

## Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria

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### Abstract

*This paper analyses the domestic legal framework of sexual violence in Nigeria. This paper recognises that sexual violence has been on the increase in Nigeria and seeks to know the legislative and judicial framework for curbing same. The paper examines different laws especially federal laws which should have uniform application all over the country. The paper discovers that the VAPPA which is a very current law made a lot of improvements on the already existing laws especially in its definition of rape and the sentence imposed on offenders. The Childs Right Act is also an important legislation but the paper discovers that some States are yet to enact their Childs Right Law which would enable them prosecute paedophiles in their States. A major concern of this paper is the fact that child defilement has been condoned in Nigeria on grounds of cultural practices and religion and it is the papers position that this trend must be addressed if we must save our children. The paper also discovers that the Criminal and Penal Codes have various provisions addressing sexual violence but the punishments for the offenses differ a great deal in both legislations. The judiciary has not been of much help in this regard as the punishment for offenses are so watered down against the provisions of the statutes. The paper therefore calls for a review of some of the laws as they are considered obsolete and also recommends that punishment for offenses should be applied the way it is provided for in the statute books.*

**Keywords:** Rape, Sexual violence, Women, Children, Pornography, Incest, Female Genital Mutilation.

### Introduction

This paper examines the legal framework on sexual violence in Nigeria with a view to determine the adequacy or otherwise of these laws in combating sexual violence in Nigeria. Sexual violence is known to happen all over the world although not much attention is paid to it in some countries. The World Health Organisation report shows that about one in every four women may experience sexual violence by an intimate partner in some countries while one third of adolescent girls report their first sexual experience as being forced.<sup>2</sup> In Nigeria, reports abound of cases of sexual violence on women, young girls/children<sup>3</sup> and boys.

Sexual violence against men and boys cannot be overlooked. It has become a matter of great concern even through it is not so much publicised. Rape and other forms of sexual violence against boys and men can occur in different places such as the home, workplace, streets, and schools, in the military and during war in prisons and police custody. The Punch editorial of May 2016 gave a horrific insight into the plights of men and boys who are sexually abused by fellow inmates in police cells.<sup>4</sup> In prisons, sexual violence can occur among the detainees to establish hierarchies of respect and discipline.

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<sup>2</sup>WHO "Sexual Violence [http://www.who.int/violence-injury-prevention/violence/global\\_campaign/.../chap6.pdf](http://www.who.int/violence-injury-prevention/violence/global_campaign/.../chap6.pdf). (Accessed 24<sup>th</sup> May, 2016)

<sup>3</sup>Adeleke, N. A et al "Sexual Assault Against Women at Oshogho, South West Nigeria" *Nigerian Journal of Clinical Practice* (2012), Vol. 15, No.2, pp, pp 190-193.

<sup>4</sup>Alagbe, J. "Victims Share Agonising Tales of Sexual Assault by Fellow Male Inmates" *The Punch* (14 May, 2016), Pp 18-19.

The World Health Organisation notes that sexual violence by prison officials, police and soldiers is also widely reported in many countries and that such violence may take the form of prisoners being forced to have sex with others as a form of “entertainment”, or to provide sex for officers or officials in command.<sup>5</sup> These happen almost on a daily basis and reported in national dailies. To address the topic under discussion, this paper will be divided into six parts. Part II attempts a definition of sexual violence; Part III discusses forms/patterns of sexual violence and its effects on the victims. Part IV examines the legal framework on sexual violence in Nigeria, part V discusses the way forward and part VI concludes the paper.

### ***I. What is Sexual Violence?***

This is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances or acts to traffic or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victims, in any setting, including but not limited to home and work.<sup>6</sup> The Act defines sexual violence thus:

This is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances or acts to traffic or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victims, in any setting, including but not limited to home and work.<sup>7</sup> The above definition of violence is quite encompassing as it covers violence against men, women, and children, economic or political. More interesting is the fact that it applies both in peace and armed conflict situations. This means that sexual violence perpetrated in times of armed conflict in Nigeria can be addressed using this piece of legislation.

The key word in the definition of sexual violence is coercion which could cover a whole range of level of force. The force would include but not limited to physical force, psychological intimidation, blackmail or other forms of threat such as threat of physical harm, or being dismissed from a job or not obtaining a job that is sought. In some instances the victim is unable to give consent as in the case of drunkenness, influence of drug, when one is asleep or mentally incapacitated. Sexual violence also implies that someone forces or manipulates someone else into unwanted sexual activity without their consent. Usually the abusers can be acquaintances, family members, and trusted individuals or strangers.

### ***II. Forms/Patterns of Sexual Violence and Its effect on the Victims***<sup>8</sup>

There is a wide range of sexually violent acts that can occur in different settings and situations and they include:

- a. Rape within marriage or dating relationship;<sup>9</sup>
- b. Rape by strangers/Gang rape;
- c. Systemic rape in armed conflicts;
- d. Unwanted sexual advances or harassment including demand for sex in exchange for favours; unwanted touching;
- e. Sexual abuse of mentally or physically challenged people;
- f. Sexual abuse of children;
- g. Forced marriage or cohabitation including the marriage of children;
- h. denial of right to use contraceptives;
- i. forced abortions;
- j. Violent acts against the sexual integrity of women including female genital mutilation and obligatory inspections for virginity;
- k. Forced prostitution and trafficking of people for the purpose of sexual exploitation
- l. Showing one’s genitals or naked body to others without consent;
- m. Masturbating in public;
- n. Watching someone in a private act without their knowledge or permission.

<sup>5</sup> WHO “Sexual Violence”,

[http://www.int/violence.int/violence\\_injury\\_preventing/violence/global-campaign/.../chap6.pdf](http://www.int/violence.int/violence_injury_preventing/violence/global-campaign/.../chap6.pdf) (Accessed 25th May 2016)

<sup>6</sup> WHO supra note 1, pp 161

<sup>7</sup> Section 1 Violence Against Persons (Prohibition) Act, 2015

<sup>8</sup> National Sexual Violence Resource Centre “Impact of Sexual Violence”

[http://www.studentsaffairs.duke.edu/.../NSVRC\\_publication\\_factsheet\\_impact-of-sexual-violence-v](http://www.studentsaffairs.duke.edu/.../NSVRC_publication_factsheet_impact-of-sexual-violence-v), (Accessed 24th May 2016)

<sup>9</sup> See WHO supra note 1, pp. 162-163

The effect of any of the above forms of sexual violence can be very devastating for the victims and such effects would include:

1. **Health Effects:** Pregnancy and gynaecological complications; Sexually transmitted diseases; and Mental health;
2. **Psychological Effects:** suicidal behaviour, depression, nightmares and/or flashbacks; Social ostracization; Difficulty concentrating, anxiety and or phobia; Post traumatic stress disorder; Eating disorders, low self esteem; Substance use and/or abuse;
3. **Emotional effects:** Guilt, shame, self blame, embarrassment, fear, distrust, sadness, vulnerability, isolation, lack of control, anger, numbness, confusion, shock, disbelief, denial.

It is trite to note that victims react to sexual violence in their own unique way. The reaction may be based on personal style, culture and the context of the victim's life may also affect the reactions. While some of the victims may wish to keep their feelings/experiences to themselves, others may chose to express theirs. Where the victim decides to open up, it may take days, weeks, months and years for some to do so. We must learn to respect the victim's choice and style of coping with the situation.

### III. An Overview of some of these Effects

**1. Pregnancy and Gynaecological Problems:** In most cases pregnancies occur as a result of rape. These victims may be forced to bear the children or put their lives at risk while attempting illegal abortions<sup>10</sup>. Gynaecological complications have been consistently found to be related to forced sex. These include fibroids, vaginal bleeding or infection, decreased sexual desire, genital irritation, pain during intercourse, chronic pelvic and urinary tract infections.<sup>11</sup>

It is believed that women who experience sexual and physical violence from close partners are at higher risk of health problems than those experiencing only physical violence.<sup>12</sup>

**2. Sexually Transmitted Diseases:** Aside pregnancies and gynaecological related problems, victims of sexual violence have a higher risk of sexually transmitted diseases such as syphilis, gonorrhoea, Chlamydia, herpes simplex virus, human papilloma and human immune deficiency virus (HIV). Pelvic inflammatory disease, urinary tract infection or ascending infection affecting the reproductive organs could result as an aftermath of violent rape that gave rise to untreated genital injuries.<sup>13</sup>

**3. Mental Health:** Mental health and behavioural problems have been associated with sexual violence especially in adolescents and some adults.<sup>14</sup> These survivors suffer from depression, suicide and other forms of mental health disorders. It is discovered that the rate of lifetime depression among rape survivors was 52% compared to 27% among- non-victims.<sup>15</sup> Saunders et al opines that sexual violence can lead to a wide variety of unhealthy consequences including behavioural and psychological problems, sexual dysfunction and perversion, relationship problems, low self esteem, depression, thought of suicide, alcohol and drug abuse.<sup>16</sup>

<sup>10</sup> Kiesel, J. "Partnering with Practitioners: Rape Care and Health Care; *CCEB News letter*, Vol. 1, No. 2 . . <http://www.cceb.kpenn.edu/news/newsletter>. (Accessed 26<sup>th</sup> May 2016)

<sup>11</sup> Eby, K. et al, "Health Effects of Experiences of Sexual Violence for Women with Abusive Partners", *Healthcare for Women International* (1995) Vol. 16, pp. 563-576.

<sup>12</sup> Campbell, J.C and Soekan, K. "Forced Sex and Intimate Partner Violence: Effect on Women's Health", *Violence Against Women* (1999), Vol. 5, pp. 1017-1035.

<sup>13</sup> Kiesel, J. *Supra* note 9.

<sup>14</sup> Creamer, N., et al "Post Traumatic Stress Disorder: Findings from Australian National survey of Mental Health and Well Being", *Psychological Medicine*, (2001) Vol. 31, pp. 1237-1247.

<sup>15</sup> Saunders, B.E. et al. Prevalence, Case Characteristics and Long Term Psychological Correlates of Child Rape among Women: A National Survey" *Child Maltreatment*, (2001), Vol. 4, Pp 187-200.

<sup>16</sup> Saunders, D.G. and Kindy, P. Prediction of Physicians Responses to Women Abuse: The Role of Gender Background and Brief Training; *Journal of Gender Internal Medicine* (1993), Vol. 8, No. 11, pp 606-609.

This is in agreement with the opinion of Creamer above. Kiesel, in support of these also stated that emotional symptoms shown by victims of sexual violence include major depression, adjustment disorder, substance abuse, personality disorder and psychosexual dysfunction and that silence has been the greatest problem in the healing process of these victims<sup>17</sup>.

#### 4. Social Stigma

It is generally believed in many cultures that men are not able to control their sexual urges and that the women are responsible for arousing the men and this largely affects the manner in which families and communities react to acts of rape and other forms of sexual violence.<sup>18</sup> Some of these victims are treated as outcast and blamed for their predicament. Some of the victims respond by inflicting self-injury to express the emotional trauma, anger or blocking out painful thought of betrayal. The shame, guilt and lack of support experienced by these victims affect their self worth.<sup>19</sup> This attests to the reason why most sexual violence is not reported. Some men reject their wives because they have been raped<sup>20</sup> and in some communities, restoration of honour means that the women would be cast out and in some extreme situations, they would be killed<sup>21</sup>.

### IV. Legal Framework on Sexual Violence in Nigeria

#### a. The Constitution of Nigeria 1999 (as amended 2011)

The constitution<sup>22</sup> is the *Grund norm* and chapter IV deals extensively with fundamental rights. Section 34 is entitled "right to dignity of human person" and sub 1 reads: "every individual is entitled to respect for the dignity of his (her) person and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment".

Sexual violence in any form is an act against the personal dignity and honour of any person (victim). It is torture of the highest order and contrary to the provisions of the constitution. It is inhuman and degrading and has led to the death or psychological trauma for victims. Basically, sexual violence in whatever form is an infringement of a fundamental right of the victims. The constitution however did not define acts that would constitute breach of human dignity or torture although it can be implied but in sub (2) of the same section 34, the drafters took time to explain acts that would constitute "forced or compulsory labour", such interpretation should be given to section 34 (1) (a). Listing acts that would constitute a breach of this provision would be a step in the right direction to avoid multiplicity of interpretations and ambiguities.

#### b. Violence against Persons (Prohibition) Act, 2015

This Act was signed by the former President Good luck Jonathan on 25<sup>th</sup> of May 2015. The Act deals with sexual violence in sections 1, 6, and 26 respectively.

Rape is addressed and the Act provides that:

A person commits the offence of rape if:<sup>23</sup>

- (a) He or she intentionally penetrates the vagina, anus, or mouth of another person with any other part of his body or anything else;
- (b) The other person does not consent to the penetration; or
- (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

<sup>17</sup> Kiesel, supra note 9.

<sup>18</sup> WHO, supra note 1

<sup>19</sup> Cavaugh, R.M. "Self Mutilation as a Manifestation of Sexual Abuse in Adolescent Girls", *Journal of Paediatric Adolescent Gynaecology* (2002), Vol. 15, pp. 97-100.

<sup>20</sup> Mollica, R.F and Son, L "Cultural Dimensions in the Evaluation and Treatment of Sexual Trauma: An Overview", *Psychiatric Clinics of North America*, (1989) pp. 363-379.

<sup>21</sup> Mercy, J. A et al "International Injuries". In Mashaly, A. Y et al eds., *Injury in Egypt: An analysis of Injuries as a Health Problem* (Cairo: Rose EC Youssef New Press; 1993) 65-84.

<sup>22</sup> CFRN 1999 as amended (2011) CAP C23 LFN 2010

<sup>23</sup> Section 1 violence Against Persons (Prohibition) Act, 2015 herein after the "Act"

The Act further provides that where the offender is found culpable under section 1, he would be sentenced to life imprisonment.<sup>24</sup> Where the offender is less than 14 years, the punishment is a maximum term of 14 years imprisonment.<sup>25</sup> In other cases, a minimum of 12 years imprisonment is provided by the Act<sup>26</sup> and for gang rape, the offenders are liable jointly to a minimum term of 20 years without an option of fine.<sup>27</sup> The Act also recommends the award of appropriate compensation to the victim by the court<sup>28</sup> and finally on this the Act mandates that a register of sexual offender be maintained.<sup>29</sup>

From the foregoing, it would be observed that there is an expansion on the definition of rape and its prohibition. While other laws may have restricted their definition of rape to protect only females in relation to vaginal penetration without consent<sup>30</sup> the Act has taken a giant leap by expanding the meaning and scope of rape. Going by the definition of rape in the Act, we would discover that both males and females can be raped and are protected by the Act. The issue of rape being gender biased has been topical in the Nigerian legal jurisprudence for sometime because the laws as they are failed to recognise instances where a man could be raped.<sup>31</sup> The provisions of the Act has also taken a progressive stance by recognising that sex now goes beyond the use of the primary sexual organs and extends the scope to anus and mouth. This is another success because in time past in Nigeria it was difficult to bring forceful anal or oral sex under the umbrella of rape as such was not part of our laws. Another interesting point is that penetration here need not only by the sex organ (penis) of the offender but by any part of his body or anything else. This is an improvement on the Criminal Code Act and Penal Code that requires sexual intercourse. Again, consent must have been vitiated or was obtained by force or threat of use of force or intimidation or deceit including impersonation.

Sanction for the offence of rape is adequate but for gang rape, the penalty should be for life too. Leaving the issue of compensation at the discretion of the court appears superfluous. The Act should have stipulated a minimum amount which would allow the judges to award compensation that will be punitive against the offender as this would serve as a deterrent to others. Maintaining a database of sexual offenders is a laudable step but we are yet to see how this will play out as record keeping appears to be a herculean task for the nation.

Another act of sexual violence dealt with by the Act is female circumcision or genital mutilation<sup>32</sup>. The Act prohibits this practice in clear terms when it provides that ‘the circumcision or genital mutilation of the girl child or woman is hereby prohibited.<sup>33</sup> To drive home the point, the Act further stipulates that any person that performs Female Genital Mutilation (FGM) or female circumcision or engages another to perform such is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.<sup>34</sup> An attempt to commit the offence attracts a term of imprisonment not exceeding 2years or to a fine not exceeding N100, 000.00 or both upon conviction.<sup>35</sup> Where a person incites, aids, or counsels another to commit the offence of FGM, upon conviction, the person is sentenced to a term of imprisonment not exceeding 2years and to a fine not exceeding N100, 000.00 or both.<sup>36</sup>

This provision is quite laudable but will remain a dead letter law if states do not enact their own laws in this regard. Again female circumcision is an act that has its roots in culture which believes that it must be done if a woman would be considered as worthy and pure. States must be involved in active sensitisation campaign that would address the dangers of FGM.

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<sup>24</sup> Section 2(1) VAPPA 2015

<sup>25</sup> Section 2(1) (a) VAPPA 2015

<sup>26</sup> Section 2(1) (b) VAPPA 2015

<sup>27</sup>Section 2(1) (c) VAPPA 2015

<sup>28</sup> Section 3 VAPPA 2015

<sup>29</sup> Section 4 VAPPA 2015

<sup>30</sup> Section 281 Penal Code and section 357 Criminal Code Act

<sup>31</sup> An instance was reported in the Daily Post of 17<sup>th</sup> July, 2012 of a man that was allegedly raped to death by his wives. This case was not treated as rape but manslaughter.

<sup>32</sup>Section 6 VAPPA 2015

<sup>33</sup> Section 6 (1) VAPPA 2015

<sup>34</sup> Section 6 (2) VAPPA 2015

<sup>35</sup> Section 6(3) VAPPA 2015

<sup>36</sup> Section 6 (4) VAPPA 2015

Section 25 of the Act made provisions for the offence of incest<sup>37</sup> which is another form of sexual violence and upon conviction the offender is sentenced to 10 years imprisonment without an option of fine<sup>38</sup> and where there is consent between the parties and if such consent is not obtained by fraud or threat the persons involved will be sentenced to 5 years imprisonment without an option of fine.<sup>39</sup> This is quite timely as some fathers have resorted to sleeping with their daughters and even mothers sleeping with their sons or very close relatives contravening the law on prohibited degrees of consanguinity and affinity.

Furthermore the Act makes it an offence for anybody to be involved in acts of indecent exposure. The provision will be quoted verbatim, thus:

A person who intentionally exposes his or her genital organs, or a substantial part thereof with the intention of causing distress to the other party, or that another person seeing it may be tempted to commit an offence under this Act commits an offence termed “indecent exposure”.<sup>40</sup> A person who intentionally exposes his or her genital, or a substantial part thereof and induces another to either message or touch with the intention of deriving sexual pleasure from such acts commits an offence under this section.<sup>41</sup>

Upon conviction the culprit is sentenced to 1 year imprisonment or to a fine not exceeding N500, 000.00 or both. Jurisdiction to try these offences is vested in the High Court of the Federal Capital Territory<sup>42</sup> and the police is empowered to arrest a suspect with or without a warrant to arrest and also is under a duty to assist the victims of such violence as contained in the Act.<sup>43</sup> Limiting jurisdiction to the High Court of the FCT may be a setback in terms of the implementation of the Act. The Act would also appear to have duplicated some of the provisions of already existing criminal laws and the liberty of citizens which are guaranteed under sections 35, 40 and 41 of the Constitution of the Federal Republic of Nigeria as amended 2011.

Generally, it can be safely concluded that the Act contains provisions on effective remedies, including the right to assistance for victims. By the provisions of section 38 of the Act, “every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through government agencies and/or non governmental agencies providing such assistance. Victims are to have access to the available legal, health and social services and any other relevant assistance they may need. They are further entitled to re-integration and rehabilitation programmes of the state as this will enable the victims to acquire necessary pre-requisite skills in any vocation of their choice in addition to necessary formal education and access to micro credit facilities.

It is expected that all the 36 states in the federation would enact their own laws on violence against persons. Ebonyi, Lagos, Jigawa states have legislated against domestic violence and Edo and Cross River states have legislated on female genital mutilation.

Although the VAPPA has improved on the provisions of the Penal and Criminal Codes, nevertheless these laws will be examined as the various states have not enacted their own laws in this regard.

### **c. The Penal Code**

The Penal Code<sup>44</sup> is applicable in the Northern states of the federation. The Penal Code is replete with provision against sexual violence which shall be considered herein.

**The first to be addressed is assault or criminal force to women with intent to outrage modesty.**<sup>45</sup> This section provides that whoever uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with 3 years imprisonment or with fine or both. Here no specific amount was stated.

<sup>37</sup> Incest is defined in the Act as knowingly and willfully having carnal knowledge of another within the prohibited degrees of consanguinity and affinity.

<sup>38</sup> Section 25 (a) VAPPA 2015

<sup>39</sup> Section 25 (b) VAPPA 2015

<sup>40</sup> Section 26 (1) VAPPA 2015

<sup>41</sup> Section 26(2) VAPPA 2015

<sup>42</sup> Section 27 VAPPA 2015

<sup>43</sup> Sections 32 (1) (2) (3) of the VAPPA 2015

<sup>44</sup> Penal Code Act, 1960

<sup>45</sup> Section 268, Penal Code Act

**Abduction<sup>46</sup> and kidnapping<sup>47</sup>** was addressed although not with respect to sexual violence. Interestingly, the Code in section 275 made provision for **procreation of minor girl**. The Code in this regard states that: Whoever, by any means whatsoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to 10 years and shall also be liable to a fine.

A careful reading of the above provision would reveal that there is room for imprisonment because the Code used the word “shall” for imprisonment and fine but the term of imprisonment is left at the discretion of the court. An indication that the culprit must pay a fine which is not stipulated is scaring as the fine may be an inducement for him to further commit the crime. This provision is not stiff and will be honoured more in breach. Little wonder, most people hide under the guise of religion to perpetrate acts of sexual violence. A lot of under aged girls have been procured or abducted and justified by religion. The Chibok girls and Ese Oruru are cases in point. The rescued Chibok girl came home with a 4 months old baby while Ese Oruru (14) was delivered of a baby girl on the 26<sup>th</sup> of May, 2016.

Importation of girls under the age of 21 with intent that they may or knowing that they will be forced or seduced to have illicit intercourse with another is another offence under the Code. Traffic in women for illegal purposes which includes gratifying the passion of another person without their consent is an offence punishable with seven years imprisonment and a fine<sup>48</sup>.

**Rape<sup>49</sup>** is said to occur under the Penal Code where a man has sexual intercourse with a woman in any of the following circumstances:

- (a) against her will
- (b) without her consent
- (c) With her consent, when her consent has been obtained by putting her in fear of death or hurt.
- (d) With her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- (e) With or without her consent, when she is under fourteen years of age or of unsound mind.

Under the Code mere penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape. Interestingly, the Code did not specify that corroboration is a requirement under the law in order to establish the offence. The punishment for rape is fourteen years. This is rather not stiff. It should be life imprisonment as this will be serving as deterrence to perpetrators. Maximum time of 14 years is not enough. Acts of gross indecency<sup>50</sup> attracts a jail term of seven years and also a fine. Finally, incest attracts a term of imprisonment which may extend to seven years.

#### d. The Criminal Code

The Criminal Code Act<sup>51</sup> is applicable to the southern states of the country. States have their criminal laws. Rape is defined under the Criminal Code thus: Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.<sup>52</sup>

<sup>46</sup>Section 272 Penal Code

<sup>47</sup> Section 271 Penal Code

<sup>48</sup> Section 281 Penal Code

<sup>49</sup>Section 282 Penal Code

<sup>50</sup> Section 285 Penal Code

<sup>51</sup> CAP C 38 LFN 2010

<sup>52</sup> Section 357 Criminal Code Act

The ingredients of the offence of rape include:

1. That the accused had sexual intercourse with a woman (the victim) against her will;
2. The act of intercourse was unlawful not being between husband and wife;
3. Penetration is proved;
4. The accused must have the requisite *mens rea*, i.e. intention to have intercourse without the victims consent; and
5. Evidence must be adduced to corroborate the complaint. This is not a requirement of law but practice.

These elements have been judicially tested and will be discussed albeit briefly.

In *Adeoti v State*,<sup>53</sup> the Court of Appeal held that the offence of rape is said to be consummated where a man has unlawful carnal knowledge of a woman or girl without her consent or where consent is obtained by force or by means of threat or intimidation of any kind or by fear of death or possible bodily harm or by means of deceit, falsehood or fraudulent representation as to the nature of the act. The court further held that the essential and most important ingredient of the offence of rape is penetration and unless penetration is proved, the prosecution must fail. Penetration however slight is sufficient and it is not necessary to prove injury or rupture of the hymen to constitute the crime of rape.

Also in the *Ogunbayo v State*<sup>54</sup>, the Supreme Court held that sexual interference is deemed complete, upon proof of penetration of the penis into vagina. Emission is not a necessary requirement. It has however been held, that any, even the slightest penetration will be sufficient to constitute the act of sexual intercourse. This is why, even where the penetration was proved but not of such a depth as to injure the hymen, it has been held to be sufficient to constitute the crime of rape. Thus proof of the rupture of the hymen is unnecessary to establish the offence of rape. In this same case, the Supreme Court made references to the case of *State v Ogwudiegwu*<sup>55</sup> where it was held that in the offence of rape, in order to secure a conviction, corroborations of the evidence of the complainant implicating the accused is not essential, but a judge must warn himself of the risk of convicting on the uncorroborated evidence of the complainant.

The issue of corroboration has been quite thorny in the criminal law jurisprudence for the offence of rape. These days the manner in which the crime occurs makes it practically impossible to require corroboration. For instance, where a man is caught in the act, what other corroboration is needed to convict such a person or where it is the defilement of a child by an adult with a threat of harm on the child if she dares report and the act continues until the parents of the child discovers same either as a result of change in the attitude of the child or the child is hurt and bleeding and confesses to the parents that she has been constantly defiled by the suspect. What would be the corroborating evidence in this situation? This issue is germane because in the case of *Sambo v State*<sup>56</sup> the court held that if the prosecution can secure the conviction of the accused, the victims evidence must be corroborated and that the corroborating evidence must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged; an independent evidence which connects the accused with the offence charged; and evidence that implicates the accused in the commission of the offence charged.

It is the submission of this paper that this can no longer be the true representation of the law considering the rate of sexual violence in our society. Some of these are going on unnoticed and being perpetrated by people who appear to be more powerful than their victims that these victims perpetually becomes their sex slave or objects of sexual gratification at their beck and call because finding evidence to corroborate the act of rape appears to be a herculean task. The paper further submits that if this position is not changed, our streets and neighbourhoods will be filled with rapists and paedophiles wrecking havoc on the vulnerable victims. The paper aligns itself with position of the court in the case of *Iko v State*<sup>57</sup> where it held that ... “the proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutor. The court may, after paying due attention to the warning, nevertheless convict the accused person if it is satisfied with the truth of her evidence...”

<sup>53</sup> (2009) All FWLR (Pt 454) 1450

<sup>54</sup> (2007) All FWLR (Pt 365) 408

<sup>55</sup> (1968) NMLR 117

<sup>56</sup> (1993) 6 NWLR (Pt. 300) 399

<sup>57</sup> (2001) FWLR (Pt. 68) 1161 or (2001) 14 NWLR (Pt. 732) 221

It is the writer's view that the court need not look for evidence of corroboration in order to convict on the offence of rape. This is because there is no statute stating so. This paper has looked at the Violence Against Persons (Prohibition) Act, the Penal Code and the Criminal Code Act and none requires corroboration. Offences that require corroboration in the Criminal Code do not include rape. Corroboration thrived with the jury system where the judge warns the jury of the danger of convicting on the uncorroborated evidence of the victim. The question then is, whether this is still necessary in Nigeria, when we no longer have the jury? If we continue to insist on corroboration, is our justice system not pretentious and can the law afford to be pretentious, the answer is no. Our criminal justice system must move forward and protect citizens against crimes that infringes on their honour and dignity.

In *Rabiu v State*<sup>58</sup>, the Court of Appeal held that where the prosecutrix testified that the accused inserted his penis into her vagina, the law requires such evidence to be corroborated by an independent witness. The question again is how and who will be this independent witness. If the offence is complete upon the slightest penetration without emission and done in secret, who then is qualified to be this independent witness. The paper submits that only the victim is qualified. In *Ahmed v Nigerian Army*,<sup>59</sup> the court held that in the instant case the PW 2 Ruth Waziri testified with clarity not only that she had been severally raped more than three times, she was also able to note and state the two birth marks around the pubic area of the appellant and on the thigh which was confirmed. This was taken as enough to secure a conviction.

Obviously there appears to be some level of uncertainty with the laws as regards corroboration in rape cases. It is hoped that this will be resolved as quickly as possible so that rape suspects will not be allowed to roam the streets of Nigeria simply because the victim could not corroborate her statement or evidence. The Criminal Code also stipulates that the punishment for the offence of rape is life imprisonment with or without caning. It is trite to note here that it is only recently that the courts stopped handing down lesser punishments unlike before. For instance in the case of *Posu v State*,<sup>60</sup> the appellants were charged with the offence of rape. At the trial, the prosecution called PW 1 who was a friend to the appellants and was in company of the appellants when they committed the offence to testify. At the conclusion of the trial, the trial court found the appellants guilty as charged and convicted them. Aggrieved by their conviction, the appellant appealed to the Court of Appeal contending *inter alia* that PW 1 should have been held as an accomplice under section 7 of the Criminal Code whose evidence should have been treated with caution.

The Court of Appeal affirmed the decision of the lower court and dismissed the appeal. Not yet satisfied, the appellants appealed to the Supreme Court. The Supreme Court held that: .... a light sentence for the offence of rape as in the instant case must never be imposed. This may have unsavoury effect of turning rape into a past time by flippant youths. By virtue of the provision of section 358 of the Criminal Code Law of Ogun State, any person who commits the offence of rape is liable to imprisonment for life, with or without whipping.

It is surprising that the appellants were sentenced to three years in prison. The reasoning of the Supreme Court was that since there was no cross-appeal, there is nothing that can be done on the strange sentence. Upon what premise did the trial court base its sentence? To substitute life imprisonment with a three year term, to the mind of the present writer tantamount to trivialising the offence of rape. This paper condemns the sentence in totality.

One wonders why the trial judge sentenced the appellants to three year imprisonment after the trial showed that there was over-whelming evidence that the appellants took time to rape a defenceless young girl in a horrific and degrading manner. This paper submits that such persons as the accused should not be allowed to have a place in a decent society. What then happens after three years? At the time of writing this paper, the appellants had completed their jail terms and nobody can tell what they have been up to. The paper strongly advocates that the register of those convicted of rape as recommended by the VAPP Act 2015 be made a reality.

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<sup>58</sup> (2005) 7 NWLR (Pt. 925) p. 496

<sup>59</sup> (2011) 2 NWLR (Pt. 1234) 393

<sup>60</sup> Section 359 Criminal Code

Again there is the offence of attempted rape<sup>61</sup> which attracts fourteen years imprisonment for the offenders. Indecent assaults on females<sup>62</sup>, abduction of females and abducting females under sixteen years<sup>63</sup> are all crimes under the Criminal Code and attracts a term of imprisonment of two and seven years respectively. It is trite to note that in cases of abduction of girls below sixteen years, ignorance of the girls age, and consent cannot be a defence for the accused person. In the case of Ese Oruru for instance, a lot of argument was made in favour of the abductor to the effect that Ese was seventeen years old in order to absolve him of any blame. There was also argument indicating that Ese gave consent. The trial is ongoing and we would all wait to see what becomes of the abductor and his defences since it has been proven that Ese is just a fourteen year old girl. The Criminal Code prohibits the defilement of girls below eleven years<sup>64</sup> and offenders are liable to life imprisonment upon conviction. Where the girl is thirteen years<sup>65</sup>, the accused is guilty of a felony and liable to fourteen years upon conviction. But note that no person can be convicted of either of the offences upon the uncorroborated testimony of one witness.<sup>66</sup> Where a girl is under sixteen but above thirteen, any person who attempts to have carnal knowledge of her or an idiot is guilty of a misdemeanour and is liable to imprisonment for two years upon conviction.<sup>67</sup>

#### e. The Childs Right Act, 2003

The Child's Right Act was enacted in 2003 to protect the rights of children as the children are the future of any country. The Act in section 1 states that every action concerning a child whether undertaken or service... must be in the best interest of child. The Act defines a child as any person below the age of 18 years<sup>68</sup>. It went further to state that no person is permitted to have sexual intercourse with a child<sup>69</sup> and the punishment is life imprisonment<sup>70</sup>. The Act does not allow the defence of ignorance of the child's age<sup>71</sup> or that the child gave consent for the sexual intercourse.<sup>72</sup> Section 11 (a) prohibits subjecting a child to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse. There is no punishment for violation.

More interesting is the fact that the Act prohibits any other forms of sexual abuse and exploitation of a child and upon conviction, the offender is liable to a term of fourteen years. Section 21-23 prohibits the betrothal or marriage of children below 18 years. It is unfortunate to note that some states have a problem with these provisions in the Act as they view them as contrary to their culture, custom and for some religion. Marriage had been used often to legitimise a variety of sexual violence against women and young girls. The custom of marrying off young girls is observed in many parts of the world. The practice which is legal in many parts of the world is a form of sexual violence, since these children are unable to either give or withhold consent and most of them know little or nothing about sex before marriage and their first sexual encounters are usually forced<sup>73</sup>. Generally, in Nigeria, the mean age of first marriage is 17 years, but in Kebbi State of Northern Nigeria, the average age at first marriage is just over 11 years<sup>74</sup>. It is sad to note that this form of sexual violence is quite rampant in the Northern parts of Nigeria. Children's Day celebration of 2016 has its theme as: "Protect the right of the child in the face of violence and insecurity and end child Marriage". States, irrespective of their opinions are enjoined to enact their states Childs Right law. Only 26 out of 36 states in Nigeria have been able to enact their own state laws as at May 2014. Others are encouraged to follow suit if we must save our children.

<sup>61</sup> Section 360 Criminal Code

<sup>62</sup> Section 361 Criminal Code

<sup>63</sup> Section 362 Criminal Code

<sup>64</sup> Section 218 Criminal Code

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Section 221 1(1) (2) Criminal Code

<sup>68</sup> Section 21 of the Child's Right Act

<sup>69</sup> Section 31 (1) Childs Right Act

<sup>70</sup> Section 31 (2) Childs Right Act

<sup>71</sup> Section 31 (3) (a) Childs Right Act

<sup>72</sup> Section 31 3(b) Child's Right Act

<sup>73</sup> Sharma, V. et al, "Can Married Women Say No to Sex? Repercussion of the Denial of the Sexual Act", *Journal of Family Welfare* (1998) Vol. 44, pp. 1-8.

<sup>74</sup> UNICEF Innocenti, Research Centre "Early Marriage: Child Spouses, *Innocenti Digest* (2001) No. 7, p10

**f. The Cyber Crime Act, 2015**

The Cyber Crimes (Prohibition, Prevention etc) Act<sup>75</sup> in its explanatory memorandum posits that the Act is enacted to provide an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. This Act is divided into eight parts with 59 sections and Schedules. Under Part III which deals with offences and penalties, the Act contains sections on sexual offences that are committed on the cyberspace and these will be discussed.

Under the Act, child pornography and other related offences were addressed. The Act provides that any person who intentionally uses any computer system or network in or for

- a. producing child pornography,
- b. offering or making available child pornography,
- c. distributing, or transmitting child pornography,
- d. procuring child pornography for oneself or for another person,
- e. possessing child pornography in a computer system or on a computer-data storage medium: commits an offence under this Act.<sup>76</sup>

This legislation is quite timely in Nigeria considering the degree of sexual violence on children. The explosion of online channels for both adults and children makes the internet an avenue for adults to perpetrate this crime on unsuspecting children. The Act provides a term of imprisonment of 10 years or an option of fine not exceeding N20, 000,000.00 (Twenty Million Naira) for anybody found guilty of the offences under categories a, b, c of this section and a term of imprisonment for 5 years or a fine not exceeding 10, 000, 000.00 (Ten Million Naira) for offences under categories d and e. An examination of the above provision reveals that the punishment for the offence is quite prohibitive and the drafters of the law should be commended but the snag lies with the implementation of this law. There should be an effective mechanism for monitoring the use of internet in Nigeria. Most people are hooked on the internet without any regulatory framework and this makes it difficult for government and law enforcement agencies to track, arrest and prosecute these perpetrators. Until this is done the legislation may be a dead letter law even in the face of happenings in Nigeria that has shown that Children have been victims of this crime.

The next offence is captured under section 23 (3) and it states:

A person, who intentionally proposes, grooms or solicits, through any computer system or network, to meet a child for the purpose of:

- a. Engaging in sexual activities with the child;
- b. Engaging in sexual activities with the child where: (i). use is made of coercion, inducement, force or threats, (ii). Abuse is made of a recognised position of trust, authority or influence over the child, including within the family, or (iii). Abuse is made of a particularly vulnerable situation of the child, mental or physical disability or a situation of dependence;
- c. Recruiting, inducing, coercing, exposing or causing a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes; commits an offence under this Act.

Upon conviction of the accused, the Act prescribes a term of imprisonment of 10 years and a fine not exceeding N15, 000.00 (fifteen thousand Naira) for offences under category (a). A glance at this punishment would show that it is quite cumulative. The Act made use of the word “and” which indicates that in addition to 10 years imprisonment, the culprit will also pay a fine. For offences under categories (b) and (c) the culprit will be jailed for 15 years and also pay a fine not exceeding N25, 000.00 (Twenty five thousand Naira) only. The Act also in section 24 (1) provides that any person who knowingly sends a message or other matter by means of computer systems or network that is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent is guilty of an offence under the Act is liable upon conviction to 3 years imprisonment or an option of fine not exceeding N7, 000.00 (Seven Thousand Naira) only. Here the punishment is disjunctive. It is either a fine or a term of imprisonment.

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<sup>75</sup> Cyber Crimes (Prohibition, Prevention etc) Act 2015

<sup>76</sup> Section 23 Cyber Crimes Act, 2015

The problem associated with this kind of penalty is that the offenders will always pay the fine (where the value of the fine is not punitive as in this case) and walk the streets free and continue in their acts thereby honouring the Act more in breach. Punishments for sexual violence should be prohibitive to serve as deterrence to others.

## **V. The Way Forward**

Approaches to curbing sexual violence have largely centred on the criminal justice system. There is now a paradigm shift towards public health approach which recognises that violence is not as a result of any single factor but is caused by multiple risk factor that interface at individual relationship, community or society levels. The problem requires a multi dimensional approach which would include education, public health, legal and community based approaches. The public health approach would extend care and safety to the entire population and focus basically on prevention while ensuring that victims of sexual violence have access to appropriate services and support.

1. **Health Care** would include but not limited to:

- a. Recording a full description of the incident and listing all the assembled evidence
- b. Take note of the gynaecological and contraceptive history of the victim;
- c. Documenting the results of a full physical examination;
- d. Testing the victim against the risk of pregnancy
- e. Providing free medical testing for and treating sexually transmitted diseases including where appropriate, testing for HIV;
- f. Victims should be given emergency contraception and where legal, counselling and abortion;
- g. Psychological support and referral must be done where appropriate
- h. Health care staff should be specially trained on issues bothering on sexual violence

2. **Community Efforts:** This should include prevention campaigns aimed at changing public attitudes towards sexual violence using the media. This would include TV and radios. In Nigeria, there are several Television and Radio Stations both privately and government owned. They should be actively involved in the campaign against sexual violence. Non-governmental Organisations in Nigeria has been very effective in this regard.

Another way to prevent sexual violence or physical violence against the vulnerable in the society is a collective initiative by men and women. Men and women are advised to form groups against domestic violence and rape. Actions in schools are crucial for stemming the tide of sexual violence and other forms of violence. There should be rules by schools prohibiting sexual violence by teachers and where it occurs disciplinary measures should be taken against such a teacher. The culture of sexual violence with impunity in our schools- at all levels must stop.

3. **Legal Changes:** First and foremost, victims of sexual violence in Nigeria should be encouraged to report such incidents and the courts must be ready to attend to such matters speedily. Sometimes victims do not make formal complaints due to the official processes and bottleneck/hurdles they have to overcome. Incessant adjournment of cases, the quest for corroboration and sometimes the inability of witnesses' especially expert witnesses to attend court hinder the trial. The unwillingness of victims parents especially children to report cases of rape and defilement of their wards should stop. Government must devise means of getting these people to open up and must provide free legal services for the victims.

Legal reforms in Nigeria could follow the under listed pattern:

- a. broadening the definition of rape as has been done by the VAPPA 2015;
- b. reforming the rules on sentencing and on the admissibility of evidence. Where an offence attracts life imprisonment such should be handed down without modification, conditions or qualifications. The punishment should be uniform throughout the country;
- c. Removing the requirement for victims' accounts to be corroborated. Even though corroboration is not required as a matter of law but practice, it has hindered the sentencing of many culprits' thereby unleashing criminally minded people into the streets to wreck havoc on girls and women.
- d. On sexual defilement of children, which is on the rise in Nigeria, the National Assembly and the various States Houses of Assembly should strengthen and enact laws against child molestation. Every State should enact their Child Right Law and Courts should have the will to punish paedophiles. The enforcement of the laws will curb the resort to sentiment and pressure which allows suspects to go and settle with the family of the victim.

e. The police should as a matter of necessity establish a desk dedicated to the crime of sexual violence in every station all over the country and officers should be trained especially in the area of investigating such deviant behaviour as sexual violence in whatever form it presents itself is dangerous for the nation.

As noted earlier, the law alone cannot erase this culture of impunity therefore; the paper reiterates the need for a multidisciplinary approach.

## VI. Conclusion

The paper analysed the legal framework on sexual violence in Nigeria. The paper identified the causes and forms of sexual violence. It also defined some concepts such as violence and sexual violence before identifying and analysing the laws on the subject. The paper observed that sexual violence is a common and serious public problem affecting millions of people including children all over the world and this vice is caused by a number of factors which includes social, cultural and economic factors. At the heart of sexual violence directed against women is gender inequality. Having analysed the laws, the paper discovered that there are gaps existing in the current framework and the unwillingness of some states to adopt relevant laws that will curb sexual violence. The paper noted that some cultural practices run contrary to the law and posits that the existing laws and law enforcement mechanisms are not adequate and cannot successfully curb sexual violence. The paper therefore recommends a multi dimensional approach in solving the problem. The approach would include health sectors, communities, schools, social media and other forms of electronic media; public enlightenment on the subject by Nongovernmental organisations in addition to the laws.

The paper finally notes that the enforcement of the existing laws with the recommended modifications will go a long way in solving the problem. We must all rise and fight against this vice that is threatening to destroy us as women and girls and unfortunately our children. We wake up every morning to the news of babies being raped either by acquaintances or their fathers or school teachers and mates. This must stop. Our integrity and pride cannot be forcefully taken from us. The National Assembly must rise up and make laws that will protect women, government and civil society must end sexual violence. This paper calls on all women and girls, to arise and fight, and save themselves and their children from all forms of sexual violence and say no to obnoxious customs and practices that take away life and dignity from them and promotes sexual violence.

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