

Legal Brief: Rape as a Penal Offence in the Nigerian Violence Against Persons (Prohibition) Act, 2015: A Forensic Investigative Approach

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Abstract

The Nigeria Violence against Persons (Prohibition) Act prohibits all forms of violence against persons while providing maximum protection and remedies for victims and punishment of offenders. Sections 1, 2, 3 and 4 provides for the offence of rape, defines the offence and punishment for offenders. Interesting as the provisions and severe as the punishment may be, successful investigation and prosecution of rapists are predicated upon standard forensic investigative procedures. However, available statistics reveal discrepancies between the cases reported and the number of convictions. Hence, the contention of this paper that the discrepancies is either that these forensic investigative procedures are hitherto neglected or little attention has been paid to them during investigation of rape cases thereby resulting in loss of cases.

1. Introduction

Across the length and breadth of Nigeria, the print and electronic media operating within different wave bands in various States of Nigeria are awash with gory and pathetic stories and reports of rape cases and other forms of sexual violence.

From the Universities to work places in private and public life, stories of rape abound resulting to government and legislative interventions to stem the ugly tide. Unfortunately, the efforts of the Nigerian government have not sufficiently addressed this social problem thereby placing higher responsibility on law enforcement to arrest and prosecute the perpetrators of this heinous crime.

The Violence against Persons (Prohibition) (VAPP) Act, 2015 is one of such government and Civil Society intervention to address this scourge. The law provides a comprehensive definition of rape as well as penalties for offenders. Specifically, Section (2) states that a person convicted of an offence of rape is liable to imprisonment for life except-:

- (a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment
- (b) In all other cases, to a minimum of 12 years imprisonment without an option of fine; or

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- (c) In the case of rape by a group of persons, the offenders are liable jointly to a minimum of 20 years imprisonment without any option of fine.
2. The Court shall also award appropriate compensation to the victim as it may deem fit in the circumstance while (4) provides for a register for convicted sexual offenders.

In spite of these provisions alongside other legislative authorities such as the Police saddled with the investigative and prosecutorial powers on rape cases, convictions have been very low compared to the plethora of cases reported. Section 357 of the Criminal Code and Section 282 of the Penal Code provide for the offence of rape and, empowers the Police to investigate and prosecute offenders.

According to the data released by the Nigeria National Bureau of Statistics in 2016, rape is a major crime. For instance, a study by Gbemileke A and Oladepo O. of Department of Health Promotions and Education, University of Ibadan, in 'A Five Year Analysis of Police Records on Sexual- Related Offences in Lagos State, Nigeria' indicates prevalence of crime of rape but the information on outcomes of these offences have not been fully investigated. Similarly, out of twenty-seven (27) reported cases of sexual offences to NAPTIP, only 4 convictions have so far been recorded between 2015 to date (Data from National Agency for the Prohibition of Trafficking in Persons). The paper attempts to address these discrepancies by asserting that abuse or partial compliance with/application of the basic forensics are responsible in view of the cases referred to law enforcement compared to cases in courts and convictions thereafter. The paper is sub-divided into sections commencing with the introduction, operationalization of terms, procedures/stages in rape investigation and crime scene management, effects on victims, challenges, effective remedies and conclusion.

3. Operationalization of Terms

- i. **RAPE:** According to VAPP, Act, 2015, a person commits the offence of rape if;
 - a. He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else,
 - b. 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 and 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. Violence against Persons (Prohibition) Act, 2015.
- ii. **Sexual Violence:** World Report cited by Gbemileke et al (in Krug et al 2002) 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 sexually using coercion, by any person regardless of their relationship to the victim”
Sexual violence includes a wide range of acts, including attempted or forced sexual intercourse, unwanted sexual contact, making a woman or

child engage in a sexual act without consent, unwanted sexual comments, sexual molestation of children, genital mutilation, sexual harassment, forced prostitution, trafficking with sexual purposes among others.

- iii. **Investigation:** It is the act or process of formal or systematic examination of a crime, problem, statement, etc, carefully, especially to discover the truth. It seeks to confirm the commission of a crime, corroborate existing criminal activity or otherwise. To prove a case of rape requires diligent investigation.
- iv. **Prosecution:** This refers to the institution and conducting of legal proceedings against someone in respect of a criminal charge. It is very important and integral part of the criminal justice system. Further defined as the act of prosecuting someone usually a criminal or suspect for committing a crime or the act of officially accusing someone of committing an illegal act especially by bringing a case against that person in a court of law. (Cambridge Dictionary) The word prosecution refers to the lawyers in trial who try to prove that a person accused of committing a crime is guilty of that offence.
- v. **Crime Scene:** A crime scene is any location that may be associated with a committed crime. It contains physical evidence that is pertinent to a criminal investigation. A crime Scene can be the place where the crime took place, or can be any area that contains evidence from the crime itself not limited to a location, but can be any person or object.
- vi. **Contamination/Pollution:** It is the unwanted alteration of evidence that could affect the integrity of the original exhibit or the crime scene. Exhibits such as blood, hair, finger prints and other objects requiring forensic analysis should be protected and handled with care to avoid being tampered with.
- vii. **Forensics:** Scientific tests or techniques used in connection of a crime. It relates or denotes the application of scientific methods and techniques to the investigation of crimes, involving examining the objects or substances that are involved in the crime. The application of technology to provide information about crime is forensic.

Stages/Procedures In Rape Case Investigation And Crime Scene Management

- **Prompt Response to Distress Call / Crime Scene:** One of the basic requirements of forensic investigative approach to rape cases is prompt response to the crime scene. Quick response to a rape report, complaint or

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- scene is advised as delay might lead to taking away of vital evidence that is necessary to prosecute the offence.
- **Security/Protection Of Crime Scene:** Law enforcement officers must take action to block off the surrounding areas as well as keep track of who comes in and out so that evidence collected will not be contaminated as any evidence tampered with can pollute the scene and render the evidence inadmissible in Court. It is therefore vital that everything that occurred during the analysis of a crime scene is documented *viz*;
 - i. Documentation should include the officers name, observations and actions while at the scene
 - ii. The appearance and state of the scene including photographs
 - iii. Gather statements and comments from witnesses, victims and possible suspects including interviews. Relevant questions in a manner that don't infringe on the rights of victims and witness and suspects is encouraged. This is to avoid institution of fundamental rights case that might jeopardize the on-going prosecution.
 - **Collection of Evidence:** The way and manner the evidence is collected matters a lot especially in rape cases. There are standard procedures for collecting evidence such that they are not polluted and also not fall short of the requirements of the law. Phones, blood stains in pants and bed spread, torn pants and braziers, physical injuries and other essential ingredients such as financial and electronic evidence to prove a rape case are required here.
 - **Obtaining Necessary Warrants:** A Warrant according to Advanced Learner's Dictionary is a legal document that is signed by a judge and gives the authority to do something. It is an order that serves as authorization especially (law) a judicial Unit authorizing an officer to make a search, seizure or arrest or to execute a judgment. Examples are search, arrest and remand warrants.
 - **Chain of Custody:** This is the chronological documentary or paper trail that records the sequence of custody, control, transfer, analysis and disposition of physical or electronic evidence. Section 32 (c) of the VAPP, Act 2015 provides for collection and storage of finger prints including DNA of accused. It contains the name of the officer collecting the evidence, date of collection and transfer, name of victim, suspect, witness, receipts and payments, etc.
 - **Medical Examination:** Medical examination should be conducted as quickly as possible and results obtained without delay. Once there is delay and the scene is contaminated, evidence becomes difficult to prove in court. Part of the delay in Nigeria is caused by the insistence that the medical result must be obtained in government hospitals which has been dispensed with by the erudite judgment in a case between *Ivwithre vs. State* (2018) where

the Court stated that as long as the medical evidence is from a qualified Medical Doctor, whether it is from a private or government hospital is a non-issue- (Ivwithre vs. State (2018) LPELR-44862 (CA)).

4. Effects of Rape on Victims

The effects of sexual abuse on victims are categorized into three viz; physical, mental and emotional. **Physically**, the effects include bruising, bleeding, difficulty in walking, soreness, broken or distorted bones, sexually transmitted infections and diseases. **Mentally**, these include but not limited to- Post-traumatic disorder, including flashbacks, nightmares, anxiety etc. Depression, including prolonged sadness, feeling of hopelessness, unwanted pregnancy-early womanhood, suicidal thoughts, dislocation-not being able to focus at work or school, abortion and death. **Emotionally**, these include mistrust-difficulty trusting others, Anger and blame, Shock, Withdrawal, Loss of control, Fear, Feeling of being damaged and worth nothing of value and takes to anti-social habits.

Challenges in Investigation and Prosecution of Rape and Sexual Violence Cases.

In Nigeria and by extension Africa, the following have been noted as some of the identified challenges associated with the investigation and prosecution of rape and sexual violence cases viz: lack of public awareness, lateness of report, problem of evidence, victimization, parental withdrawal, fear and intimidation, unwillingness of survivors to advocate against the crime, compromise by investigative and prosecutorial authorities, delay in prosecution by Courts of competent jurisdictions, inadequate resources/ funds and lack of forensics.

5. Remedies:

Blame game should be discouraged such as citing the clothes a lady is wearing, visiting a male friend or appearance in clubs and parties as justification for this heinous act are condemnable. While mass awareness campaign is strongly recommended, basic forensics such as early reportage of rape cases, prompt response to the crime scene and medical examinations are encouraged. Establishment of forensics laboratory for law enforcement authorities with the mandate of investigating and prosecuting rape cases in Nigeria for easy, affordable and prompt response to the examination of rape victims in addition to qualified personnel cannot be over-emphasized. Provision of funds and equipment as well as building the capacity of law enforcement officers and punishment of corrupt officers amongst others are canvassed to save vulnerable citizens from the marauding rapist while providing justice to victims. This is imperative in view of the fact that rape is not just a criminal offence but a gross violation of fundamental human rights which are intrinsic to all human beings irrespective of race, age,

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gender, sex, nationality, language, ethnicity, religion and other status. These rights particularly the right to freedom of opinion and expression, the right to life and liberty, right to social protection and many more are enshrined in the United Nations Declaration of Human Rights (1948).

6. Conclusion

Public enlightenment has been shown to be a critical tool in changing behaviors, attitudes, beliefs, and value system of people. Intensive public enlightenment and education at schools, social clubs, cultural group gathering, churches, mosques, media (print and electronic) and related target groups will raise the consciousness of the people towards prompt reportage of cases of rape and related sexual violence offences to law enforcement and follow up investigation leading to conviction. Developing countries in Africa must as a matter of urgency consciously develop public enlightenment programs and strategies to address the mindset of its citizens towards victims of rape and sexual violence. Victim protection, availability of funds as well as prompt investigation of the crime scene in line with other forensic procedures are essential requirements to bridge the gap between the cases reported and the conviction of sexual offenders as envisaged in relevant provisions of the enabling laws of competent authorities combating this heinous crime. Finally, since the United Nations Declaration of Human Rights (UNDHR) gives everyone a baseline to live in dignity, we should collectively help safeguard vulnerable women and children to live free from fear and abuse, raise our voices for decent values and respect for human rights, donate and support organizations working in defense of human rights as well as protection of victims of crime.

References

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