

IN MEMORIAM: UWAILA VERA OMOZUWA

Sexual Violence in Nigeria: The Victims, the Law and the need for reform.



According to United Nations Children's Fund (UNICEF), one in four girls and ten percent of boys have been sexually violated in Nigeria and majority of them have received no help or support¹. The Nigerian Bureau of Statistics has also reported that about 3,443 cases of sexual violence were reported in 2017. However, Nigeria had 0 convictions reported by the police and only one state out of the 36 states reported no cases of indecent assault. We know that these figures do not adequately reflect the magnitude of the abuse taking place because many victims fail to report attacks from fear of repercussions or stigma among other 'cultural' concerns.

Last month, we were overwhelmed with the visceral images of Uwaila Vera Omozuwa who was a victim of gruesome sexual violence. Within a short space of time there were more stories of victim girls and boys from Jigawa, Oyo and Anambra. These are the stories that made it to media mainstream. Hundreds, if not thousands go unacknowledged.

We believe that a pillar on which sexual violence thrives is the victim's (or her/his guardian's) lack of knowledge of the severity of the rights provided under the law and the existence of avenues for redress. In this document, we have attempted to summarise the various provisions of the law that provide for protection against sexual violence as well as a mini-directory of initiatives and resources for rehabilitation and redress.

What is Sexual Violence?

The World Health Organisation (WHO) 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 victims, in any setting, including but not limited to home and work.²

It occurs in different forms including: Rape; advances or harassment including demand for sex in exchange for favours; unwanted touching; sexual abuse of mentally or physically challenged people; Sexual abuse of children; female genital mutilation and obligatory inspections for virginity; and flashing amongst others.³

From the WHO's definition, it is apparent that sexual violence is gender agnostic. The key element being coercion, which occurs in various forms such as the use of physical force, psychological intimidation, blackmail or other forms of threat.

There is also the absence of consent. This occurs where the victim is unable to give consent as a result of inebriation, drug influence, being asleep or mentally incapacitated.

Nigerian law recognises and criminalises sexual violence. This stems from the fundamental human right of dignity of the human person which is

¹ www.unicef.org/nigeria/child-protection last assessed on 13th June 2020

² World Health Organisation "Sexual Violence", http://www.int/violence.int/violence_injury_preventing

[/violence/global-campaign/.../chap6.pdf](#) last assessed on 13th June 2020

³ Supra.

guaranteed under the Constitution. The other related laws derive their legitimacy from here.

Legal Framework on Sexual Violence in Nigeria

The Constitution of the Federal Republic of Nigeria 1999 (as amended)

Chapter IV of the Constitution deals extensively and sets out fundamental rights which are available to every person. These rights are inalienable and accrue to every Nigerian citizen, regardless of gender, age, ethnicity, religion or social status. When these rights are infringed upon, an action can be instituted before a Court of law.

Section 34 guarantees the right to dignity of the human person. Section 34(1) specifically provides that ***“every individual is entitled to respect for the dignity of his (her) person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment”***.

Although the Constitution does not explicitly list the acts which may constitute torture, inhuman or degrading treatment, it is trite that sexual violence in any form is an act against the personal dignity and honour of the victim and as such can be factored under this heading.

An action for the breach of fundamental human rights can be maintained against any person who carries out such acts against the dignity and honour of another⁴.

The Criminal Code Act

This Act is applicable in all the Southern states in Nigeria. It classifies sexual abuse into different groups which are:

- Indecent treatment of boys under 14- this attracts a sentence of 7 years’ imprisonment.
- Defilement of girls under 13- this attracts a sentence of life imprisonment.
- Defilement of girls under 16 and above 13- this attracts a sentence of 2 years’ imprisonment.
- Rape which is defined as the unlawful carnal knowledge of a woman or girl without her consent or through the use of threats,

intimidation, fear of harm or false and fraudulent representation. It attracts a sentence of life imprisonment.

The Penal Code Act

The Penal Code Act is applicable in all the Northern states in Nigeria. It defines rape as sexual intercourse by a man without the woman’s consent, against her will, through the use of threats, misrepresentation or the sexual intercourse with a woman under 14 years of age or a woman of unsound mind. Rape attracts a maximum sentence of life imprisonment and a fine. The Act also imposes the punishment of a maximum sentence of 7 years’ imprisonment and a fine for anyone who commits an act of gross indecency against another person without the victim’s consent or through the use of force or threats.

The Child’s Right Act

The Child’s Right Act was enacted in 2003 to protect the rights of children. The Act defines a child as any person below the age of 18 years. The Act goes further to define the age of majority to mean the attainment of age eighteen (18). This definition clearly pegs the age eighteen (18) as the age of consent.

It went further to state that where a person has unlawful sexual intercourse with a child, it is immaterial that the child gave consent or that the offender believed the person to be of or above the age of eighteen (18). The offender is liable, upon conviction, to imprisonment for life.

Although the Child’s Right Act has been passed into law by the Federal Government, the Child’s Right Act can have no effect until the States domesticate same. At the time of writing this, only 25 out of 36 states have passed the Child Rights Act.

Thus, in a state where the Child’s Right Act has not been passed into law, the Criminal Code and the Penal Code will apply as it relates to the age of consent.

The Cyber Crime Act, 2015

The Cyber Crimes (Prohibition, Prevention etc.) Act was enacted to provide an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection,

⁴ Section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

prosecution and punishment of cybercrimes in Nigeria. The Act recognises the increase in sexual violence against children and the avenue that the internet provides for adults to perpetrate sexual crimes on unsuspecting children.

Particularly, Section 23 of the Act criminalises the use of 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.

The Act provides for a term of imprisonment for 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-c 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.

The Act also criminalises the act of intentionally proposing, grooming or soliciting, 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, 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) and a term of imprisonment of 15 years and a fine not exceeding N25, 000.00 (Twenty-five thousand Naira) only for offences under categories b and c.

The Violence Against Persons (Prohibition) Act

This Act defines rape as the non-consensual penetration of the vagina, anus or mouth of a person by another person with a part of the perpetrator's body or anything else. It establishes a minimum sentence of 12 years' imprisonment (the minimum sentence for gang rape is 20 years) and a maximum of life imprisonment for those convicted of the offence of rape. The Act further gives the Court the power to award compensation to the victim and mandates the establishment and maintenance of a register of convicted sexual offenders which should be accessible to all.

The Act also establishes a maximum sentence of 2 years' imprisonment or a fine of N500,000 (Five Hundred Thousand Naira) or both fine and imprisonment for any person found guilty of compelling, forcing or threatening another person to engage in sexual acts which are detrimental to the physical or psychological well-being of the victim.

However, only the High Court of the Federal Capital Territory can try cases brought under the provisions of this Act. This means that the application of the Act is limited to the Federal Capital Territory.

The Lagos State Protection against Domestic Violence Law

This law prohibits the commission of any act of domestic violence against any person. Sexual abuse which includes rape, incest and sexual assault are included in the definition of domestic violence. The relief provided for victims under this law is the issuance of a protective order by the Court against the perpetrator. This law is only applicable in Lagos State.

The Criminal Law of Lagos State

This Law is only applicable in Lagos State. It has similar provisions with the Criminal Code Act. The Law defines defilement of a child as the unlawful sexual intercourse with a child and prescribes a sentence of life imprisonment. It also defines rape as the unlawful sexual intercourse by a man with a woman or girl without her consent and prescribes a

sentence of life imprisonment for the offence. The Law further establishes a sentence of life imprisonment for sexual assault by penetration (the non-consensual sexual penetration of the vagina, anus, mouth or any other opening on the body of another person by a person with a part of his body or anything else). The Law prescribes a punishment of 3 years' imprisonment for both sexual assault and sexual harassment.

Recommendations

While it is necessary to be aware of the foregoing laws and the rights that they create and protect, it is apparent from a consideration of these laws, that they are inadequate in curbing the menace of sexual violence as it obtains today. For example, the definition of sexual intercourse and rape presupposes actions carried out by male aggressors on females alone. Also there are hardly any provisions guiding the modalities for reporting rape such as measures to test the victims as soon as is possible and maintaining some discretion around the identities of victims to mention a few. As such, a reform of these laws is necessary.

Notwithstanding, the enforcement of the extant laws leaves much to be desired and many private individuals and organisations have stepped in the gap to provide help, justice and rehabilitation for victims of sexual violence. Below we have pooled an inexhaustive list and contact details of organisations that provide such help and support:

Organisation	Address	Phone Number
WARIF (Women at Risk International Foundation) www.warifng.org	WARIF CENTRE 6 Turton Street, off Thorburn Avenue, Yaba, Lagos.	08092100009
The Mirabel Centre www.mirabelcentre.org	Lagos State Teaching Hospital (LASUTH), Ikeja.	07013491769 08176275732
The Consent Workshop- www.theconsentworkshop.com		
Stand to End Rape Initiative- www.standtoendrape.org	1b Godson Ildianya Close, off Ayo Babatunde Crescent, by Akiogun road, Oniru, Lekki, Lagos	08130320270
FIDA (International Federation of Women Lawyers) www.fida.org.ng	Branches in all 36 states. Headquarters: Court of Appeal Headquarters, Three Arms Zone, Abuja	07088496115

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