

The Effect of I.T on the Law of Stealing in Nigeria: A Comparative Perspective

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Abstract

Stealing, generally, has been recognised as a criminal offence and worldwide it has been viewed as the permanent deprivation of a person's ownership in a property by another. The concept of property has often been limited to material things which can be transferred to or inherited by another. This paper seeks to shed light on those other things that are not but should be considered property for the sake of defining the offence of stealing. In doing this, the effect of technology on the concept of stealing in Nigeria will be examined. A comparative analysis of the Nigerian status and the status of a few select jurisdictions, as regards the subject matter, will be done. It is believed that at the end of this paper, the concept of stealing will be viewed broader than it is seen now and that what the average person would normally see as fraud or "419" (using the Nigerian slang), will be clearly classified as stealing.

Keywords: Stealing, criminal offence, effect of technology, property.

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INTRODUCTION

The offence of stealing is probably the most common crime being committed on a daily basis all over the world. Even before the creation of written laws, the act of stealing has been recognized as an offence and has often had a reasonable level of punishment meted out on the offenders. Centuries ago, the punishment could be as severe as killing the offenders and in other cases as light as having the offender return the stolen items probably in double or multiple portions. In the early years of the Israelites, the offence was frowned upon and the punishment clearly spelt out as follows:

Whoever steals an ox or a sheep and slaughters it or sells it must pay back five head of cattle for the Ox and four sheep for the sheep. If a thief is caught breaking in at night and is struck a fatal blow, the defender is not guilty of blood shed; but if it happens after sunrise, the defender is guilty of bloodshed. Anyone who steals must certainly make restitution but if they have nothing they must be sold to pay for their theft. If the stolen animal is found alive in their possession-whether Ox or

donkey or sheep-they must pay back double. If anyone grazes their livestock in a field or vineyard and lets them stray and they graze in someone else's field, the offender must make restitution from the best of their own field or vineyard.... If anyone gives a neighbor silver or goods for safekeeping and they are stolen from the neighbour's house, the thief, if caught, must pay back double.

The clarity of the definition of the offence and the accompanying punishment as it operated in the olden days in Israel is an example of the way the offence was treated in various parts of the world in the ancient days. Various tribes in our indigenous country, Nigeria, had their ways and manners of dealing with the offenders caught in the act of stealing. The punishment meted out on offenders ranged from banishment to enslavement and sometimes death.

The definition and ingredients of the offence of stealing is more often than naught the same in various parts of the world. In establishing that the offence has been committed, it is primary to point out

that the stolen item belonged to another and not the offender. Once this is established, it is also important to show that the offender had the intention to deprive the owner of his title to the stolen object permanently; that is, the offender did not just borrow the said item, and that the offender had successfully moved the stolen item from the possession of the owner to another location.

In the past two or three centuries, the act of stealing has been clearly defined and codified as an offence contravening the laws of the society. Apart from enacted laws, the courts of justice have also contributed to defining the ingredients of the offence. The criminal code act provides that:

A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to be use of any other person, anything capable of being stolen, is said to steal that thing [1].

The Supreme court has also opined in *Onwudiwe v. Federal Republic of Nigeria* [2] that in order to establish a charge of stealing against an accused person, the prosecution must prove the following ingredients of the offence: (a) that the thing stolen is capable of being stolen; (b) that the accused has the intention of permanently depriving the owner of the thing stolen; (c) that the accused has unlawfully appropriated the thing stolen to his own use [3].

The revered Niki Tobi, J.C.A. (as he then was) also specified the ingredients needed to be proved in the offence of stealing in *Michael Alake & Anor. V. The state* [4] as follows;

For the offence of stealing to be proved, the thing alleged to have been stolen must be capable of being stolen. To constitute stealing, the taking must be fraudulent and with the intention to deprive the person his permanent ownership of the thing. In a charge of stealing, proof that the goods stolen belong to some person is an essential ingredient of the offence and it is the duty of the prosecution to adduce that evidence.

Kevin Gray has stated that in order to claim deprivation of a person's rights in a property, that property must be capable of being referred to as

"property". It must not be something enjoyable by everyone at will. He cited an example of the light in a lighthouse and identified that the owner of the lighthouse cannot claim ownership of the beam of light and so cannot prevent anyone around the lighthouse from enjoying the rays provided by the beam of light. It adds up that the owner of the lighthouse cannot claim to have been deprived of his ownership in the usage of the light merely because others in the surrounding also make use of it. If he does not want others to enjoy the usage of the light, all he has to do is to turn the light off. In his words,

The primordial principle which emerges from the majority judgments in Victoria Park Racing is that a resource can be propertised only if it is -- to use another ugly but effective word -- "excludable". A resource is "excludable" only if it is feasible for a legal person to exercise regulatory control over the access of strangers to the various benefits inherent in the resource [5].

It is therefore easy to identify that in order to prove that a person's rights have been deprived in a property, that property must not only be capable of being stolen, it must be such that is enjoyed by the owner to the exclusion of the public.

The offence of stealing is sometimes referred to as Theft and it is sometimes conceived that both are different offences. The difference, if any, between "Theft" and "Stealing" is in the legislation. Most jurisdictions prefer to use the term "theft" to lump all crimes against property (larceny, burglary, looting, robbery, shoplifting, fraud, embezzlement, etc). Stealing is generally used to describe the action of taking something specific [6].

The concept of stealing

The Oxford Advanced Learner's Dictionary defines the word "Steal" as "to take something from a person without permission and without intending to return it or pay for it" [7]. Stealing is the root of all forms of offences that involves "a taking without permission"; these offences include Robbery, Armed robbery, Housebreaking and Burglary; and so an understanding of what Stealing is and what it entails is

¹Section 383(1), Criminal Code Act, CAP 77 LFN 1990.

²(2006) All FWLR (Pt.774) at P.810.

³Duru, O.W. The necessity for proof of ingredients of stealing. *Legal Essay Series No.7*. Retrieved July 23, 2019, from <https://www.academia.edu/6792870/the-necessity-for-proof-of-ingredients-of-stealing>.

⁴(1991) 7 NWLR (pt.205) 567 at 590.

⁵Gray K. 1991. Property in thin air. 50 Cambridge LJ 252-307.

⁶Lee, R.C. Mar. 27, 2015. Is there a difference between theft and stealing (legally speaking)? Retrieved July 25, 2019, from <https://www.quora.com/is-there-a-difference-between-theft-and-stealing-legally-speaking>.

⁷Oxford Advanced Learner's Dictionary 6th ed.

crucial to understanding what these other offences involve.

Stealing has been identified as the intent to permanently deprive another of his rightful possession in a property. The property in question must be such that is capable of being stolen. As earlier stated, Kevin Gray thinks it absurd for a person to claim that his possession in a light has been deprived because another makes use of the rays provided by the light. Once the property becomes a publicly used one, a person cannot claim private ownership of it anymore. If he desires that it becomes private, all he has to do is to turn off the light or install a bulb that can only be used by him.

Stealing, in the 21st century, has gone beyond the obvious deprivation of a person's ownership in a thing. Technology has affected the concept of stealing in such a way that "permanent deprivation" is no longer an ingredient of the offence of stealing. This is especially true in the area of intellectual property and will be properly discussed in the course of this writing.

Landed properties can also be stolen these days with the use of technology. Apart from forgery of documents, landed properties that are not well taken care of by the owners could be sold by fraudulent people. Pictures of these properties are posted online and marketed for a price, interested buyers indicate their interest and within a month or two, the transaction has been concluded. Usually, the sales of these kind of properties are supported by forged documents which is done by the use of technology. The medium through which the fraudulent seller and the buyer got in contact is also enabled by technology. With the rise of online markets like Jumia, Jiji.com, Konga etc, it is very easy for a fraudulent person to pass off a landed property as a legally owned one.

Nexus between law of tort and criminal law on stealing

R.F.V. Heuston defines tort as a specie of civil wrong or injury and further went on to establish the relationship between the laws of tort and crime.

The distinction between civil and criminal wrongs depends on the nature of the appropriate remedy provided by law. A civil wrong is one which gives rise to civil proceedings-proceedings, that is to say, which have as their purpose the enforcement of some right claimed by the plaintiff as against the defendant. Criminal proceedings, on the other hand, are those which have for their object the punishment of the defendant for some act of which he is accused. It is often the case that the same wrong is both civil and criminal-capable of being made the

subject of proceedings of both kinds. Assault, libel, theft and malicious injury to property, for example, are wrongs of this kind. Speaking generally, in all such cases the civil and criminal remedies are not alternative but concurrent, each being independent of the other. The wrongdoer may be punished criminally by imprisonment or otherwise, and also compelled in a civil action to make compensation or restitution to the injured person [8].

The main difference between tort and crime is in the mode of sanctioning. While criminal law is the concern of the government authorities, law of tort is the concern of individuals. When sectioning offenders of both laws, the purpose of tortious remedy is to compensate the victim while the purpose of criminal proceedings is to punish the wrongdoer [9]. However, in this age, it is essential to put into consideration the fact that certain offences which primarily would be taken to court as civil offences are now gradually drifting into and now being classified as criminal offences, due to the rise in technology and its adverse effects. It is often thought that landed properties do not qualify as things capable of being stolen because they are not chattels and therefore cannot be moved. Hence, encroachment on a person's right to a landed property has often being viewed as trespass and not stealing. However, the advancement of technology in this 21st century, especially as it relates to stealing of ideas, intellectual properties and even internet data without necessarily moving the originals from one spot to another makes one think and wonder whether an infringement on a title to land can still be limited to the civil offence of trespass under the law of tort or classified as stealing under the criminal law.

Stealing, now in recent years, has gone beyond moving a person's item from one spot to another; it has gone beyond permanently depriving another of his ownership of stolen items. It is now in an age where an owner can still confidently flaunt his possessions without knowing that another is depriving him of its benefits. A writer can still have his name established as the owner of a literary idea while someone else in another part of the world makes use of the ideas and claim its originality as his without the knowledge of the original owner. An example of this is plagiarism. "Publishing fraudulent data and presenting ideas

⁸ Heuston, R.F.V. 1973. *The Law of Torts*. 16th ed. London: sweet & Maxwell. Chapter 1:8.

⁹ Clark, J.F, Lindsell, W.H.G. 1969. *Clerk & Lindsell on Torts*. Ed. A.L. Armitage. The Common Law library No.30. 13th ed. London: sweet & Maxwell. Chapter 1:7-8.

attributed to other researchers without appropriate recognition violates scientific ethics” [10]. The crime of stealing has advanced even to the level of stealing passwords; this act is commonly known as spoofing. Passwords to internet banking, social media accounts and internet data are now capable of being stolen. Cybercrime is now on the rise and has even been tagged *yahoo* by those involved in it in Nigeria. Identities are not left out of the things that technology has made possible for people to steal. On a daily basis, people are being scammed into entering business transactions believing that the other party is who he claims to be in an age when forging an identity card and making it look like the original is an easy task for those involved, it is very easy for an offender to pretend to be a notable person worthy of dealing with in business transactions. The innocent party who, believing that he is dealing with the right person, is dispossessed of his properties which most times is monetary or landed property. The crime only becomes obvious after the thief must have succeeded. “The internet allows people to mask their location, their intent, and their identity, and to pretend to be someone else” [11].

Stealing is not operated as it used to be anymore. Technology has created a huge influence on what the offence of stealing is now and it is essential that the appropriate authorities put this into consideration in defining the law as it is today and what it can be in the nearest future. Nowadays, a new trend of stealing has evolved. When a bank account is credited with an amount of money, the owner of the bank account gets a message alert notifying him about the recent transaction. This was the way people usually confirmed if the charges for goods and services offered has been paid. It is now unsafe to believe that an account has truly been credited just by receiving the message alert. A bank customer would have to contact his bank or view his account balance online to verify the status of the recent transaction. The uncertainty of the message alert is as a result of a fraudulent use of technology whereby someone would get a message alert of a credit transaction that was never made.

The adverse effect technology is having on the law of stealing is increasing day after day. The way technology is being used today to perpetrate crimes is in contrast to what it was designed to do.

¹⁰Gross, C. Jan. 2016. Scientific misconduct. *Annual Review of Psychology*. 67:693-711. Retrieved July 25, 2019, from <https://doi.org/10.1146/annurev-Psych-122414-033437>.

¹¹UC Berkeley School of Information. The damaging effects of IP theft. Aug. 24, 2018. Retrieved on July 25, 2019, from <https://cybersecurity.berkeley.edu/bloy/damaging-effects-IP-theft>.

The internet has proven to do a transformative communication tool. So much so that we've bootstrapped a lot of our economy to it... The internet wasn't designed with security in mind. Its communication nature is at odds with law it is used today. It was designed as a communication network among small number of computers that were owned by people who knew and trusted each other. The underlying technical infrastructure is not designed for what we're using it for. The unstable nature of internet security makes stealing intellectual property easy compared to physical theft. A digital burglar can steal from a computer on the other side of the world, then copy and distribute the material to a wide audience [12]. (Emphasis mine)

Though IP theft is hardly new, and some IP may still be attainable only through physical means, the digital world has made theft easier [13].

The cybercrime (prohibition, prevention) act, 2015

Cybercrime refers to any criminal activity that uses a computer as its primary tool. It is also the use of a computer as a tool to commit fraud, identity theft and violation of privacy. Although cybercrime is committed using a computer network, it is not just about hackers; it goes beyond hacking passwords and transferring bank account funds [14].

The Cybercrime (prohibition, prevention) Act, 2015 is the Nigerian Act that provides for the prohibition, prevention, detection, response, investigation and prosecution of cybercrimes and other related matters. The Act covers a lot of aspects of cybercrimes and provides penalties for offenders of these cybercrimes.

¹²UC Berkley School of Information. Aug.24, 2018. The damaging effects of IP theft. Retrieved July 25, 2019, from <https://cybersecurity.berkeley.edu/blog/damaging-effects-IP-theft>.

¹³ National Research Council. 2000. The digital dilemma: Intellectual property in the information age. Retrieved July 25, 2019, from <https://www.nep.edu/read/19601/chapter/1>.

¹⁴Barfi, K.A., Nyagarme, P., Yahoah, N. 2018. The internet and cybercrime in Ghana: Evidence from senior high school in Brong Ahafo region. *Library Philosophy and Practice (e-journal)* 1715. Retrieved July 26, 2019, from <https://digitalcommons.unl.edu/libphilprac/1715>.

The Cybercrime (prohibition, prevention) Act, 2015, in a bid to curb internet fraud, provided in section 7 that all cybercafés must first be registered and a register of users must be kept by the operators of the cybercafés. Section 7 (2) provides that:

Any person, who perpetrates electronic fraud or online fraud using a cybercafé, shall be guilty of an offence and shall be sentenced to three years imprisonment or a fine of one million naira or both.

Section 14 (2) & (3) also provides that:

(2) any person who with intent to defraud sends electronic message materially misrepresents any fact or set of facts upon which reliance the recipient or another person is caused to suffer any damage or loss, commits on offence and shall be liable on conviction to imprisonment for a term of not less than 5 years and to a fine of not less than ₦10,000,000.00 or to both fine and imprisonment.

(3) any person who with intent to defraud, franks electronic messages, instructions, super scribes any electronic message end or instruction, commits on offence and shall be liable on conviction to imprisonment for a term of not more than 3 years or to a fine of not more than ₦5,000,000.00 or to both such fine and imprisonment.

The cybercrime Act also has provisions prohibiting identity theft and impersonation in section 22; theft of a registered business name, trademark, domain name or registered word or phrase in section 25; manipulation of Automated Teller Machines (ATM) or Point of Sales (POS) terminals with the intention to defraud in section 30; and theft and use of another person's financial cards without consent in section 33. The cybercrime Act, 2015 has closed up the lacuna not covered by the Criminal Code Act in the law of stealing especially as it relates to technology influenced offences.

Section 25 of the Act provides as follows:

Any person who, intentionally takes or makes use of a name, business name, trademark, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Nigeria, on the internet or any other computer network, without authority or right, and for the purpose of interfering

with their use by the owner, registrant or legitimate prior user, commits an offence under this Act and shall be liable on conviction to imprisonment for a term of not more than 2 years or a fine of not more than N5,000,000.00 or to both fine and imprisonment.

From this section, it is apparent that the Cybercrime Act prevents the theft of trademarks, trade names and all related names used for business. This is applaudable, however, the Cybercrime Act could have gone further to include the protection of all forms of intellectual property, especially copyrights. The absence of Copyright as one of the protected aspects in the Act creates a big lacuna in the fight against cybercrime. Theft of literary works, songs and even designs are on a high rise today in the 21st century. Documents that are stored on Cloud are also subject to being stolen in the 21st century and are not covered by the Cybercrime Act. The protection of these aspects of the business world is a big determinant to whether cybercrime can be effectively fought.

A Comparison of the law of stealing in other Jurisdictions

United States of America

Innovations are being stolen yearly from large technology firms, most often, by their employees. Sometimes, developed countries with an enviable economic system are involved in this act of stealing. China and the United States of America are often at loggerheads over stolen technology and intellectual property. The United states have sued a number of Chinese spies to court to face charges bordering on stealing data, research materials and intellectual property.

Chinese theft of the United States technology and intellectual property is on the rise and does not seem to be stopping anytime soon. On a yearly basis, the United States loses between \$225 billion and \$600 billion due to Chinese theft of her intellectual property. Piracy and counterfeiting have become tools by which the Chinese industries steal the U.S technology and despite several appeal to the Chinese government, there has been a failure to curb the constant theft of the U.S intellectual property. "The two newer forms of ciphoning off foreign IP value are theft -often cyber theft- of extra ordinarily valuable trade secrets and knowhow, and the technology transfers required of American and other foreign companies as a condition to doing business on Chinese soil" [15].

¹⁵Goldstein, P., Driscall S. April 4, 2018. Intellectual property and china is china stealing American IP?. Retrieved July 25, 2019, from

The United States have employed means of protecting her intellectual property against theft. The United States laws enables the United States president to “impose trade sanctions against countries that failed adequately to protect intellectual property rights” [16]. This move has been ultimately used by the United States to reduce the level of theft of the country’s technology. “Advancements in technology, increased mobility, rapid globalization and the anonymous nature of the internet create growing challenges in protecting trade secrets [17].

In response to the high rate of cybercrime being committed, the United States has enacted several laws to battle the offence of fraud and stealing. Notable amongst them is the Computer Fraud and Abuse Act of 1986 (CFAA) codified in 18 U.S.C sec. 1030, which criminalizes hacking, identity theft, electronic theft and other related activities. It prescribes a punishment of 20 years in prison, criminal forfeiture, and/or fine [18]. The Act has been amended and updated with sections that expand the reach of the law.

The United Kingdom

The United Kingdom comprising of England, Wales, Scotland and Northern Ireland have the Theft Act 1968 [19] as the regulating law for the offence of stealing. Section 1 of the Theft Act 1968 defines theft as the “dishonest appropriation of property belonging to another with the intention to permanently deprive the other of it” [20]. The ingredients required to prove the offence of stealing is practically the same in the UK as it obtains in Nigeria. The following elements must be established before the offence of theft can be proven:

- i. Appropriation;
- ii. Of property;
- iii. Belonging to another;
- iv. Dishonestly;
- v. With intention to permanently deprive.

Section 3 of the Theft Act 1968 defines appropriation as assuming the rights of a legal owner of the property without consent or with consent if consent has initially been given but withdrawn or abused. Section 4 (2) of the theft act clearly spells out that land cannot be stolen except one of the following occurs.

- Where the defendant is a trustee...or has authorized power of attorney and deals with the property in breach of trust;
- Where the defendant is not in possession of the property but appropriates anything forming part of the land by severing or causing it to be severed;
- Where the defendant is a tenant and appropriates the whole or part of any fixture [21].

Another ingredient specified in section 1 of the Theft Act is that the property alleged to have been stolen belongs to another. Section 5 of the Theft Act describes this as meaning that another person other than the thief is the rightful owner and has possession and control of it. The ingredient of dishonesty has to be proved by a two-stage test.

- According to the ordinary standards of reasonable and honest people, was what was done dishonest?
- If it was dishonest by those standards did the defendant realize that reasonable and honest people would regard the conduct as dishonest?

It must also be shown that there was an intention to permanently deprive the owner of his right over the property. This ingredient may be easy to prove where the stolen property is a physical and tangible thing. Will it be so easy to prove where the property is intangible such as intellectual property and internet data? The Fraud Act 2006 is to be applauded for erasing this ingredient and ensuring that the intent to permanently deprive the owner does not have to be proved [22].

<https://law.stanford.edu/2018/04/10/intellectual-property-china-china-stealing-american-IP/>.

¹⁶Goldstein, P., Driscall S. April 4, 2018. Intellectual property and china is china stealing American IP?. Retrieved July 25, 2019, from <https://law.stanford.edu/2018/04/10/intellectual-property-china-china-stealing-american-IP/>.

¹⁷Gelinne, J., Fancher, J.D., Mossbury, T. July 25, 2016. The hidden costs of an IP breach: cyber theft end the less of intellectual property. Deleitte Review issue 19. Retrieved July 25, 2019, from <https://www2.deleitte.com/insights/us/en/delaittte-renew/issue-19/loss-of-intellectual-property-IP-breach.html>.

¹⁸Livney, K., Reed, J. Oct. 16,2018 USA: Cybersecurity 2019. Retrieved July 27, 2019, from <https://iclg.com/practice-areas/cybersecurity-laws-and-regulation/usa>.

¹⁹Chap. 60.

²⁰Laver, N. Actions undertaken to be guilty of the criminal offence of theft. Retrieved July 25, 2019, from <https://www.inbrief.co.uk/offences/points-to-prove-theft/>

²¹Laver, N. Actions undertaken to be guilty of the criminal offence of theft. Retrieved July 25, 2019, from <https://www.inbrief.co.uk/offences/points-to-prove-theft/>

²²Laver, N. Actions undertaken to be guilty of the criminal offence of theft. Retrieved July 25, 2019, from <https://www.inbrief.co.uk/offences/points-to-prove-theft/>

“Modern technologies, combined with easier access to information, have created new opportunities for financial crime. In the case of land, this phenomenon has become known as ‘title theft’”. It used to be extremely difficult to steal land, but modern forms of property theft are hard to spot and quickly accomplished. Fraudsters assume false identities so that they can pass themselves off as landowners. This enables them to offer the land as security for a loan, or to sell it to a third party, and then pocket the cash and disappear. When the landowner discovers the crime, the property is already burdened by a mortgage or has been registered in the name of someone else. Although the number of frauds like this is still relatively low, figures published by the land registry—the government body responsible for publicly recording interests in registered land in England and Wales—suggest that title theft is becoming more common. In addition, identity theft is becoming more widespread as professional criminals now target land belonging to complete strangers.

The land registry registers title to freehold and leasehold land in England and Wales. It has computerized all its records and its electronic registers of title have replaced old-fashioned title deeds and documents. Land and charge certificates were abolished on 13th October 2003. Their disappearance has made it easier for imposters to impersonate registered landowners because they no longer need to produce the certificate as proof of ownership in support of a fraudulent application to change the register.

In addition, modern technologies have made it easier for criminals to obtain counterfeit documents which can be used to represent themselves as the registered owner of a piece of land” [23]. The attempts and actual theft of land title committed in the United Kingdom have been audacious. Notable amongst such thefts are;

- A Saudi sheikh owned 47 acre site in Sunning Dale, Berkshire worth 6.5 million GB pounds;
- A 600,000 pounds Victorian semi-detached house in Harborne, Birmingham, whose owners paid off their mortgage and placed the property on the market before going abroad on an extended holiday;
- 14 terraced houses in the same locality targeted and sold off by a criminal gang in Merseyside;
- An owner-occupied detached house in Manchester which was mortgaged to two different lenders for 111,000 pounds.

²³ Pinsent Masons. Aug. 4, 2011. Safeguarding land against title theft. Retrieved July 25, 2019, from <https://www.pinsentmasons.com/out-law/guides/safeguarding-land-against-title-theft>.

Title theft is more difficult to rectify in England if the stolen title has been transferred or mortgaged to an innocent party. A land owner had to bear the brunt of this new rise of title theft when his 50-acre portion of land was transferred to another without his knowledge and further mortgaged to secure a loan of 110 million pounds from Barclays bank. When the suit was heard in court, the court ruled that the title to the land be restored to the true owner but that the bank was still entitled to exercise its power of sale over the land [24].

The effect technology has had on stealing is so adverse that innocent owners lose their properties with little or no remedy available to rectify their titles or return the ownership of the properties to its status quo.

The United Kingdom has in operation the Computer Misuse Act 1990 and the Fraud Act 2006 [25] prohibiting cybercrimes. The Fraud Act prohibits fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. Anyone guilty of these faces a possible imprisonment of 10 years or a fine or to both.

Ghana

Ghana is one of the fast growing West-African economies. A review of the Ghanaian Criminal Offences Act 1960 [26] reflects the same criminal law system that obtains in other parts of the continent. The Criminal Offences Act provision on stealing in part 3, chapter 1, defines the essential elements expected to be involved before it can be said that a property has been stolen. Section 125 defines stealing as dishonestly appropriating a thing of which he is not the owner. Section 120 provides thus:

- (1) An appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of the person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent.*
- (2) It is not necessary, in order to constitute a dishonest appropriation of a thing that the accused person should know who the owner of the thing is, but*

²⁴ Pinsent Masons. Aug. 4, 2011. Safeguarding land against title theft. Retrieved July 25, 2019, from <https://www.pinsentmasons.com/out-law/guides/safeguarding-land-against-title-theft>.

²⁵ Chapter 35.

²⁶ Act no 29 of 1960.

that any other person, whether certain or uncertain, is interested therein or entitled to that thing whether as owner in that person's right, or by operation of law, or in any other manner; and person so interested in or entitled to a thing is an owner of that thing for the purposes of the provisions of this Act relating to criminal misappropriation and frauds.

(3) The general provisions of part one with respect to consent and with respect to the avoidance of consent by force, duress, incapacity, and otherwise, apply for the purposes of this section, except as is otherwise provided in this chapter with respect to deceit.

In as much as the Ghanaian Criminal Offences Act has provisions prohibiting stealing, technology has imparted the way and manner things are stolen now. Most notable of the technology affected modes of stealing is the internet fraud or scam. Just as the Nigerian internet fraudsters are called *yahoo boys*, the Ghanaians involved are called *sakawa* boys. This form of cybercrime has led to the blacklisting of Ghana in 2012 by the Global Financial Action Task Force, for money-laundering. The country's reputation has taken a hit as a result [27].

The Ghanaian laws prohibiting cybercrimes include the Electronic Transitions Act 2008, and Economic and Organized Crime Act, 2010.

Kenya

The law against stealing is codified in the Kenyan Penal code [28]. Section 268 of the Kenyan Penal Code defines stealing as provided below.

1. A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.

2. A person who takes anything capable of being stolen or who converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say-

A. An intent permanently to deprive the general or special owner of the thing of it;

B. An intent to use the thing as a pledge or security;

C. An intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

D. An intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion.

Just like other jurisdictions, the element "permanently to deprive" is present in the Kenyan Penal Code. Technology has also affected the Kenyan economy adversely as the internet has aided advanced means of stealing. The Kenyan government has responded to this by enacting the *Kenya Information Communication Act* and more recently in 2018, the *Computer Misuse and Cyber Crime Act*. The *Kenya Information and Communications Act 1998* [29] has notable provisions prohibiting cybercrimes. Section 84B provides that:

Any person who fraudulently causes loss of property to another person by-

- *Any input, alteration, deletion or suppression of data; or*

- *Any interference with the functioning of a computer system,*

with intent to procure for himself or another person, an advantage, shall commit an offence and shall, on conviction be liable to a fine not exceeding two hundred thousand shillings and or imprisonment for a term not exceeding three years or both.

Section 84F provides that:

Any person who use secures access or attempts to secure access to a protected system in contravention of the provisions of this part shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years or both.

The Computer Misuse and Cybercrime Act 2018 criminalizes unauthorized access of a computer system with a penalty of Sh10 million fine or a 10 year jail term or both. Hacking computers and causing threat to national security is punishable by a 10year jail term, Sh20million or both [30].

²⁷Darko, S. May 10, 2015. Inside the world of Ghana's internet fraudsters. Retrieved July 26, 2019, from <https://www.bbc.com/news/world-africa-32583161>.

²⁸CAP. 63 Laws of Kenya.

²⁹CAP 411A. Laws of Kenya

³⁰Ondieki, E. May 20, 2018. New cybercrime law is not too bad. *Daily Nation*. Retrieved July 26, 2019, from <https://www.nation.co.ke/news/new-cybercrime-law-is->

Despite the laws enacted by the Kenyan government to curb cybercrimes, Kenya lost Sh29.5 billion to cybercrime last year, a 40 percent increase from the Sh21 billion loss in 2017 [31].

CONCLUSION AND RECOMMENDATIONS

“The internet has become a double-edged sword providing opportunities for individuals and organizations and also bringing with it an increased information security risk...there is no doubt that internet has changed the way business is conducted. The rapid changes in computer connectivity and innovation in digital technology provide numerous benefits to human life but it is not out of side effects such as cybercrime. Cybercrime is a new wave of crimes using internet facilities, which needs to be addressed urgently and earnestly by policy planners to protect the young generation as there is a high risk of becoming a victim of this crime” [32].

The Laws regulating the offence of stealing in various parts of the world is beginning to recognize the impact of technology and the continual rise of cybercrimes. There is a need to review the laws prohibiting stealing in Nigeria as there is an obvious lacuna in the Nigerian criminal laws. Although the Cybercrime Act, 2015, has closed the gap to an extent, there is a need to criminalise intellectual property thefts. The Criminal Code Act and the Penal Code should also criminalize the acts of cybercrimes. Since technology has made it possible for someone to steal without physically moving the stolen item and also without permanently depriving the owner of his title, the concept of the act of stealing has to be redefined to capture the impact of technology on stealing in Nigeria. The existing Criminal Code Act has to include the possibility of stealing without “permanently” depriving the owner of the benefits enjoyed thereof.

The Cybercrime Act, 2015 majorly focuses on cybercrimes that are a threat to the national security of Nigeria. While this is not bad, it is thought that major

not-too-bhad-says-cs-mucheru/1056-4570728-gag4e6/index.html.

³¹Sunday , F. May 15, 2019. Cybercriminals up their game, steal Sh30b in one year. Retrieved July 26, 2019, from <http://www.standandmedia.co.ke/business/article/2001325495/cybercriminals-up-their-game-steal-sh30b-in-one-year>.

³²Barfi, K.A., Nyagorme, P., Yeboah, N. 2018. The internet and cybercrime in Ghana: evidence from senior high school in Brong Ahafo region. *Library Philosophy and Practice (e-journal)*. 1715. Retrieved July 26, 2019, from <https://digitalcommons.unl.edu/liphilprac/1715>.

focus should also be placed on other forms of cybercrimes that are a threat to the businesses of the Nigerian citizenry and other citizens of the world. Today, Nigeria has a bad reputation of being a corrupt Country with a constant rise in the fraudulent activities being perpetuated by the Nigerian youths home and abroad. If we observe this incident closely, we will discover that a bad reputation of fraudulent activities for any country is a threat to that country's growth and when the country stops growing, it will come down to a decadence in the country's security. This is because, lack of growth in a country's business activities automatically leads to a hike in criminal activities and criminal activities are most times linked to a breach of one kind of security or the other. The breach could be physical, when it becomes violent; or it could be cyber, when it is done online; or it could be fraudulent, when properties and money are stolen. Any form of breach in security involved, the national security is at stake. So, it is important to have a Cybercrime Act that takes all these into consideration and is not just based on what it considers as a big threat to the national security. A consideration of these aspects and more will enable the Cybercrime Act effectively capture all forms of stealing done through the use of technology.

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