more than 3 years or both.

Cyber stalking involves the use of all social media platforms such as Facebook, Whatsapp, Instagram, Snap chat, Skype, Twitter, and Blackberry Messenger etc.

The cases of stalking in Nigeria are not documented and are very rare to come across. The case filed by Department of State Services (DSS) against one Mr. Saint Mienapo of cyber-stalking charge was withdrawn by the DSS at the Federal High Court Yeanagoa and was accordingly struck out. In the American case of *Long v. State*¹⁰ appellant was convicted under the stalking provisions of 1993 Harassment Statute. He argued at the court of Appeals that the stalking provision is unconstitutionally vague on its face and as applied to his conduct. The Court of Appeals held that the statute was not vague and affirmed the conviction. In *The People of the State of Colorado v. Cross*¹¹, the court of Appeals held that there was sufficient evidence for the Jury to find that Cross stalked the female victim at a shopping mall where she worked in a phone sales-kiosk. Cross went to the shopping mall almost daily and spent several hours sitting on benches near the kiosk and circling it. It became apparent to other male employees and the victim that Cross targeted the victim.

⁹ Section 17(2) of the Art.

¹⁰ 903 S. W. 2d 52 (Tex. App.) Austin 1995.

¹¹ 114 P. 3d 1.

Feeling threatened and suffering from serious emotional distress, the victim attempted to use different doors to enter and leave the mall, had her husband drive her to and pick her up from work and asked her supervisor to modify her work schedule. None of this altered the ways in which Cross pursued her. On one occasion, Cross approached the kiosk, tapped on it, smiled or smirked at the victim, and watched her from approximately two-and-one-half hours. That night the victim went to a church service with her family and Cross appeared and watched her until the husband arrived; then he left but reappeared at her work place the next two days. The victim complained to the police and they arrested Cross on a parole violation for another stalking case and ultimately charged him with stalking. The Jury convicted Cross of harassment by stalking credible threat, contrary to section 18-9-11 (4) (b) (1), c. R. S (2001) and harassment by stalking serious emotional distress contrary to Section 18-9-111 (4) (b) (i) C.R. S (2001). The trial court found the defendant guilty of three habitual criminal counts, one of which is an alleged 1999 conviction of a similar offence. The defendant was sentenced to twenty-four years in the Department of Correction and five years of mandatory parole.

The Court of Appeals reversed both convictions and remanded for a retrial because “the trial court erred in admitting evidence of (another stalking) conviction and instructing the Jury that it was an element of harassment by stalking.

The judgment of the Court of Appeals was reversed on appeal and the suit returned to the court of Appeals for remand to the trial court and re-trial consistent with the court’s opinion.

In *Hayes (FC) v. Willoughby*¹² the court held that Section 1 (1) of the protection from Harassment Act 1997 provide that a person “must not pursue a course of conduct (a) which amounts to harassment of another and (b) which he know or ought to know amounts to harassment of the other”. Harassment is a criminal offence under Section 2 and a civil wrong under Section 3. Under Section 7(2) ‘reference to harassing a person include alarming the person or causing the person distress but the term is not otherwise defined. It is however an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person which is calculated to and does cause that person alarm, fear or distress¹³. One of the most egregious forms of harassment is the stalking of women. But the act is capable of applying to any form of harassment. Among the examples to come before the courts in recent years have been repeat offensive publication in newspaper; victimization in the work place¹⁴ and campaigns against the employees of an arm manufacture by political protester¹⁵. In the instant case, the trial judge found that Mr. Willoughby’s words and acts constituted a course of conduct linked by a common purpose and subject matter calculated to cause and in fact causing harm, distress and anxiety to Mr. Hayes. Although he did not communicate directly with Mr. Hayes, Mr. Willoughby was well aware that his allegations and other conduct would get back to Mr. Hayes and have that effect on him. The judge concluded that this amounted to harassment and it is no longer disputed that it does. The Appeal Court reversed this judgment which the Supreme Court reinstated.

¹² (2013) UKSC 17 on Appeal (2011) EWCA-civ 154.

¹³*Thomas v. News Group Newspaper Ltd*, (2002) EMLR, 78 para 30.

¹⁴ *Majrowski v. Guy’s and St Thomas’s NHS Trust*, (2007) 1 AC 224.

¹⁵ *Cedo MBM Technology Ltd v. AX Worthy* (2005) EWHC 2490 QB.

4. Difficulty in Proving Stalking

According to Rosenfeld and Cling¹⁶, anti-stalking laws share a number of common features but also many important differences. Most of these laws require several key elements in order to classify harassing behaviours as stalking including (a) Willful or intentional behaviour on the part of the perpetrator, (b) the presence of either a credible threat toward the target or a third party (e.g. a family member) and (c) fear on the part of the target¹⁷. Incidentally, defining these criteria has often proven to be more difficult. For example, proving that a perpetrator intends to engage in the course of conduct that constitutes the harassment or, to instill fear in the target is often quite difficult. Many statutes respond to this ambiguity by requiring that the target specifically instruct the offender to stop the harassment. Threats may be difficult to define, particularly when the communications are not explicit but rather imply a potential harm. Also in determining whether a target's fear is 'reasonable' rather than an exaggerated response to seemingly benign interactions requires an understanding of the normative reaction to harassment.

Recent anti-stalking legislations in the US and elsewhere has been accompanied by a number of constitutional challenges (i.e. challenging the constitutionality of the laws on various legal grounds) including charges of over breadth and vagueness. Over breadth refers to a statute that is so broad that it prohibits behaviours that are constitutionally protected or otherwise innocent. For example, to telephone someone or to wait outside a building is usually legal, prohibiting such behaviours through anti-stalking statute has unwanted effect in criminalizing otherwise reasonable behaviours. Vagueness on the other hand refers to the excessive ambiguity present in many anti-stalking statutes. Examples such as a 'persistent course of conduct' or 'reasonable fear of harm' have been challenged on the grounds that these terms are not sufficiently well defined as to enable the court (or the public) to differentiate when behaviours violate the law. In general however, these challenges have been unsuccessful as most courts have upheld the anti-stalking statutes¹⁸. Thus despite occasional roadblocks and ambiguities, anti-stalking legislations has become increasingly accepted and utilized.

In the Nigerian case of *Okedara v. Attorney General of the Federation*, Solomon Okedara, a legal practitioner in Nigeria, filed an application before the Federal High Court in Lagos State challenging the constitutionality of Section 24(1) of the Act. Okedara submitted that the provision lacked a clear definition of the offence as it is vague and overbroad and that it threatened his right to freedom of expression protected by section 39 of the Constitution¹⁹ and Fair hearing protected by Section 36 (2) of the said Constitution.

The Federal High Court per Buba J. in dismissing the Appellant's application reasoned that Section 24(1) of the Cybercrime Act was not vague and that "cybercrime is incapable of direct definition". The learned judge further held that the restriction on freedom of speech as contained in Section 21 (1) of the cybercrime was necessary in a democratic society as it relates to the interest of defense, public safety, public order, public morality or public health pursuant to section 45 of the Constitution. The Appellant appealed against the judgment of the lower court. The court of Appeal reasoned from the above constitutional provision that the legislature

¹⁶ B Rosenfeld and B J Cling (Eds) *Sexualized Violence against Woman* (New York: Guilford 2004) pp.

¹⁷ N Miller, 'Stalking Investigation, Law, Public Policy and Criminal Prosecution as problem solver', in J A Davis (ed) *Stalking Crimes and Victim Protection: Prevention, Intention, Threat, Assessment and Case Management* (Boca Rato, Fl: CRE Press) pp. 387-424.

¹⁸ C E Jordan, K Quinn, B Jordan; & C R Daileader, 'Stalking: Cultural, Clinical and Legal Considerations'. *University of Louisville Brandeis Law Journal*, 38, 513-575. 2000.

¹⁹ (2013) LCN/12768 CA).

has the power to enact laws that are reasonably justified in a democratic society and that such laws shall not be declared invalid merely because they appear to be in conflict with the rights and freedom extended to citizens under the constitution. However, the court noted for example in the case at hand, that the right of freedom of speech guaranteed under Section 39 cannot be taken away except for the purpose of preserving the interest of defense, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons.

On the Appellants contentions that Section 24(1) of the Cybercrime Act 2015 conflict with Section 39 of the Constitution and that words such as ‘grossly offensive’ ‘indecent’ ‘obscene’ or ‘menacing character’ were not given clear definition in the Act, the court cited and relied on the case of *Marwa & Ors v. Nyako & Ors*²⁰ as well as Section 1 of the Cybercrime Act 2015 and section 45 of the Constitution to hold both the provisions of the Cybercrime Act and Section 45 of the Constitution set out to protect the privacy rights of citizens. The Court therefore concluded that the intention of the legislature in enacting the Cybercrime Act 2015 was in accord with the provisions of Section 45 of the Constitution.

The court equally rejected the Appellants’ argument that Section 24 of the Act does not satisfy the requirements of Section 36(12) of the Constitution holding that in his view the words in Section 24 (1) of the Act are “explicit and leave no room for speculation or logical deduction”. The Court held that the offence in the relevant section of the Act is clearly defined and the punishment is also clearly stated. It therefore concluded that the provisions of Section 24 (1) of the Cybercrime Act 2015 are not in conflict with the provisions of Section 36 (12) and 39 of the Constitution. The Court unanimously held that the Appellant’s appeal was devoid of merit and deserved to be dismissed and was accordingly dismissed.

5. Strategies to Prevent Stalking

It is important for everyone to work together to end stalking. Early prevention and support efforts include:

- a) Empowering everyone to understand, recognize and address stalking.
- b) Mobilizing men and boys as allies in prevention efforts.
- c) Creating and supporting safe environments in schools, work place, church and communities through programs and policies that reduce risk and promote healthy relationships.
- d) Sometimes stopping all contact and communication with the stalker
- e) Keep all evidence of the stalking such as voice mails, text message(s), e-mails letters etc.

6. Conclusion

Stalking is real in Nigeria and other jurisdictions. Good enough, anti-stalking law abound in Nigeria and elsewhere and despite controversies on such laws conflicting with some sections of the constitution and the vagueness and over breath of staling laws, courts have consistently held in favour of such laws. Due to the enormous health challenges that made stalking to be classified as a public health problem, people especially women have to be conscious of its existence and to report such cases to the police and prosecute same to its logical end.

²⁰ (1980) LPELR- 2936 (SC).