



## **Legal Analysis Of The Domestic Legal Framework On Sexual Violence In Nigeria: Appraisal**

**Mac-Eteli, Etoza Queeneth\***

### **ABSTRACT**

This paper analysed the domestic legal framework of sexual violence in Nigeria. This paper recognized that sexual violence has been on an alarming rate in Nigeria and seeks to understand the legislative and judicial framework for combating same. The paper discovered that the VAPPA which would have a uniform application across Nigeria. The Child Rights Act is also a germane legislation, however, the paper also found out that some States are to domestic their Child Rights Law which would have been used in prosecuting paedophiles in their States. The major thrust of this paper was to find out child defilement and the fact that the practice has been condoned in Nigeria on mere grounds of cultural practices and religion. The paper found out that the courts has not been of great assistance with respect to the punishment of culprits found guilty of sexual violence related offences. The paper, adopted the doctrinal method of research, with primary sources of information derived from legislations, statutes and subsidiary legislations, whilst the secondary sources of information were derived from internet materials, periodicals and legal blogs. The paper, therefore calls for a total review of the existing legislations on sexual offences and as well adequate enforcement of the laws.

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

### **1. INTRODUCTION**

The paper carefully examines the legal framework on sexual violence in Nigeria with concern towards determining the adequacy or otherwise of the existing legal frameworks in curbing sexual violence, particularly in Nigeria. Sexual violence happens all over the world, although, most times, lip service is paid to it. This has contributed to the degeneration of the whole problem, cascading into something quite abysmal and denigrating for our society today. It was reported by World Health Organization, that about one in every four women may experience sexual violence by an intimate partner, in some jurisdictions, while one third of adolescent girls report their first sexual experience as being forced<sup>1</sup>

Generally, sexual violence against men and boys cannot be put under the carpet. It has become a matter of great concern to everyone. The offence of rape and other forms of sexual violence against boys and men occur in different places and at different time, places like; home workplace, streets, schools, in the military and during war in prisons and police custody. The Punch editorial of May 2016 gave a horrific insight of men and boys who are sexually abused by fellow inmates in police cells. The World Health Organization noted 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>2</sup>

This paper shall consider the relevant existing legislations in Nigeria on sexual offences, with a view towards advocating for implementation of the laws, in order to punish sexual offences violators and as a deterrent to potential violator.

\*LL.B (Niger Delta University, Nigeria); BL (Abuja); LL.M (RSU); Ph.D ( Candidate, Rivers State University); Member, Association of Environmental Lawyers of Nigeria; email: ambiogirl@yahoo.com; contact: +2348065236618

<sup>1</sup>WHO “Sexual Violence <http://www.who.int/violence-injury-prevention/violence/global-campaign.../chapo.pdf>. (Accessed 24<sup>th</sup> May, 2016)

<sup>2</sup> Ibid.

## 2. Conceptual Clarifications

For purposes of clarification and to put some terms relevant to the discourse in proper perspective, it is necessary at this point for some terms to be given proper definition for better understanding. Those terms are sexual harassment, sexual violence, rape and menace.

### a. Sexual Harassment

The Black's Law Dictionary defines it as "an employment discrimination that consists of verbal or physical abuse of a sexual nature that involves the use of lewd remarks, salacious looks and unwelcoming touching."<sup>3</sup>

### b. Sexual Violence

The World Health Organization defines sexual violence as;

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 victim, in any setting, including but not limited to home or work.

From the above, it means that sexual violence maybe viewed as an act where a person intentionally, without consent, coerces or forces a person to engage in sexual acts against their will.<sup>4</sup> Therefore, 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 other 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 be described as a situation where someone forces or manipulates someone else into unwanted sexual activity without their consent. Usually the abusers can be acquaintances, family members, relations, and trusted individuals or some strangers.

### c. Rape

The Criminal Code which is applicable in the Southern States of Nigeria prescribes the offence of rape thus:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the content is obtained by force or by means of threats or intimidation of any kind or by fear of harm, or by means of a married woman, by impersonating her husband, is guilty of an offence which is called rape.<sup>5</sup> In *Adeoti v State*,<sup>6</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 identified the most important ingredient for the offence of rape to be penetration; and unless penetration is proved, the prosecution cannot secure a conviction. It highlighted that penetration, however slight, is sufficient. It is not necessary to prove injury or rupture of the hymen to constitute the crime of rape.

### d. Menace

The Oxford Advanced Learner's Dictionary defines menace as a thing that is annoying or cause trouble.<sup>7</sup> Its synonym is nuisance. The issue of sexual harassment is both annoying and constitutes trouble to our

<sup>3</sup> B A Garner, Black's Law Dictionary (10<sup>th</sup> Edn 1584).

<sup>4</sup> Y Olomjobi, Human Rights on Gender, Sex and the Law in Nigeria (Princeton Publishing Co. 2015) 62.

<sup>5</sup> Criminal Code Act, s. 357.

<sup>6</sup> (2009) All FWLR (Pt.454) 1450.

<sup>7</sup> A S Hornby, Oxford Advanced Learner's Dictionary (9<sup>th</sup> Edn Oxford University Press 2015) 971.

society. Incident of sexual harassment is on the increase in recent times. It is beginning to constitute societal nuisance, hence the need to bring it to the front burner.<sup>8</sup>

**3. Forms/Patterns of Sexual Violence and its Implications on the Victims**

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

- a. Rape within marriage or dating relationship;
- 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. Forced marriage or cohabitation including the marriage of children;
- g. Denial of right to use contraceptives;
- h. Forced prostitution and trafficking of people for the purpose of sexual exploitation;
- i. Showing one's genitals or naked body to others without consent;
- j. Watching someone in a private act without their knowledge or permission
- k. Violent acts against the sexual integrity of women including female genital mutilation and obligatory inspections for virginity;

**4. An Overview of Some of these Effects**

- a. **Pregnancy and Gynaecological Problems:** In most instances, pregnancies occur as a result of rape. These victims may be forced to bear the children or put their beloved lives at great risk while taking steps towards illegal abortions.<sup>9</sup>
- b. **Sexually Transmitted Diseases:** Besides, pregnancies and gynaecological related problems, connected to sexual violence, 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>10</sup>
- c. **Mental Health:** Mental health and behavioural problems has also been connected to sexual violence, particularly, in adolescents and some adults.<sup>11</sup> These survivors suffer from depression, suicide and other forms of mental health disorders.
- d. **Social Stigma:** Generally, it is believed in many cultures that men are able to control their sexual urges and that women are responsible for arousing the men and this largely affects the manner in which families and communities react to situations of rape and other forms of sexual violence.<sup>12</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

<sup>6</sup> (2009) All FWLR (Pt.454) 1450.

<sup>7</sup> A S Hornby, Oxford Advanced Learner's Dictionary (9<sup>th</sup> Edn Oxford University Press 2015) 971.

<sup>8</sup> Ibid.

<sup>9</sup> E Eby and Others, 'Health Effects of Experiences of Sexual Violence for Women with Abusive Partners' [1995] (16) Healthcare for Women International; 563-576.

<sup>10</sup> Ibid.

<sup>11</sup> N Creamer and Others, 'Post Traumatic Stress Disorder: Findings from Australian National Survey of Mental Health and Well Being' [1999] (5) Violence Against Women International Journal; 1017-1035

<sup>12</sup> (n 11)

- e. painful thought of betrayal. The shame, guilt and lack of support experienced by these victims affect their self-worth.<sup>13</sup>

## 5. Annotation of the Legal Framework on Sexual Violence in Nigeria

### a. **The Constitution of the Federal Republic of Nigeria 1999 (as amended 2011)**

The Nigerian Constitution is the supreme law of the land, particularly, chapter IV deals elaborately with fundamental rights of the citizens. Hence, section 34 is entitled ‘right to dignity of human person’ and section 34(1) provides for the right of every individual as being entitled to respect for the dignity of his or her person and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment.’’

Flowing from the above lines, sexual violence in whatever form is an act against the personal dignity and honour of any person. The Constitution however, clearly omitted to define acts that would constitute breach of human dignity or torture although, it is impliedly stated.

### b. **Violence Against Persons (Prohibition) Act, 2015**

This Act was signed by the former President, G. E. Jonathan on 25<sup>th</sup> of May, 2015. The Act deals with sexual violence in sections 1,6 and 26 respectively. In the Act, the offence of rape is addressed and the Act provides that:

A person commits the offence

- i. He or she intentionally penetrates the vagina, anus, or mouth of another person with any other part of his body or anything else;
- ii. The other person does not consent to the penetration; or
- iii. The consent is obtained by force or means that 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 sue 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 spouse.<sup>14</sup>

Furthermore, the Act provides that where the offender is found culpable under section 1, he would be sentenced to life imprisonment.<sup>15</sup> Where the offender is less than 14 years, the punishment is a maximum term of 14 years imprisonment.<sup>16</sup> In other instances or cases, a minimum of 12 years imprisonment is provided by the Act and for gang rape, the offenders are liable jointly to a minimum term of 20 years without an option of fine.<sup>17</sup> The Act also recommends the award of appropriate compensation to the victim by the court and finally, the Act mandates that a register of sexual offender be maintained.<sup>18</sup>

Flowing from the above sections of the Act, it would have been clearly seen, that there is an expansion on the definition of rape and its prohibition. The provisions of the Act have also taken a progressive stance by recognizing that sex now goes beyond the use of primary sexual organs and extends the scope to anus and mouth. This is a radical 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.

Therefore, sanction for the offence of rape is adequate, however, for the offence of gang rape, the penalty should have been life imprisonment, to deter potential persons from indulging in such a dastardly act. 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. Also, maintaining a database of sexual offenders is a laudable step and one in the right direction, however, we are yet to see this play out as record keeping appears onerous.

Another act of sexual violence dealt with by the Act is female circumcision or genital mutilation.<sup>19</sup> The

<sup>13</sup> (n 11)

<sup>14</sup> Section 1 of VAPPA 2015

<sup>15</sup> Section 2(1) VAPPA 2015

<sup>16</sup> (n 15) s. 2(1)(a) VAPPA 2015

<sup>17</sup> (n 15) 2(1)(c) VAPPA 2015

<sup>18</sup> Section 4 VAPPA 2015

<sup>19</sup> Section 6 VAPPA 2015

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>20</sup> To ensure effective implementation, the Act stipulated 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>21</sup> These provisions are quite unique and significant, however, these provisions would remain dormant, if states in Nigeria do not domesticate these laws and ensure their effective and efficient application.

Further, the Act by virtue of section 25 provides for the offence of incest, which is another form of sexual violence and upon conviction the offender is sentenced to 10 years imprisonment without an option of fine 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 without an option of fine. Also, the Act makes provision for the offence of anybody caught involved in the acts of indecent exposure. 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 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. The restriction to only the High Court of the FCT may constitute a serious setback to the effective implementation of the Act.

On the whole, it can be safely concluded that the Act contains provisions on effective remedies, including the right to assistance for victims. By the provision 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 social services and any other relevant assistance they may need.

**a. The Penal Code 1960**

The Penal Code is applicable in the Northern states of the federation. The Penal Code is replete with provision against sexual violence, ranging from section 268, 272, 281, 282, and 285.

**b. The Criminal Code**

The Criminal Code<sup>22</sup> Act, is applicable to the southern states of the federation. States have their criminal laws and these laws make express provisions for definitions of offences, as expressly captured in the Act.

Rape is defined under the Criminal Code: 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. The Act makes provision for the ingredients of the offence of rape to 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 intention to have intercourse without the victim’s consent;
5. Evidence must be adduced to corroborate the complaint.

**a. The Child’s Rights 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 nation. The Act defines a child as any person below the age of 18 years, by virtue of section 21 of the Act. The Act went further to state that no person is permitted to have sexual intercourse with a child and the punishment is life imprisonment.<sup>23</sup> The Act does not allow the defence of ignorance of the child’s

<sup>20</sup> Section 6 (1) VAPPA 2015

<sup>21</sup> Section 6(2) VAPPA 2015

<sup>22</sup> CAP C38 LFN 2010

<sup>23</sup> Section 31(2) Child’s Right Act

age<sup>24</sup> or that the child gave consent for the sexual intercourse. Section 11(a) prohibits subjecting a child to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse.

Interestingly, the Act expressly prohibits any form of sexual abuse and exploitation of a child and upon conviction, the offender is liable to a term of 14years imprisonment. Section 21-23 prohibits expressly, the betrothal or marriage of children below 18years. Generally, in Nigeria, the main age of marriage is 17 years, but, in Kebbi State, the average age at first marriage is just over 11years. It is sad to note that this form of sexual violence is quite rampant in the Northern part of Nigeria.

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

The Cyber Crimes (Prohibition, Prevention) Act 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.

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 the Act.<sup>25</sup>

Furthermore, the Act provides for 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 5years or a fine not exceeding 10,000,000.00 (Ten Million Naira) for offences under categories d and e.

The Act also makes it an offence for a person, who is 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 particularly vulnerable situation of the child, mental or physical disability or a situation of dependence. Upon conviction of the accused, the Act prescribes a term of imprisonment of 10years and a fine not exceeding N15,000.00.

**6. The Way Forward**

The mechanisms to curbing sexual violence have largely centred on the criminal system. Today, it is observed that there a shift towards public approach which also recognizes that sexual violence is not as 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. There are as follows;

- i. Health Care, which includes, but, not limited to;
- ii. Provision of free medical testing for and treating sexually transmitted diseases
- iii. Health care staff should be specially trained on issues bothering on sexual violence
- iv. Testing the victim against the risk of pregnancy

<sup>24</sup> Section 31(3)(a) Child's Right Act

<sup>25</sup> Cyber Crimes (Prohibition, Prevention) Act 2015

- v. Community Efforts: This include prevention campaigns, sensitization programmes aimed at changing public attitudes towards sexual violence
- vi. Legal changes: First and most importantly, victims of sexual violence in Nigeria should be encouraged to make report about such incidents and the courts must be ready to attend to them expeditiously.
- vii. The police should as a matter of urgency and necessity establish a department or unit dedicated solely to the crime of sexual violence in every station across Nigeria and officers periodically trained on how to properly investigate sexual violence related offences

## **7. CONCLUSION**

The paper carefully observed that sexual violence is a common and serious public challenge affecting millions of young people. At the heart of sexual violence directed against women is gender inequality. The paper also noted that some cultural practices and traditions run contrary to the law and posits that the existing laws and law enforcement institutions are not active and adequate enough to stem the tide of sexual violence. The paper therefore, recommends 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 non-governmental organisations in addition to the existing laws.