

Appraisal of the legal protections against sexual violence in Nigeria and the impact of the Violence against Persons (Prohibition) Act 2015

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Abstract

Sexual violence, which violates human rights, is widespread in Nigeria. The Violence Against Persons (Prohibition) Act (VAPPA) was enacted in 2015 to address issues of gender-based violence in the country. This article appraises the legal framework for the prohibition and punishment of sexual violence in Nigeria after the passage of VAPPA, to assess its adequacy in offering protection from sexual violence. Doctrinal research was utilised to analyse literature, judicial precedents and existing legislation to determine if VAPPA had strengthened the legal system. The findings of the research revealed that the laws in place before the Act were grossly inadequate and VAPPA bolstered the legal framework by criminalising most of the prevailing acts of sexual violence. The Act introduced measures, in line with global best practices to offer further protection from sexual violence. However, the implementation of the legislation has been hampered by a lack of funding among other challenges.

1 Introduction

Sexual violence is a grave violation of human rights and a source of concern across the globe. A report released in 2016 showed that there are huge gaps that need to be covered in the protection of women from violence. It revealed that 125 million African women and girls

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alive today were married before the age of 18 and 1 in 3 women have experienced either physical or sexual violence in their life.¹ Unfortunately, sexual violence is rife in Nigeria as well, affecting many, including children. The 2014 Nigeria Violence Against Children Survey, which was carried out by the National Population Commission and United Nations Children's Fund found that one in four girls and one in ten boys experience sexual violence.² It was observed in a Nigerian text on criminal law, that sexual offences and rape are ubiquitous and sexual violence sometimes escalates in periods of conflict.³ It is noteworthy that most regions of Nigeria have been affected in some way by conflict over the past decade.

Before 2015, when the Violence Against Persons (Prohibition) Act (VAPPA) was passed, the legal framework within the country for protection from gender-based violence, which includes sexual violence, was ineffectual. The legal mechanisms in place for the protection of women against violence, were the constitutional fundamental human rights protections, relevant provisions of the African Charter on Human and Peoples' Rights and the crimes in the Penal and Criminal Codes on physical and sexual assault. The offences covered by the codes are rape, indecent assault and abduction of any female. However, the laws were from the colonial era and they did not reflect the variety and trends of sexual crimes that have become prevalent in modern society. The prosecution and proof of these crimes of sexual violence in the courts was a tedious task that required evidence that was difficult to procure. Given the stigma attached to the offences and the trauma the victims pass through in court, people were not willing to seek justice against their aggressors.⁴

¹ African Union, Office of the United Nations High Commissioner for Human Rights & UN Women, *Women's Rights in Africa*(2019) 11 <www.ohchr.org/Documents/Issues/Women/WRGS/WomensRightsinAfrica_singlepages.pdf> accessed 23 March 2019.

² Tony Ojukwu and Benedict Okey (eds) *State of Human Rights Report 2016-2017* (National Human Rights Commission 2018) <www.nigeriarights.gov.ng/publications/state-of-human-rights-report.html 17> accessed 16 September 2022.

³ Alphonsus Okoh Alubo, *Modern Nigerian Criminal Law (Materials, Cases and Comparative Studies)* (3rd edn University of Jos Press 2018) 143.

⁴ Chibueze Ngozi, I Iyioha and ET Durojaye, 'The Violence Against Persons Prohibition Act, the Maputo Protocol and the Rights of Women in Nigeria' [2018] 39(3) *SLR* 313.

In view of the incessant occurrences of violence against women in Nigeria, many gender activists, stakeholders as well as local and international non-governmental organisations campaigned for legislative reform. Over the years, different groups had canvassed for separate bills to be enacted at the National Assembly, to address various aspects of gender-based violence. In 2001, they coalesced into a group called the Legislative Advocacy Coalition on Violence Against Women (LACVAW), to create a more significant impact by bringing their efforts together, merging all the bills into one and succeeding in campaigning for the passage into law of the Violence Against Persons (Prohibition) Act 2015. The objective of the Law is to provide protection and redress for survivors of violence and to eliminate violence in private and public life by prohibiting forms of violence including physical, sexual, psychological, domestic, harmful traditional Practices (HTP), discrimination against persons; and then to punish offenders appropriately. The Law identified emerging forms of violence against women and filled in the loopholes in criminal legislation on gender-based violence without being gender specific.⁵ In addition, the Law introduced innovations and measures to ensure effective implementation.

2 Meaning of Sexual Violence

The term sexual violence has been defined as any sexual act, remarks, or advances directed against a person using coercion, whatever their relationship may be with that person.⁶ Olomojobi describes the term as ‘when a woman is physically pressured, coerced, forced against her wish by a male counterpart to have sexual intercourse against her consent or she is afraid of the consequences of her refusal to do so.’⁷ He stresses the essential aspect of duress, meaning that the woman is not a willing participant but restricts his definition to sexual intercourse. However, sexual

⁵ Women's Rights Advancement and Protection Alternative (WRAPA), ‘Wrapi Tool Kit – Gender-Based Violence: Facts and Consequences’ <wrapanigeria.org.2016/07/wrapatoolkit-pages-5-april-.pdf 5> accessed 6 June 2017.

⁶ PSI, *Gender-based Violence: Evidence Series* (2016) <www.psi.org/wpcontent/uploads/2016/06/GBV_EvidenceSeries_d1.pdf> accessed 8 January 2018.

⁷ Y Olomojobi, *Human Rights on Gender, Sex and the Law in Nigeria* (2nd edn Princeton Publishing Company 2015) 89.

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violence is not just about rape, it includes sexual harassment, touching of sexual parts without consent, forced exposure to pornography, forced sterilisation and abortion, trafficking for sexual exploitation, incest and forced marriage.⁸ Limiting the definition to forced sexual intercourse would exclude other painful and humiliating experiences that women endure; violations like forced nudity, strip searches, compulsory miscarriages, rape with objects and deliberate sexual disease transmission.⁹

Sexual violence can occur in all kinds of settings: within the home, in the workplace, in schools, during periods of conflict and in refugee or internally displaced persons camps. The setting does not excuse or justify the action. It remains sexual violence in whatever circumstances. This position is supported by Alubo, who opines that 'sexual violence against women transcends cultural, religious, ideological and national boundaries' and can take place both at home and in times of conflict, supports this position.¹⁰ Sexual violence is often perpetrated by men, who may be acquaintances, strangers, or individuals with a pre-existing relationship with the victim.¹¹ Predators come from diverse backgrounds; regardless of socioeconomic status, education level or religious affiliation.¹² Perpetrators may not be moved by attraction to the victim but by a desire to subjugate and degrade the person.¹³ Although sexual assault is traumatising and usually leaves the victim scarred for life many victims do not report the offence. Globally, only about four out of 10 cases of rape are reported;¹⁴ thus, the majority of perpetrators are not punished.

In light of the above, sexual violence, for the purpose of this work means actions of a sensual nature that are directed, using duress, towards a person in a degrading or threatening manner. As previously mentioned, it is not just about rape alone but includes

⁸ WRAPA (n 5) 5.

⁹ R Manjoo and C McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' (2011) 44 *CILJL* <www.lawschool.cornell.edu 12> accessed 16 September 2022

¹⁰ Alubo (n 3) 342.

¹¹ PSI (n 6) 3.

¹² *ibid*

¹³ Catherine Elliot and Frances Quinn, *Criminal Law* (10th edn Pearson 2014) 202

¹⁴ Alubo (n 3) 342.

other derogatory sexual advances, like the examples given above. It occurs in almost every setting and could be carried out by a person or people the victim is familiar with or total strangers. Sexual violence includes rape, incest, marital rape, sexual assault, stalking, and sexual harassment.¹⁵

3 Sexual protection provided by VAPPA

The Criminal and Penal Codes offered limited protection from sexual violence focusing mainly on rape, which was defined in both codes in a restrictive manner. VAPPA expanded the meaning of rape to capture other aspects of sexual violence and criminalised additional categories of sexual violence. In addition, the legislation made provision for innovations that serve as deterrents to the predator and further protection for survivors of violence, among which are compensation for survivors and a sexual offender's register.

3.1 Rape

The crime of rape is reprehensible and a grave violation of the rights of the victim. It is, according to Okonkwo, 'the most serious kind of sexual assault.'¹⁶ Conventionally and traditionally, rape was known as sexual intercourse or more literally, penetration of the vagina by the penis,¹⁷ without the consent of the woman. Although there has been no legal definition accepted globally¹⁸; the popular common law definition was "A carnal knowledge of a woman not one's wife by force or against her will."¹⁹ This formed the basis for the definition of the crime that was reflected in the Criminal and Penal Codes, which had been inherited from British common law in the 1900s. The

¹⁵ Saudatu Mahdi (ed), *Overview and Analysis of Gender-Based Violence in Nigeria (January - June 2010)* (Allsorts Network Ltd 2010) 10.

¹⁶ CO Okwonkwo, *Okonkwo and Naish: Criminal Law in Nigeria* (2nd edn Spectrum Books Ltd 1980) 27.

¹⁷ Elliot and Quinn (n 13) 179.

¹⁸ MO Ashiru and OA Orifowomo, 'Law of Rape in Nigeria and England: Need to Re-Invent in the Twenty-First Century' (2015) 38 *JLPG* <www.iiste.org/Journals/index.php/JLPG/article/view/23513 ISSN 2224-3259 28> accessed 10 January 2018.

¹⁹ Dean G Kilpatrick, *Rape and Sexual Assault* <www.hoplofobia.info/wp-content/uploads/2014/05/underreported-crime.pdf> accessed 19 November 2023.

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meaning of the offence of rape constituted by these laws was narrow and failed to address many aspects of this sexual assault adequately.

Under the Penal Code, which is now enacted as Laws in the various states of Northern Nigeria, the offence of rape is provided for in section 282 and states in sub-section 1 that

a man is said to commit rape who has sexual intercourse with a woman against her will or without her consent, or with her consent, when her consent has been obtained by putting her in fear of death or of hurt, or when the man knows he is not her husband and she believes that he is another man to whom she is lawfully married.

Also, with or without her consent, when she is under fourteen years of age or of unsound mind. Section 2 adds an exception that sexual intercourse by a man with his own wife is not rape if she has attained puberty. Section 357 of the Criminal Code, is closely linked with the Penal Code and provides that anyone who has 'unlawful carnal knowledge' of a woman or a girl, without consent or with consent obtained by force, fraud or impersonation commits an offence. These definitions limit the scope of the description of rape as recent trends have revealed sexual offences that are as grievous but because they do not fit into the legal definition of the offence, such travesties could not be classified as rape or punished accordingly.

The key ingredients constituting rape as defined above is sexual intercourse without consent or consent unduly obtained through threat, force or incapacity by reason of age or soundness of mind. These ingredients required under the Criminal Code, were listed out by the Court of Appeal as:

- i. The accused had intercourse with the victim;
- ii. The victim did not give her consent or her consent was obtained through intimidation, threats or fraud;
- iii. The victim was not the wife of the accused;
- iv. The accused had the intention to have intercourse with the victim without her consent (which would form the mens rea) and;

- v. There was penetration.²⁰ Proving the last ingredient of penetration could be a cumbersome process.

In the case of *Upahar v State*,²¹ the victim (a 13-year-old girl) claimed that the perpetrator had forcibly had sexual intercourse with her and while in the act her stepbrother heard her screaming and found the accused/appellant on top of her in a state of nakedness. A medical report revealed that there was general body pain, and a white substance in the private area, the hymen, though lax, was intact and there was no bleeding. The court of first instance found the accused guilty of rape but the Court of Appeal concluded that since the hymen was not broken, the penetration was not complete. The Supreme Court set aside the conviction of rape and substituted it with a conviction for attempted rape with a sentence of 3 years imprisonment.

If the elements listed above are strictly adhered to, many instances of sexual assault do not qualify as rape. For example, oral sex forcefully obtained would lack the ingredient of penetration; or if objects were used as the weapon of sexual assault, it would not qualify as sexual intercourse. Both actions are obviously sexual assault but neither would fit into the description of rape. Marital rape is also clearly ruled out and the wording of the Penal Code in section 282(2) in this regard 'if she (the wife) has attained puberty' appears to justify child marriage. Tragically, incidents of sexual violence reported involve other heinous actions but not meeting the standard description outlined in the Codes. This either inadvertently or deliberately amounts to failure to criminalise certain types of sexual assault or make convictions highly unlikely. Furthermore, rape as defined, by common law is not gender-neutral. It is described as a crime that can only be committed by a man against a woman.²² Moreover, the definitions in the Criminal and Penal Code, stated above, make it impossible for a man to be a victim of rape, only a

²⁰ *Alex Iwighre v State* [2017] CA/B/ 338C/2017 Summaries of the Judgements of the Supreme Court & Court of Appeal Legalpedia [2020] 8-10.

²¹ CA/J/177C/99.

²² Kilpatrick (n 19) 3.

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perpetrator.²³ While the majority of victims of rape are female, it is evident that male rape does occur.²⁴

Globally, the definition of rape has been evolving over the years; it is often determined by different societies' perceptions of sexual morality. Additionally, a vital component to the formulation of the meaning of rape, is how women are perceived in society, which is influenced by culture and religion.²⁵

Many countries have changed their laws to reflect the current trend of cases of sexual abuse.²⁶ In America, the common law definition of the 1960s was expanded by the 1970s and 1980s, to be gender neutral and to include penetration of other parts of the body apart from the vagina and by other body parts or objects, apart from the penis.²⁷ In England, it was not until 1994, that the Criminal Justice and Public Order Act 1994 brought reformation to reflect that there could be male victims of rape and broadened the description of rape to include, penetration of the anus.²⁸ The current operational law is The Sexual Offences Act 2003, which extended the offence to include oral intercourse²⁹ but still restricts the offenders to only male being able to commit the offence of rape.³⁰ In compliance with international human rights norms, the International Criminal Tribunals of Yugoslavia and Rwanda recommended that the definition of rape in modern day penal legislation should include the elements highlighted by the Rome Statute's Elements of Crimes. The tribunal characterised rape using gender-neutral language indicating that both male and female can be victims of rape. Additionally, it clearly stated that other body parts apart from the vagina, can be penetrated and other body parts (other than the penis) or even objects can be used to penetrate.³¹

²³ Ashiru and Orifowomo (n 18) 32.

²⁴ Maria Eriksson, *Defining Rape, Emerging Obligations for States Under International Law* (Martinus Nijhoff Publishers 2011) 31.

²⁵ *ibid* 47.

²⁶ Ashiru and Orifowomo (n 18) 28.

²⁷ Kilpatrick (n 19) 3-4.

²⁸ Elliot and Quinn (n 13) 179.

²⁹ *ibid*

³⁰ Ashiru and Orifowomo (n 18) 29.

³¹ Eriksson (n 24) 483.

In line with the legal reasoning outlined above, VAPPA expanded the definition of the offence of rape in Nigerian jurisprudence. It is one of the innovations in Nigeria's domestic legislation introduced by VAPPA. It is provided for in section 1 and states:

- (1) The person commits the offence of rape if –
 - (a) He/she intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her 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 and fraudulent representation as to the nature of the act or the use of any substance or addictive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse/partner.

The first thing to note, from a cursory perusal of this section, is that a man or woman can be either perpetrator or victim. Gender neutrality is embraced completely right from the opening words – 'The person commits the offence.' Second, the crime is no longer restricted to terms like sexual intercourse or carnal knowledge, but extends the reach of the law by describing rape as penetration of the vagina, mouth or anus by any body parts or objects. This description captures most acts of sexual assault. A case at hand, that would previously not be classified as rape but by this expansion now fits into the crime, is of a woman in Ebonyi State that tortured her niece by inserting sticks into her vagina.³² This action, under Section 1 of VAPPA is categorised as rape and the perpetrator can be held liable even though she is a woman.

It has been said that anal rape was an offence previously under Section 214 and Section 284 of the Criminal Code and Penal Code respectively, which punish carnal knowledge against the order of

³² Ojukwu and Agu (n 2) 131.

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nature.³³ However, these provisions appeared to target homosexual conduct as lack of consent, an essential ingredient of rape, was not included in describing the offence. Examples of sexual assaults against male survivors that qualify as rape under VAPPA, are the instance of a 9-year-old boy who was lured by two men with N100 and raped repeatedly in Gwanje ward of Maiduguri in Borno State in June 2017.³⁴ Another case was reported in the newspaper, *Daily Trust*, of a pastor, who raped a 13-year-old-boy in his church in Ifite Awka, Awka South Local Government of Anambra State in August 2016.³⁵

The traditional mode of definition, that had placed constrictions on the connotation of rape, was neutralised by the Nigerian Legislature with the passing of this law.³⁶ Furthermore, the key ingredient of lack of consent, is not just mentioned in passing, but a more detailed explanation is given of circumstances that can be construed as such. These include intimidation, fraudulent misrepresentation or using substances that could subdue the victim's consciousness. Finally, marital rape is included in this encompassing provision when the term 'any person' is employed to describe the perpetrator; particularly as there is no exception made that the husband of the victim cannot commit the offence as the Penal Code stated explicitly. Onyemelukwe believes that the absence of such an exclusion makes it possible to rope in a spouse who uses sex as a means of violence against his partner.³⁷ However, another school of thought is that since there was no specific provision made for marital rape under VAPPA, then the Act does not provide for the offence.³⁸ The courts would have to determine the correct position of the Act.

³³ AN Nwazuo, 'A Critical Appraisal of the Violence Against Persons (Prohibition) Act 2015' (2016) 47 *JLPG* <www.iiste.org/Journals/index.php/JLPG/article/view/29658> accessed 10 January 2018.

³⁴ Ojukwu and Agu (n 2) 172.

³⁵ *Daily Trust* (Abuja, 1 September 2016) 29.

³⁶ Alubo (n 3) 346.

³⁷ Cheluchi Onyemelukwe, 'Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015' (2016) 15(2) *DJWGL* 26-27.

³⁸ Lights Uwaegbunem Izunwanne, 'Marital Rape Exemption in Nigeria: Time for a Departure' (2023) 9 *CLRJ* 415-442.

Subsection 2 of Section 1 of VAPPA, pronounces the punishment for the offence of rape in the following manner:

- (2) A person convicted of an offence under subsection (1) of this section 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
 - (c) In the case of rape by a group of persons, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.

There are several noteworthy things in the provision above. First of all, the punishment given for the offence, which is life imprisonment. The severity of the punishment, indicates the gravity with which the society wants it to be treated. Second, sentencing is not left completely to the discretion of the courts but a minimum sentence of 12 years is provided for without the option of a fine. The implication is that no one found guilty of rape, can get away with a slap on the wrist of a mild sentence as punishment. This means the judiciary does not have the complete liberty to sentence at their discretion.

This is momentous because, it has been a matter of concern that in cases of sexual assault, courts in several instances, gave light sentences, which did not reveal the gravity of the offence.³⁹ Although the sentence provided for in both codes is life imprisonment, many perpetrators have been handed down insignificant sentences that make it seem that justice has not been served. In *Popoola v State*,⁴⁰ the accused was found guilty of raping a student of Abeokuta Grammar School and was sentenced to just 5 years imprisonment. This sentence was upheld by the Court of Appeal and the Supreme Court. In order to avoid judges using their discretion to give short prison terms for the offence of rape, VAPPA included a minimum sentence

³⁹ O Izuora, 'The Perspective of Nigerian Women on Domestic Violence' in E Azinge and L Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 64, 86.

⁴⁰ [2013] 17 NWLR [pt 1382] 96.

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when suspects are found liable for the offence of rape. Nevertheless, this sentencing provision of VAPPA has been criticised by a renowned author, for using the word 'liable' when providing for life imprisonment instead of the word 'shall'. This is because the former gives the Court discretion to give a sentence lower than that maximum while the latter would compel the Courts to give the prescribed sentence.⁴¹ However, guidance was given for exercising this discretion by mandating 12 years as the minimum sentence. This provides the safety net required to ensure that once a guilty sentence has been handed out, an adequate sentence will be given.

There are two more observations culled from subsection 2 of Section 1 of VAPPA. Under the Criminal Code the wording of the offence was crafted in a way that boys under the age of 12, could not commit rape and thus would be charged or convicted with indecent assault.⁴² Conversely, the implication of Section 1(2) (a) of VAPPA is that children can be perpetrators of rape as provision is made for punishment of offenders that are less than 14 years. However, considering their status as minors, an exception is made for their sentencing, which should be a maximum of 14 years. This is in line with the provisions of Articles 37 and 40 of the Convention on the Rights of the Child 1989 which provides that children in contact with the law have the right to treatment that promotes their sense of dignity and worth take into account their age and aims at their reintegration into society. Furthermore, the convention prohibits the imposition of death penalty and sentences of life imprisonment for offences committed by persons under the age of 18.

Another aspect of sexual assault that has remained inadequately acknowledged in the Penal and Criminal Codes is gang rape, probably because it became more prevalent in recent times. This involves multiple perpetrators assaulting a single victim, often in the same incident. This form of sexual violence can have severe physical and emotional consequences for the victim.⁴³ A classic example of

⁴¹ Alubo (n 3) 346.

⁴² *ibid* 351.

⁴³ BA Garner (ed), *Black's Law Dictionary* (Thomson West 2004) 1450.

this is the case of *The State v Olumuyiwa and Ayodele*⁴⁴ where a young woman accompanied a girlfriend to meet with the friend's brother after school. Three young men she met in the house all forcibly had sexual intercourse with her. Two of the young men were found guilty of rape, while the third, who remained at large, was classified as an unindicted but named felon in the case. Gang rape is obviously, even more traumatic and damaging, physically and psychologically to a victim. VAPPA explicitly identifies it in section 1(2) (c), and the minimum punishment is 20 years.

3.2 Other Sexual Offences

There are other activities of a sexual nature that do not amount to rape but are harmful to the well-being of a victim physically, psychologically or otherwise. There are several offensive sexual actions recognised as punishable by VAPPA. Section 5 makes it an offence to compel another to engage in conduct whether sexual or otherwise that is detrimental to the victim's physical or psychological well-being. This offence is described as offensive conduct by the subtitle of the Act. The word offensive is defined as an action that causes displeasure, anger or resentment, particularly when it contravenes the prevailing sense of what is considered moral, proper and decent.⁴⁵ Therefore, this crime is directed to instances where the perpetrator coerces the victim under duress to engage in actions that are considered immoral and negatively affect the victim. The phrase, 'sexual or otherwise' is used in describing the types of activities that the victim may be forced to carry out underscoring the indecency alluded to in the use of the word offensive in the subtitle.

Where a person administers a substance to a person to overpower a person for sexual activity, it is an offence in section 22 of VAPPA, punishable by 10 years' imprisonment, a fine of ₦500,000.00 or both. The Criminal Code in Section 331 provided for an analogous offence; it does not specifically mention sexual activity but that

⁴⁴ [1982] (2) NCR 297.

⁴⁵ Garner (n 43) 1253.

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any person who with intent to commit or to facilitate the commission of a felony or misdemeanour, . . . administers or attempts to administer any stupefying or overpowering drug or thing to any person is guilty of a felony and is liable to life imprisonment.

Stupefying a person in order to sexually assault the person in anyway would amount to a crime under this provision.

The offence of indecent exposure is provided for in Section 26 of VAPPA. The description of the crime is when a person exposes his or her genital organs deliberately intending to cause distress to another person. It is also an offence under this section, to expose genital organs and induce another person to touch, purposely to derive pleasure therefrom. It is pertinent to note the mens rea component of this offence, which is that there is an intention to cause distress to the other party. Nwazuoike found this portion of the Law puzzling and could not figure out its usefulness and how the offence would pass the test of proof in a court of law.⁴⁶ However, in other climes, where the offence has been in existence in penal law, there have been several convictions. A classic example of the crime is the case of *U.S. v Graham*,⁴⁷ where the accused invited a young lady, who was babysitting in his home to his bedroom and then dropped his towel; thereby exposing his private parts wilfully to an unsuspecting and uninterested person. The Court held that this was indecent exposure and the reason such conduct was criminalised was to protect members of the public from 'shocking and embarrassing displays of sexual activity.'

There is a similar provision in the Criminal Code in section 231 where it is considered criminal conduct for any person to wilfully and without lawful excuse to act indecently in any public place or in any place with the intent to insult or offend any person in. Such conduct, amounts to a misdemeanour, and could be sanctioned with imprisonment for two years. The huge scandal of Harvey Weinstien,

⁴⁶ Nwazuoike (n 33) 5.

⁴⁷ [2002] 56 MJ 266 Core Criminal Law Subjects: Crimes Article 134 - Indecent Exposure <www.armfor.uscourts.gov/digest/IIIA88.htm>.

an American film producer, which triggered off the #MeTooMovement, was founded on allegations of sexual assault by numerous victims. Some of them accused him of indecent exposure as they claimed that they were forced to watch him go naked or massage his genitals in order to advance their careers.⁴⁸ VAPPA, was already enacted in Nigeria before this scandal emerged in 2017 demonstrating how far-reaching the Law is in responding to emerging forms of gender-based violence. The crime is punishable with imprisonment for 1 year or a fine of N500,000.00⁴⁹

Incest, a serious sexual offence, is criminalised under Section 25 of VAPPA. The Law states that the crime occurs when a person knowingly and willingly has carnal knowledge of another within the prohibited degrees of consanguinity and affinity. The offender is liable on conviction to a minimum term of ten years imprisonment without an option of fine and where the two parties consent to commit incest, provided that the consent was not obtained by fraud or threat, 5 years imprisonment without an option of fine. The schedule referred to categorises those who fit into the prohibited degrees of consanguinity as the sister, daughter, granddaughter, niece, aunt, mother, grandmother and grandaunt, brother, son, grandson, nephew, uncle, father, grandfather or grand-uncle of the offender. It has been observed that the mens rea of this offence, is that for a person to be liable, the offence must have been conducted knowingly and wilfully. This means if the actors are not aware of the relationship between them, they have not committed a crime and are not culpable.⁵⁰

The Law punishes the offence with 10 years' imprisonment but a notable point in the penalty section of this crime is the use of the word 'consent' in section 25(b) of VAPPA, stating that consensual sexual relations between relatives attracts a lesser punishment of 5 years imprisonment. This implies that non-consensual sexual intercourse between relatives, is being labelled as the crime of incest instead of being treated as rape. The absence of consent by a person

⁴⁸ 'Harvey Weinstein Timeline: How the Scandal Unfolded' BBC (2021) <www.bbc.com/news/entertainment-arts-41594672>.

⁴⁹ Violence Against Persons (Prohibition) Act 2015 s 26(3).

⁵⁰ Alubo (n 3) 518.

involved in sexual relations constitutes rape; for which the same Law prescribes a minimum punishment of 12 years. This inadvertently implies that the same law that punishes rape with a minimum of 12 years imprisonment in Section 1 reduces the punishment to 10 years when the travesty is perpetrated by a relative. Obviously, rape perpetrated by a relative would be regarded as particularly offensive by society and possibly more traumatic for the victim and thus should be punished with greater severity. For instance, the case of the father of a three-year-old girl, who would watch pornographic films with his daughter. The mother noticed this then found semen in their daughter's vagina while bathing her.⁵¹ If found guilty of the offence, there should be no justification that would warrant him being given a lighter sentence than an accused who had no biological relationship with the child. However, the remedial measure a prosecutor could take would be to charge the relative of both offences of incest and rape.

4. Innovative tools for protection introduced by VAPPA

VAPPA, did not stop at identifying the issues that mostly affected women due to violence and criminalising them. It went further to put some provisions in place that are global best practices for the protection of women. A novel concept introduced to Nigeria by VAPPA is the sex offender register which was designed with the intention to create safer societies through public surveillance of offenders and thereby reduce recidivism. The original purpose of the register is not to serve as a further sanction for the offender but to ensure safety within communities and especially for child protection. Nigeria had not practised the use of a sex offender's register until VAPPA in Section 1 (4) stated that 'a register for convicted sexual offenders shall be maintained and accessible to the public.' Section 43 categorises a sexual offender as a person who has been convicted of a sexual offence by a Court and becomes a dangerous sexual offender if such person has more than one conviction for a sexual offence or has been convicted of a sexual offence against a child. The register was officially launched on November 25, 2019 by the then Vice President, Professor Yemi Osinbajo. It documents reported cases of sexual violations as

⁵¹ Ojukwu and Agu (n 2) 101.

defined in VAPPA, cases reported, arraigned in court and convicted.⁵²

The Sexual Offenders Register is contained within what is known as the Nigeria Sexual Offenders Database (NSOD) as mandated by VAPPA in Section 1, to keep a record of cases of sexual violence and name offenders. The website is accessible to security agencies as well as members of the public and the data of convicted offenders is available directly from there. The Register, is a resource for verifiable information to prevent recidivism and to conduct background checks on the profiles of prospective employees to be engaged for positions to care for the vulnerable, particularly children. There is a provision for States of the Federation to link their registers to the National Sexual Offenders Database.⁵³

Survivors of violence require retributive justice and not only punishment of offenders. VAPPA recognises this need of survivors of violence. Section 38 of the Law makes provision for the rights of victims to aid in their recuperation from the harm they have suffered. Thereunder, victims are entitled to obtain medical, psychological, social and legal assistance from government agencies and non-governmental organisations. They should be informed of the legal, health and social services available and given access to them. In addition, survivors of violence under VAPPA are eligible to participate in rehabilitation and reintegration programmes of the government, to equip them with vocational skills or to have access to formal education and micro-credit facilities.

Section 1(3) of VAPPA, permits the Court to award compensation to victims of rape in the circumstances that it deems appropriate. Where the respondent fails to pay a monetary relief ordered by the court, the employer of the respondent, or a bank in which the respondent operates an account or a debtor of the respondent, could be directed to pay the complainant directly or deposit the sum with

⁵² Ngamariju Titus Mangzha, *Nigeria Sexual Offender & Service Provider Database* <nsod.naptip.gov.ng.2> accessed 29 May 2023.

⁵³ National Agency for the Prohibition of Trafficking in Persons, *Violence Against Persons (Prohibition) Act 2015 Annual Report: 2021 Report* <www.naptip.gov.ng 43> accessed 29 May 2023.

the Court. The Act further provides that survivors of violence, shall not be expelled, suspended or punished in any way because of the circumstances in which they find themselves as a result of violence in compliance with the Act. Sanctions are stipulated for any organisation or individual that re-victimises a survivor by engaging in such actions.

VAPPA is a survivor-centred legislation and makes provision for court process that protects survivors from stigmatisation. Section 38(3) restricts the number of people that will attend the trial of offences committed under the Act to the officers of the Court, the parties to the proceedings and their legal practitioners or anyone bringing an application on behalf of the victim. There should be not more than 3 persons each to provide support for the complainant and respondent and any other person that the Court permits in the interest of justice. Publication of any information that may reveal the identity of any party to the proceedings is prohibited and subject to a penalty of 1 year imprisonment or ₦200,000.00 fine or both.

5 Challenges identified in VAPPA

The most significant gap identified in VAPPA is its narrow geographical spread because it only applies in the Federal Capital Territory.⁵⁴ The reason for this is that Nigeria operates as a Federation and the Constitution gives a guide for legislative responsibilities; criminal law is on the residual list of the Constitution making it a matter that States have to legislate on exclusively. VAPPA is a legislation that principally designates acts of violence as offences and provides penalties accordingly. Hence, VAPPA is criminal law and consequently⁵⁵ each State in the Federation would need to adopt VAPPA as Law for it to be operational in that State.⁵⁶ However, since its enactment, thirty-five states in the country have passed the Act into Law thereby making it enforceable in most parts of the country.

⁵⁴ Onyemelukwe (n 37) 45.

⁵⁵ *ibid.*

⁵⁶ C Onyemelukwe, 'Intersections of Violence Against Women and Health: Implications for Health Law and Policy in Nigeria' (2016) 22(6) *W&M J Wom & L* 614.

Another shortcoming identified was that in order to be all encompassing, in minimising violence through legislation, preventive measures should have been included in the Act. Unfortunately, VAPPA was not proactive enough to make mandatory some actions and activities that would prevent violence. There were no provisions made requiring that there should be education and awareness creation on the content of the Act for the general public; training of personnel that would enforce the Act; or to indicate the source of funding to implement the Act. Neither was provision made for structures to support survivors, in a manner that makes them confident to seek for help, particularly the requirement for shelters, safe homes⁵⁷ or sexual assault referral centres (SARC). Although the Act mentioned that survivors were entitled to health care, it does not specify whom the health care providers should be, the role that they should play⁵⁸ and who would pay for the service.

An additional impediment observed with the VAPPA is that although the Interpretation clause of the Act defined several sexual offences like sexual harassment, sexual assault, sexual abuse, sexual intimidation and sexual exploitation; however, they were absent in the body of the Act and were not made into offences. Earlier drafts of the law had captured them as offences with penalties but they must have been dropped off in the bid to make the Bill acceptable to the male-dominated legislature and to ensure it was passed.⁵⁹ Although the Act was initiated primarily for the protection of women, it was converted into a gender-neutral law to make it acceptable to a predominantly male parliament. The effect of this is that some of the provisions of the Act, when interpreted without women as beneficiaries, appear to be skewed against vulnerable women. These are some of the gaps in the legislation that could still be addressed by amendments in the future.

One of the major challenges of the implementation of VAPPA is caused by the stigmatisation that survivors face, which prevents them from reporting offences committed against them. A regular

⁵⁷ Onyemelukwe (n 37) 38.

⁵⁸ Onyemelukwe (n 56) 614.

⁵⁹ Onyemelukwe (n 37) 27.

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trial in open court is traumatising, embarrassing and intimidating for most victims and discourages them from seeking justice, a sentiment echoed by family members due to the associated trauma. There is a culture of silence and concealment, which is a major obstacle in protecting women and girls from violence.⁶⁰ There is an unwillingness on the part of victims and their relatives to testify as a result of the stigma attached to sexual offences. This attitude has been attributed to the culture of silence among communities about such acts of violence, which causes several families to withdraw cases after commencement.⁶¹ VAPPA takes measures to mitigate the stigma faced by survivors by restricting the number of people present in court during trials in Section 38.

The Nigerian criminal justice system is designed with the principal objective of punishing the offender. This would usually give the victim the satisfaction that justice has been served but survivors of violence require more than just retributive justice. Having endured mental and physical trauma, many survivors face dire financial circumstances, thus the need for holistic interventions. Oftentimes, reports are not even made due to lack of institutional support for survivors.⁶² Survivors become weary during the prosecution of their cases, as there appears to be no clear benefit to them, and the focus is placed on sanctioning the offender without any support being offered to the survivor. This has been remedied by VAPPA making provision for compensation and support for survivors. This has to be publicised and enforced.

6 Conclusion

VAPPA puts in place a clear legal framework to offer protection from the prevalent issues of sexual violence in Nigeria that measures up to global best practises. It filled a gaping hole that had existed prior

⁶⁰ Westminster Foundation for Democracy, *The Impact of the Violence Against Persons (Prohibition) Act and Related Laws in Nigeria* (March 2021) 12.

⁶¹ Jennifer Ovenaone Uniga and Danladi Yakubu, 'Effective Implementation of the Violence Against Persons Prohibition (VAPP) Act, Curbing the Impunity of Perpetrators of Gender Based violence and Promoting Socio-Economic Development in Nigeria' (June 2021) 4(2) *IJMSSPCS*

<<https://www.ijmsspcs.com/index.php/IJMSSPCS/article/download/218/219201>> accessed 22 January 2023.

⁶² Ojukwu and Agu (n 2) 163.

to its enactment. As outlined above, the definition of rape has been expanded and other sexual offences have been created to ensure that perpetrators of violence are held accountable and punished. Robust provisions are made for victims of violence to be protected and remedies and rehabilitation are offered for survivors of violence.

It is however not sufficient that the legislation has been enacted, the government, through its enforcing agencies, should exhibit dedication towards investigation and prosecution of these offences of gender-based violence and take them as seriously as other crimes of violence. This would require training of investigators, prosecutors and the judiciary to enable them to understand the purpose of the Law in order to effectively prevent, investigate and prosecute. The mechanisms to implement the Act, such as SARC, should be put in place so that survivors have the support they require. The SARCs are one of the crucial structures that empower survivors to confidently report as they can be assured of the requisite support.

All the challenges outlined above require funding, whether it is creating awareness, training the actors in the justice dispensation chain or putting the necessary support structures for survivors. Thus, it is imperative that government make budgetary allocations to enable women seek legal aid and improve access to justice when they encounter gender-based violence. Although VAPPA introduced several innovations, there was no provision made about the source of funding for execution. The lack of budgetary backing of the law has impeded the effective implementation of the Law. Several civil society organisations have gotten involved in supporting or promoting one aspect of the Law or the other. An example of this is the intervention of an organisation, The Rule of Law and Anti-Corruption, which supported NAPTIP in establishing the National Sexual Offender Database and replicating it in several states. The support of Civil Society is always welcome but the financial commitment of government should be the cornerstone of advancing and ensuring the effective implementation of this legislation.

It may be naive to expect that the statutory intervention will bring an end to sexual violence but it is a major step in the right direction.

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In order to ensure that the law is properly implemented, it should be sufficiently funded and the populace should be made aware of its existence through enlightenment programmes, adequate media coverage and advocacy to all relevant stakeholders. Women rights activists, relevant government agencies and lawyers, should put the law to the test and thereby add a bite to the loud barking that was all that could be done in the past.

7 Recommendations

The following are recommendations to ensure that VAPPA is properly implemented.

- a. The Act should be sufficiently funded. There should be budgetary provisions to support the requirements of VAPPA by the federal government and the VAPP Laws by state governments. VAPP Committees should be created with the mandate to oversee the enforcement of the legislation and funds allocated under their supervision for that purpose.
- b. The populace should be made aware of the existence of VAPPA through enlightenment programmes, adequate media coverage and advocacy to all relevant stakeholders. There should be a nationwide campaign to create awareness of the content of VAPPA through all platforms of the media, town hall meetings, road shows and outreaches to local communities, including advocacy to traditional and religious leaders. The Act and the laws in the States should be translated into simplified English and local languages, then distributed in cities and rural communities. Awareness of the legislation would empower victims and those close to them to report and simultaneously caution perpetrators. The knowledge may cause some of them to desist from such actions to avoid sanctions.
- c. There are structures that need to be put in place to support survivors, in a manner that makes them confident to seek help. A key resource is the Sexual Assault Referral Centre (SARC),⁶³ a 'one-stop service centre' manned by medical professionals,

⁶³ Victor Chigozie, 'Nigeria's Violence Against Persons Prohibition Act Has Been Widely Accepted, But What Now?' *humanglemedia.com* <<https://humananglemedia.com/nigerias-violence-against-persons-prohibition-act-has-been-widely-accepted-but-what-now/>> accessed 16 September 16 2022.

counsellors, police and other experts. Survivors of violence can access forensic examinations, medical treatment, psychological assistance and the required support at no cost at these Centres.⁶⁴ Unfortunately, there are only about 32 SARCs nationwide, located in 17 states out of the 36 states.⁶⁵ It is recommended that federal government and state governments establish government-run shelters for survivors of violence, at least one in each Senatorial Zone.

- d. There should be adequate training of law enforcement agents, prosecutors and the judiciary to play the roles set out in the Act. It was noted in this research that women's rights activists and civil society have played a pivotal role in the transformative development of the legal framework to protect women from violence. Therefore, further interventions are recommended in respect of creating awareness about the law, training of relevant stakeholders involved in implementing the Law, providing or supporting the provision of shelter and sexual assault referral centres.

⁶⁴ Lagos State Domestic and Sexual Violence Response Team, *Rape Manual* (Lagos State 2015) 4.

⁶⁵ Chigozie (n 63).