



IFE JURIS REVIEW

*Journal of Contemporary Legal and Allied Issues,
Published by the Department of Jurisprudence and Private Law,
Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria
IFJR, 2016 Vol. 10 (2) (September - December) ISSN: 0794-1048*

ARTICLES

- ▶ *Emeka Chianu: Void Marriages Examined Up-Close.* 1-17
- ▶ *Ibitoye Tolulope Revelation: An Examination of the Vices of Rape and Child Defilement in the Nigerian Legal System.* 18 - 39
- ▶ *Abiodun Amuda-Kannike: Extrajudicial Killings and Human Rights in Nigeria.* 40 - 54
- ▶ *Adedokun Olatokunbo Ogunfolu & Oludamilola Adebola Adejumo: A Review of Anti-Terror Legislations in Nigeria.* 55 - 67
- ▶ *Wole Kunuji: The ICC: The African Union and the Theory of Bias.* 68 - 78
- ▶ *Ogunwande Omolabake O., Akinsulore Adedoyin O. & Ogundari Enobong: An appraisal of Censorship and freedom of Expression.* 79 - 97
- ▶ *Adeoluwa Raphael Oladele: The Indispensability of Agriculturalism and Environmentalism for Existentialism: A Nigerian Perspective.* 98 - 122
- ▶ *Matthew Enya Nwocha: Constraints and Solutions in the Implementation of International Economic Rights.* 123 - 137
- ▶ *Kunle Aina: Regulation of Charges over Book Debts in Nigeria.* 138 - 158
- ▶ *Eric Omo Enakireru & Irene Airen AIGBE: Environmental Impact of Waste Management in Nigeria: Enforcement Challenges.* 159 - 174
- ▶ *Osuntogun Abiodun Jacob: Risk and Frustration as Applied in Sale of Goods: Who bears the brunt of Unforeseen Contingencies?* 175 - 199
- ▶ *Ekundayo O. Babatunde & Mutiat Abdulsalam La-kadri (Mrs.): An Examination of the International Legal Framework for Combating Civil Aviation Terrorism.* 200 - 218
- ▶ *Oluwatosin Busayo Igbayiloye (Mrs): Mining Activities and the Rights to Health in Nigeria: A Rights-Based Approach.* 219 - 238
- ▶ *Sawyerr Damilola & Tola-Lawal Eme: Recognition and Enforcement of Arbitral Awards in Nigeria.* 239 - 260
- ▶ *Bello Adesina Temitayo: Oil and Gas Exploration and the Challenges of Environmental Degradation in the Niger Delta Region of Nigeria.* 261 - 273
- ▶ *Adewale Sikiru Akinpelu: Plea Bargaining in Criminal Prosecution.* 274-292

AN EXAMINATION OF THE OFFENCES OF RAPE AND CHILD DEFILEMENT IN THE NIGERIAN LEGAL SYSTEM

*Ibitoye Tolulope Revelation**

ABSTRACT

Today in Nigeria, the offences of rape and defilement are on the increase. It has become a source of worry to the government, non-governmental organizations and other stakeholders in the country. The effects of these crimes on the victims can have a long lasting effect that transcends from physical to psychological. Sadly, there is also negative attitude of the society towards the victims which makes it difficult for them in most cases to report their occurrences. Due to poor investigation and some defects in the criminal justice system, most of the reported cases, even where prosecuted, usually end up leaving the accused off the hooks. Witnesses are generally reluctant to come to court to testify especially the victims for fear of being discriminated against in the nearest future, hence, perpetrators of these offences quite often than not go scot free. This paper defines the offences of rape and defilement and examines their elements, such as penetration, consent and corroboration under the Nigerian criminal jurisprudence. It also looks at the effects of the offences on the victims and the society at large. By way of recommendations and conclusion, the paper also suggests pragmatic means to combat these offences and treatment of its victims, drawing on good examples from jurisdictions like United Kingdom and America.

Keywords: *Rape, Child Defilement, Penetration, Lack of Consent, Corroboration.*

1. INTRODUCTION

Rape and child defilement are offences that have evolved not only in Nigeria but all over the world. Sadly, they are perpetuated daily and the offenders are going scot-free. Thus, due to the high prevalence of both sexual crimes, attention of various governmental and non-governmental actors has been drawn to them. Several authors have also given their different opinions on

what constitutes the offences, alongside various jurisdictions and several legal systems.

Rape generally refers to 'non-consensual sexual intercourse that is committed by physical force, threat of injury, or other duress'¹. The World Health Organisation (WHO) also expounds rape as 'physically forced or otherwise coerced penetration-even if slight- of the vulva or anus, using a penis, other body parts or an object.'²

Furthermore, UK law, Section 1 of the Sexual Offences Act (2003)³ states on rape that:

- (1) A person (A) commits an offence if—
 - (a) he intentionally penetrates the vagina, anus or mouth of another person
 - (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.
- (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Subsequently in December, 2012, the American Federal Bureau of Investigation (F.B.I)⁴ defined rape to be:

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

From the foregoing, the US provision is more advanced than that of UK by defining rape to be an act beyond penetration by the anus, mouth or penis of another person, to include one carried out with any body part or object. Consequently, rape is an act of sexual intercourse and penetration carried out forcefully without obtaining the consent of the victim. The victim of rape is

*Lecturer, Department of Public and International Law, Bowen University, Iwo, Osun State, Nigeria. LL.B (Hons) (Ilorin), BL, LL.M (Swansea). E-mail: toluopeayokunle@gmail.com

¹Findlaw.com <http://criminal.findlaw.com/criminal-charges/rape.html> [17th January, 2017.]

²http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf [17th January, 2017.]

³http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf [17th January, 2017]

⁴https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/rape/rapemain_final.pdf [17th January, 2017]

usually an adult, that is, someone above 18 years, who is capable of either giving or withholding his or her consent to sex.

On the other hand, child sexual abuse is defined by Black's Law Dictionary as 'an illegal sex act, esp. one performed against a minor by an adult,'⁵ while Dan Allender defines it as:

*any contact or interaction (visual, verbal, or psychological) between a child/adolescent and an adult (or older teen) when the child/adolescent is used for the sexual stimulation of the perpetrator or another person.*⁶

It is as well defined by Rape, Abuse and Incest National Network (RAINN) as 'when a perpetrator intentionally harms a minor physically, psychologically, sexually, or by acts of neglect...'⁷ Moreover, Section 5 of the Sexual Offences Act (2003)⁸ defines child defilement as:

- (1) A person commits an offence if—
 - (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and
 - (b) the other person is under 13.

It is apparent that under the English Law, a person below the age of 13 can be sexually defiled by penetrating the vagina, anus or mouth of such a child with the penis of the offender; and the guilty offender will be liable to life imprisonment. It should be noted that although the US law did not define child sexual abuse, but, its definition is wide enough to include children as possible victims of rape offence.

Furthermore, a prominent definition was given in the year 1999 by World Health Organisation (WHO) Consultation on Child Abuse Prevention which stated that:

Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not

⁵Black's Law Dictionary, second Pocket Edition; Bryan A. Graner (Editor in Chief); West Publishing Co. 1996

⁶ Dan Allender, The Wounded Heart: Hope for Adult Victims of Childhood Sexual Abuse, August 13, 2008

⁷<https://www.rainn.org/articles/child-sexual-abuse> [17th January, 2017]

⁸ Op cit, no. 3

*developmentally prepared and cannot give consent, or that violates the laws or social taboos of society...This may include but is not limited to: — the inducement or coercion of a child to engage in any unlawful sexual activity; — the exploitative use of a child in prostitution or other unlawful sexual practices; — the exploitative use of children in pornographic performance and materials.*⁹

This implies that child sexual abuse is not limited to having carnal knowledge or sex with a child alone but includes exposure of children to pornographic materials or performance, and engaging children in prostitution and similar activities.

Hence, in order to understand the gravity of the offence of child defilement, it is imperative to define who the victim is, that is, 'who is a child?' Section 77(2) of the 1999 Constitution of the Federal Republic of Nigeria, as amended in 2011¹⁰ presumes a child to be a person below the age of eighteen years. Furthermore, the interpretation section of the Child's Right Act of 2003¹¹ defines a child as 'a person who has not attained the age of eighteen years.' Article 1 of the Convention on the Rights of the Child¹² also defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'

In other words, a child is someone below the age of 18, who legally is a minor, and a person that lacks maturity or capacity to make important decisions. Thus, children's lack of maturity or gullibility make them more prone to sexual abuse. Tracy, Fromson, and others stated that 'perpetrators of statutory sexual assault often commit their crimes using coercion facilitated by exploitation of the victim's young age and lack of maturity.'¹³ They are easily

⁹http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf
[17th January, 2017]

¹⁰ The Constitution of the Federal Republic of Nigeria 1999, as amended 2011, cap. C23, Laws of the Federation of Nigeria, 2004.

¹¹ Child's Right Act 2003: A Bill for an ACT TO PROVIDE AND PROTECT THE RIGHT OF THE NIGERIAN CHILD AND OTHER RELATED MATTERS, 2003

¹² Convention on the Rights of the Child by the United Nations: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

¹³ Carol E. Tracy, Terry L. Fromson, Women's Law Project Jennifer Gentile Long, Charlene Whitman, Aequitas; RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM. Presented to the National Research Council of the National Academies Panel on Measuring Rape and Sexual Assault in the Bureau of Justice Statistics Household Surveys Committee on National Statistics. June 5, 2012

misled and too-trusting especially where the offender/perpetrator is a familiar person, not a stranger, a child may be lured by anything you can imagine like ice-cream and zobo drinks as seen in *Edwin Ezigbo v. The State*.¹⁴

An examination of decided cases reveals that there is a dearth of decision on rape and child defilement by the Nigerian courts, however, the recent case of *Edwin Ezigbo v. The State*¹⁵ did justice to both definitions. The Supreme Court, while defining rape aligned itself with the provision of section 282 (1) of the Penal Code. It went further by providing that:

For the prosecution to sustain a conviction against an accused for the offence of rape under Section 283 of the Penal Code, the following ingredients of the offence must be established by evidence, viz:

- (a) that the accused had sexual intercourse with the woman in question;
- (b) that the act was done in circumstances envisaged in any of the three paragraphs of section 282 (1) of the Penal Code;
- (c) that the woman was not the wife of the accused or, if she was the wife, she had not attained puberty;
- (d) that there was penetration.¹⁶

The above judicial pronouncement mentions penetration and consent as the two ingredients of the offence of rape under the Nigerian Criminal law, that is, the accused must have penetrated the victim's vagina while the victim withheld her consent. Nevertheless, on child defilement, Justice Muhammad J.S.C in the same case stated the need to protect all females, particularly underage girls against rapists:

the facts revealed in this appeal are sordid and can lead to a conclusion that a man can turn into a barbaric animal. When the "criminal" was alleged to have committed the offence of sexual defilement, he was 32years. His two young victims: Ogechi Kelechi, 8 years old and Chioma, 6 years, were, by all

<http://www.womenslawproject.org/resources/Rape%20and%20Sexual%20Assault%20in%20the%20Legal%20System%20FINAL.pdf> [17th January, 2017]

¹⁴(2012) 16 NWLR (Pt 1326) 318 at 320

¹⁵ *Ibid*, p. 323

¹⁶ *Ibid*, p. 321

standard underage. What did the appellant want to get out of these underage girls. Perhaps, the appellant forgot that by nature, children, generally, are like animals. They follow anyone who offers them food. That was why the appellant, tactfully, induced the young girls with ice cream and zobo drinks in order to translate his hidden criminal intention to reality, damning the consequences. Honestly, for an adult man like the appellant to have carnal knowledge of underage girls such as the appellant's victims is very callous and animalistic. It is against the laws of all human beings and it is against God and the State. Such small girls and indeed all females of whatever age need to be protected against callous acts of criminally likeminded people of the appellant's class. I wish the punishment was heavy so as to serve as deterrent.¹⁷

Thus, child sexual abuse takes place when an adult slightly or forcefully penetrates the vagina of a child with his sex organ, with or without the consent of the child. In this category, the victim, a child, is not yet matured or developmentally prepared and therefore, lacks the capability of giving consent to sex, and where consent is given, it is taken to be no consent. It is on this premise that it is suggested that parents, particularly, mothers should not trust anyone to the extent of leaving their children alone in their care. Uncles, big cousins, step-fathers, family friends, and sometimes, fathers, may be unknown paedophiles who may be looking for opportunity to sexually abuse or defile children.

It is therefore against the foregoing background that it is intended in this paper to discuss the prevalence of rape and child defilement in Nigeria by providing their statistics and examples of life situations. The discussion will be enriched by examining the legal framework on rape and child defilement in Nigeria. The thrust of this paper examines the ingredients of rape and child defilement in Nigeria; and addresses the effects or lasting consequences of these crimes on their victims. Recommendations will be proffered on how parents, individuals and the government are to respond to rape victims and sexually defiled children, and finally conclude.

¹⁷ *Ibid*, p. 323

2. STATISTICS OF EXAMPLES OF RAPE AND CHILD DEFILEMENT CASES IN NIGERIA

The frequency at which cases of rape and child defilement are increasing is alarming. Daily, we hear news of sexual harassment in Nigeria. Statistics conducted by the National Population Commission, with support from United Nations Children's Fund (UNICEF) and the US Centers for Disease Control and Prevention, discovered that approximately 6 out of every 10 Nigerian children under the age of 18 experience some form of physical, emotional and sexual violence before the age of 18 years. One in two children experience physical violence, one in four girls and one in ten boys experience sexual violence, and one in six girls and one in five boys experience emotional violence.¹⁸

Report further revealed perpetrators of sexual abuse to be neighbours, parents, adult caregivers or other adult relatives and friends¹⁹; while location of the abuse was perpetrator's home, victim's home and school.²⁰ Furthermore, 97.0% of females and 91.4% of males reported more than one incident,²¹ and most of the victims kept the occurrence to themselves while about 45.4% of females and 43.2% of males reported to people like their relatives and friends.²²

Cece Yara Foundation, led by Mrs. Bola Tinubu, projected the number of Nigerian children to be 96,696,259. Out of them, every afternoon, no less than 10,000 girls and 5,000 boys in Nigeria experience Sexual Violence, while 84% of the girls, and 61% of the boys do not know where to seek help. Furthermore, 1 in 4 girls, and 1 in 10 boys experience sexual violence before age 18. Before the age of 13, 1 in 5 girls and 1 in 4 boys experience sexual violence. Between ages 14-15, 1 in 3 girls while 1 in 6 boys experience sexual violence. Also, 70.5% of victimized girls and 69.2% of victimized boys experience multiple incidents of sexual abuse. Unfortunately, 1 in 13 girls and 1 in 11 boys is being abused by a family member; 1 in 8 girls and 1 in 28 boys is being abused by a

¹⁸ National Population Commission, UNICEF, U.S. Centers for Disease Control and Prevention: Violence against Children in Nigeria; Findings from a National Survey 2014; published in February 2016; https://www.unicef.org/nigeria/NIGERIA_VACS_FULL_REPORT_PUBLISHED.pdf [20th January, 2017]

¹⁹ *Ibid*, p. 54

²⁰ *Ibid*, pp. 42-43

²¹ *Ibid*, p. 55

²² *Ibid*, p. 67

stranger. Besides, 1 in 7 girls and 1 in 4 boys is being abused by a neighbour. 1 in 8 girls and 1 in 4 boys is being abused by a classmate/schoolmate.²³

Additionally, 1 in 5 cases of child sexual abuse occurs in the girl's home while 1 in 3 cases of sexual abuse occurs in the boy's home. For girls, 1 in 5 cases of child sexual abuse occurs in the perpetrator's home and 1 in 7 cases of sexual abuse occurs in school while for boys, 1 in 5 cases of sexual abuse occurs in the perpetrator's home and 1 in 4 cases of sexual abuse occurs in school.²⁴

Real-life scenarios, reported by the dailies further reveal the high rate of sexual violence and decadence in our society. Recently, an eleven months old baby girl was sexually abused by her 27 years old uncle in Ijebu Igbo area of Ogun state when her mother dropped her off with him in a bid to get some food stuffs in the nearby market.²⁵

Another instance is that of a fake policeman, Effiong, aged 29, who, along with his 2 friends that are at large, allegedly raped Etete, a 23-year-old woman on 17th January, 2016 at Calabar.²⁶ Recently, an eleven months old baby girl was sexually abused by her 27 years old uncle in Ijebu Igbo area of Ogun state when her mother dropped her off with him in a bid to get some food stuffs in the nearby market.²⁷

There is also the case of a Lebanese who raped, impregnated and sacked his 17 year-old Nigerian maid in Lagos.²⁸ James Sodiq a 25 (twenty five) year-old carpenter, was also accused of allegedly raping a 23-year-old 400 level National Open University student at Abeokuta, after he broke into her room, masked and armed with a machete.²⁹ Sadly, A 49-year-old father, Tony Ehumadu, was arrested for raping his 15-year-old eldest daughter twice in their

²³ Cece Yara Foundation, founded by Mrs. Boia Tinubu, <http://cecevara.org/> [20th January, 2017]

²⁴ Ibid

²⁵ <http://aitnews.com.ng/2017/02/26/11-month-old-baby-raped-by-27-year-old-uncle/> [20th January, 2017]

²⁶ <http://news2.onlinenigeria.com/news/crime/466912-fake-police-officer-rapes-23-year-old-lady.html> [20th January, 2017]

²⁷ <http://aitnews.com.ng/2017/02/26/11-month-old-baby-raped-by-27-year-old-uncle/> [20th January, 2017]

²⁸ <http://www.vanguardngr.com/2016/03/lebanese-raped-impregnated-nigerian-maid-sacked/> [20th January, 2017]

²⁹ <http://dailypost.ng/2015/11/20/carpenter-in-court-over-alleged-rape-of-university-student/> [20th January, 2017]

house in Lagos State.³⁰ There was also an incidence in which six wives took turns and raped their drunk husband, Uroko Onojato death in Benue state in July 2012 as a result of neglect of his matrimonial duties.³¹

All these data and cases reveal how dangerous the society we are living in is. These sexual crimes are violence against adults and children which transcends social and economic status of both the perpetrator and his victim. If care is not taken, however, its long term impacts will adversely tell on the future generations and their societies.

3. LEGAL FRAMEWORK ON RAPE AND CHILD DEFILEMENT IN NIGERIA

The Nigerian statutes and case laws have laid down some legal frameworks on the offences of rape and child defilement in Nigeria. They are:

3.1 The 1999 Constitution as amended 2011³²

Although the Nigerian constitution makes no express provision of who a child is, neither does it outline the rights of a child, but the right of a child to the dignity of his or her person can be deduced from the fundamental right of every citizen of Nigeria. Invariably, both children and adults are entitled to the dignity of their persons. Section 34 states thus:

34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -
(a) no person shall be subject to torture or to inhuman or degrading treatment;

Additionally, sub-section (a) of section 34 of the Constitution discards the exercise of any form of torture on anybody. Torture in this context may refer to a physical or mental act, which causes severe pain, and which is intentionally perpetrated on a person. To this end, the International Rehabilitation Council for Torture Victims (IRCT)³³ proffered some commonest methods of physical torture to include 'beating, electric shocks, stretching, submersion, suffocation,

³⁰<https://latestnigerianews.com.ng/you-will-be-shocked-by-a-fathers-reason-for-raping-his-15-year-old-daughter/> [20th January, 2017]

³¹<http://dailypost.ng/2012/07/18/six-women-rape-man-death-benue-state/> [20th January, 2017]

³²Op cit, no. 10

³³<https://www.irct.org/> [20th January, 2017]

burns, rape and sexual assault.’ Therefore, the Constitution recognises rape, and any other form of sexual assault, child defilement inclusive as crimes infringing on the fundamental rights of Nigerian citizens.

3.2 The Criminal Code Act

Section 357 of the Criminal Code Act³⁴ provides that:

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.

358. Any person who commits the offence of rape is liable to imprisonment for life, with or without caning.

In an attempt to condemn the offence of rape, the Criminal Code Act further criminalises a failed attempt at rape by providing in section 359 that:

Any person who attempts to commit the offence of rape is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning.

From the above provisions, the offence of rape is committed when a man has carnal knowledge which involves only penal and vaginal penetration with a woman who is not his wife, without her consent; or where the consent is obtained by fraud, trick, intimidation or threat. Moreover, section 218 states on child defilement, particularly, defilement of girls under thirteen that:

Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for life, with or without caning.

³⁴ Criminal Code Act, Cap 77, vol. V, Laws of the Federation of Nigeria, 1990.(The Act is applicable in the Southern part of Nigeria)

Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for fourteen years, with or without caning.

It provides further that a person cannot be convicted of this offence unless it is corroborated by at least one witness. Time is also of offence in the trial of this offence, and the prosecution must commence within two months after the offence has been committed. Failure to comply will make the case statute barred, thus, unenforceable.

3.3 The Penal Code Act

Section 282 of the Penal Code Act³⁵ defines rape as when

(1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married,

(e) with or without her consent, when she is under fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

The Penal Code Act is similar in provisions to the Criminal Code Act. The major variance is in its section 2 which does not recognise the act of a man raping his wife. Such provision is inappropriate as rape occurs where consent is not given, thus, any man who has sex with his wife without obtaining consent from her should be guilty of raping her.

³⁵Penal Code (Northern States) Federal Provisions Act, Cap 345, vol. XIX, Laws of the Federation of Nigeria, 1990 (It has the force of law in the Northern region).

3.4 The Child's Right Act

On further perusal of the Child's Right Act 2003³⁶, it was discovered that as adults are entitled to enjoy some inalienable human rights, children are privileged to enjoy same. For instance, Part II of the Act outlines some of the rights of a child. Section 11 of that part states that:

Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be—

(a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse...

This means that a child is also entitled to enjoy dignity or respect for his or her person and should in no wise be maltreated or abused, either sexually or otherwise. Furthermore, section 31 of the Act positions that:

(1) No person, shall have sexual intercourse with a child.

(2) A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.

(3) Where a person is charged with an offence under this section, it is immaterial that—

(a) the offender believed the person to be of or above the age of eighteen years; or

(b) the sexual intercourse was with the consent of the child.³⁷

This is an outright prohibition to anyone from having sexual intercourse with a child, whether the child gives his or her consent to the sexual intercourse; or whether the perpetrator thinks that the supposed child is an adult, that is above eighteen years, or not. The punishment attached to the crime is life imprisonment. In order to further protect a child, the Act under its section 32 makes it an offence to exploit or abuse a child in any other manner different the offence of child defilement mentioned above; and anyone found guilty is liable to fourteen years' imprisonment.

³⁶ Op cit., no. 11

³⁷ *Ibid*, section 31

3.5 The Violence Against Persons (Prohibition) Act, 2015³⁸

The purpose of this law is to prohibit all forms of violence against persons and provide maximum protection and effective remedies for victims and punishment of offenders. Section 1 of it states thus:

(1) 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 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 additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

A convicted offender will be liable to imprisonment for life. Where the offender is a child less than 14 years, he will be liable to a maximum of 14 years' imprisonment, in other cases, he will be liable to a minimum of 12 years' imprisonment without any fine option. Where it is a gang rape, the offenders will be jointly liable to a minimum of 20 years imprisonment without an option of fine.³⁹ Fortunately for the first time by a Nigerian law, the court shall award appropriate compensation to a victim as it may deem fit in the circumstance,⁴⁰ and will also maintain a register for convicted sexual offenders which will be made accessible to the public.⁴¹

The definition of rape above, is similar to that of the UK and US laws; which extends rape beyond penetration of the penis by the vagina to include penetration of the anus or mouth of another person with any other part; and it is a good pointer of the dynamic steps taken by the legislators towards the amendment of the Nigerian law. However, no mention is made about the

³⁸The Violence Against Persons (Prohibition) Act, 2015 (VAPP) [Nigeria], 25 May 2015; <http://lawnigeria.com/LawsoftheFederation/Violation-Against-Persons-%28Prohibition%29-Act,-2015.html> [20th January, 2017]

³⁹*Ibid*, Section 1 (2)

⁴⁰*Ibid*, section 1 (3)

⁴¹*Ibid*, section 1 (4)

definition of child defilement and its attendant punishments. It is therefore suggested that the Criminal and Penal Code Acts should be subsequently amended to fit changing situations and align them with laws of advanced countries.

3.6 Ingredients of Rape and Child Defilement in Nigeria

There are 3 (three) ingredients of rape and child defilement in Nigeria. They are penetration, consent and corroboration. They are discussed hereunder.

a) Penetration

This is a crucial element of rape. The position of the law on rape is that it must involve an unlawful carnal knowledge of a woman. According to sec. 6 of the Criminal Code act,⁴² when the term 'carnal knowledge' or 'carnal connection' is used in defining an offence, 'it is implied that the offence, so far as regards that element of it, is complete upon penetration.' Also, 'unlawful carnal knowledge' means 'carnal connection which takes place otherwise than between husband and wife.'⁴³ Therefore, carnal knowledge is synonymous with penetration, and it is unlawful if it occurs between unmarried couples.

The slightest penetration of the vagina by the penis is sufficient, and it is not necessary to prove that the hymen was ruptured or that there has been an emission of semen. Although in *Edwin Ezigbo v. The State*,⁴⁴ the court, based on medical evidence held that penetration was proved by the evidence of rupture of the hymen. The basic principle is that there cannot be rape without penetration.

It is important to note that under the Nigerian laws, penetration is only limited to one done through the vagina, that is, vaginal intercourse, and not via the anus or any other part. Apart from that, penetration can only be carried out by the penis of a man and not any other object, finger, stick, etc. Furthermore, it is implied from the laws that it is only a man that can rape a woman, and not vice-versa, or woman-woman rape.

⁴²Op cit., no. 34.

⁴³ *Ibid.*

⁴⁴Op cit., no. 14, pg. 323. Furthermore, the medical report revealed: *Exhibit "4" is the Medical Report - "A young girl in sad mood with blood stains on the vulva and around the hymen, bruises around the vagina especially posteriorly. Child also has a waddling gait. (Sway in walking as in duck) a diagnosis of rape forceful penetration made."*

b) Consent

Consent or the lack of it is equally an important element to be proved by the prosecution which will help the court to determine whether rape or child defilement has actually occurred or not. What then is consent? Black's Law Dictionary⁴⁵ defines it in the context of rape to mean:

Consent of the will, and submission under the influence of fear or terror cannot amount to real consent...and there must be a choice between resistance and assent.

Thus, consent amounts to a choice between opposition and approval. Section 273 of the Criminal Code of Canada⁴⁶ also defines consent as 'the voluntary agreement of the complainant to engage in the sexual activity in question.' It is popularly known as the 'NO MEANS NO' law. Similarly, according to sec. 74 of the Sexual Offences Act 2003,⁴⁷ 'a person consents if he agrees by choice, and has the freedom and capacity to make that choice.'⁴⁸

Thus, consent obtained by force or by means of threats or intimidation or fear of harm is no consent. Consent given because of exhaustion after persistent struggle and resistance would appear to be no consent. It is also rape to have carnal knowledge of a woman by personating her husband. Submission by a person of weak intellect or a person who is too young to understand the nature of the act done is not consent.⁴⁹ In other words, the requirement of consent is not necessary in the commission of child sexual abuse, that is, the law does not require a child to give his or her consent. Even where a child gives his or her consent to sex, in as much as he is a child, the perpetrator will still be guilty of sexually abusing the child or minor.

Unfortunately, in Nigeria, the law and the courts have interpreted lack of consent to mean that 'the complainant offered anywhere from utmost

⁴⁵ Henry Campbell Black, Black's Law Dictionary, St. Paul, Minn. West Publishing Co. 1968

⁴⁶ Criminal Code of Canada (R.S.C., 1985, c. C-46)

⁴⁷ Op cit., no. 3

⁴⁸ This is also known as the 'NO MEANS NO' law. Sections 75 and 76 of the same law further provide for evidential presumptions about consent, and conclusive presumptions about consent, respectively.

⁴⁹ Okonkwo and Naish, Criminal Law in Nigeria, 2nd ed., Spectrum Books Limited, Spectrum House, Ring Road, Ibadan.

resistance to reasonable resistance'⁵⁰ and assume that 'women are confused about their sexual desires and may say "no" when they mean "yes". To the courts, the only clear indication of "no" is physical resistance which would leave physical evidence on the complainant.'⁵¹ This assumption or interpretation is wrong. The interpretation of consent should be simple and exclude reference to force in any respect. The law, like in England, should simply ask the question: 'did the woman consent to it?'

c) Corroboration

Corroboration was defined in the case of *Igbine v. The State*⁵² thus: 'Corroboration means confirmation, ratification, verification or validation of existing evidence coming from another independent witness or witnesses'. Its purpose is to protect the interests of the accused against wrongful convictions. Based on this, Lord Reading CJ declared in *R v. Baskerville*⁵³ that 'evidence in corroboration must be independent testimony which affects the accused by connecting or contending to connect him with the crime.'

The question of whether corroboration is an express requirement of the law was resolved in the case of *IGP v. Summonu*⁵⁴ where Ademola C.J.N. (as he then was) stated that:

It is not a rule of law that in sexual offences an accused person cannot be convicted on the uncorroborated evidence of a prosecutrix, but the proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutrix; but that the jury may, after paying attention to the warning, nevertheless convict if they are satisfied of the truth of her evidence.

Notwithstanding this decision, sec. 179(5) of the Evidence Act⁵⁵ specifically provides that a person shall not be convicted upon the uncorroborated testimony of one witness for offences falling under sec. 218,

⁵⁰Olatunji, O.A. (2012), 'Penetration, Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing its Shortcomings', *University of Ilorin Law Journal (UILJ)* Vol. 8, pp. 79-105.

⁵¹*Ibid*, p. 100

⁵² (1997) 9 NWLR (Pt.519) 101 (a), 108

⁵³ [1916] 2 KB 658

⁵⁴ (1957) NRNL 23

⁵⁵ The Evidence Act 2011, Laws of the Federation of Nigeria 2004.

221, 223 or 224 of the Criminal Code.⁵⁶ Defilement of girls under thirteen is the offence provided for in sec. 218. This implies that theoretically, corroboration is only required where the victim is a child, and not in all rape cases, like where the victim is an adult.

However, in practice, corroboration is required in all rape cases, irrespective of the victim's age. In *Edet Okon Iko v. The State*⁵⁷ the court stated that apart from instances where the law required corroboration in sexual offences, the court has made it part of its practice requiring rape victims to adduce corroborative evidence. The courts are always reluctant in convicting accused persons based on uncorroborated evidence of sexually abused victims, that is, Judges warn themselves before going ahead to convict.

Inappropriately, the elements of corroboration and warning with regards to uncorroborated evidence are unnecessary formalities clogging the wheels of justice in Nigeria. The English law⁵⁸ and practice⁵⁹ abolished these requirements and produced guidelines on the situations in which a judge ought to warn or not warn the jury to proceed with caution while carrying out a witness' evidence. Thus, Lord Taylor (of Gosforth) C.J in the case of *R v. Makanjuola*⁶⁰ listed six guidelines which include that the Judge, in exercising his discretion to give warning, should not go extra mile because the witness is testifying in sexual-offence related case; and further that a warning shall not be required simply because the witness is a complainant of a sexual offence nor will it be necessary because a witness is alleged to be an accomplice.⁶¹ Therefore, the abolishment of both elements will foster the cause of justice as more offenders will be punished because the prerequisite of

⁵⁶*ibid*, section 218- Defilement of girls under thirteen, section 221- Defilement of girls under sixteen and above thirteen, and of idiots, section 223- Procurement, and section 224 of the Criminal Code Act- Procuring defilement of woman by threats or fraud, or administering drugs.

⁵⁷ (2001) 14 NWLR (Pt 732) 221 @ 424.

⁵⁸ Section 32(1), Criminal Justice and Public Order Act, 1994

⁵⁹ [1995]3 All E.R. 730

⁶⁰ (1995) 1 WLR 1348.

⁶¹*ibid*. a) It is now within the discretion of the presiding Judge to determine if a warning is indeed required; b) Where the Judge, from the surrounding circumstances, is of the opinion that a warning is required, it is now within his absolute preserve the kind of warning that should be given; c) In exercising his discretion to give warning, the Judge should not go extra mile because the witness is testifying in sexual-offence related case; d) A warning shall not be required simply because the witness is a complainant of a sexual offence nor will it be necessarily so because a witness is alleged to be an accomplice; e) There must be an evidential basis for suggesting that the evidence of the witness may be unreliable but mere suggestions by cross-examining counsel does not qualify as evidential basis; and f) Where warning is required, it will be for the Judge to decide the strength and term of the warning; it does not have to be invested with the whole florid regime of the old corroboration rule

corroboration is a herculean task as eye-witnesses are difficult to get as evidences in court. This is because rape and child abuse crimes are executed in secret or lonely places.

4. EXAMPLES OF VICES OR LASTING CONSEQUENCES OF RAPE AND CHILD DEFILEMENT ON THEIR VICTIMS

An analysis of the consequences of rape and child defilement on their victims will assist all the social actors in resisting these vices, and perhaps, it will be an urgent call on the government to amend her laws in order to drive rape and child defilement to extinction in Nigeria.

The first set of consequences to be discussed are physical and mental health problems such as bleeding, bruises, swelling, itching, or burning in genital area; difficulty in walking or sitting; physical violence like self-harm, transfer of aggression on others, sexually abusing others; chronic pain; depression and post-traumatic stress; anxiety; eating disorders; diabetes; changes in hygiene, such as refusing to bathe or bathing excessively; development of phobias; having nightmares or bed-wetting; and being overly protective and concerned for siblings, that is, assuming a caretaker role affect victims of these crimes on the long run.

Some victims are so unlucky that they get infected with frequent urinary or yeast infections; sexually transmitted diseases like HIV/AIDS, gonorrhoea. For instance, statistics carried out by Cece Yara Organisation reveals that 'females aged 18 to 24 years with a history of sexual abuse or physical violence in childhood were significantly more likely to have ever had symptoms or diagnosis of STIs.'⁶² Likewise, some of them, especially adolescents, consider suicide as the best solution to their problems and some have killed themselves.

Furthermore, some victims become mentally inactive. They may not be able to think well mentally or academically, for instance, they may experience drops in grades, or may run away from school; some develop inappropriate sexual knowledge or behaviours.

Psychological problems are also some of the vices of rape and child defilement. Their victims have wrong impressions about sex, lack trust in the opposite sex, some suffer in silence, experience dissociation from reality,

⁶² Op cit., no. 23

depersonalization such as seeing oneself as amounting to nothing, avoidance of social life, shrinking away from or feeling threatened by physical contact, remembrance of moments of sexual assault, and serious difficulty in remembering events.

Finally, unwanted pregnancies may be the resultant effect of these sexual crimes. Once more, Ceceyara statistics reveals that 'among females with experiences of unwanted completed sex during their lifetime, 15.0% of 18 to 24 year olds and 7.6% of 13 to 17 year olds reported pregnancy as a result.'⁶³Such pregnancies will, no doubt, either delay or limit their future. It may discourage school children from going to school or furthering their education. For instance, '1 in 10 girls missed school after experiencing sexual violence while 1 in 16 boys missed school after experiencing sexual violence.'⁶⁴

5. RESPONSES OF PARENTS, ADULTS AND THE GOVERNMENT TO RAPE VICTIMS AND SEXUALLY DEFILED CHILDREN

The above mentioned consequences, thus, lead the writer to discuss how the whole community, beginning with parents, should respond to the victims and the prevalence of the crimes, in order to curb or eradicate them. President Barack Obama highlights ways in which the community can respond to the victims of sexual violence, particularly, rape and child defilement in the report prepared by the White House Council on Women and Girls and the Office of the Vice President. He stated thus:

It is up to all of us to ensure victims of sexual violence are not left to face these trials alone. Too often, survivors suffer in silence, fearing retribution, lack of support, or that the criminal justice system will fail to bring the perpetrator to justice. We must do more to raise awareness about the realities of sexual assault; confront and change insensitive attitudes wherever they persist; enhance training and education in the criminal justice system; and expand access to critical health, legal, and protection services for survivors.⁶⁵

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ The White House Council on Women and Girls: RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION; January 2014.

In other words, three basic things to consider from the international campaign to stop rape and gender violence is to 'prevent, protect, and prosecute,'⁶⁶ that is, prevent the crimes through sexual education, protect the victims and the whole society by changing our attitudes and supporting victims, and lastly, prosecute the offenders/perpetrators through amendment of our laws and enhancement of the criminal justice system. Although these guidelines are specifically for conflict situations, I think they really apply in a lot of societies.

No doubt, the Nigerian Criminal and Penal Code Acts need to be amended to conform with the provisions of the Violence Against Persons (Prohibition) Act 2015, and the UK and US laws. These laws amended the definition of rape to extend beyond the conventional meaning, that is, from penetration of the vagina to penetration of the anus and mouth. The instrument of penetration should also not be limited to penis alone. It should include the insertion of finger, bottle and other objects into person's genitals. Similarly, rape is not limited to male-female rape. Anyone or any gender can perpetuate the crime. There can be female-male rape, female-female rape (lesbianism), male-male rape (homosexuality), spousal rape (a man raping his wife, and vice-versa) and other illicit acts that are evolving should be included.

Furthermore, the element of consent should mean when a woman says 'no' she means 'no,' that is, a 'NO MEANS NO' law, and not whether force has been used on the victim. As discussed above, there should be an abolishment of the requirement of corroboration, and warning where corroboration will be dispensed with. This is work more justice for the victims rather than the prevalent injustice where cases are quashed and offenders go scot free.

Likewise, the criminal justice system comprising of the police, prosecutors, and the judiciary should put all hands on deck in fighting these crimes. Victims should not be castigated but perpetrators should be brought to justice, and this can become a reality when police change their attitudes by immediately arresting offenders as soon as complaints are made; and when proper investigations and medical examinations are carried out judiciously, to the extent that there will be no way of escape to perpetrators. When the citizenry see that perpetrators are been punished, they will be discouraged from executing the crimes. There is also a call on the prosecutors to be eager, not reluctant to take up rape and sexual assault cases. Enough of their lackadaisical

⁶⁶<http://www.stoprapeinconflict.org/learn> [20th January, 2017]

attitudes and prayers for adjournment of cases. Cases files should be dusted off prosecutors' shelves and acted upon.

Another aspect which seems to be the best preventive step to be taken by parents and other adults is to educate children early enough about sex education. There is a high probability of protecting them from child sexual abuse/defilement at their young age, or rape later at adulthood. Moore stated that

the reality is, when it comes to sexual abuse, our children are not automatically as safe as we'd like them to be. We may build around them a fortress of protection, but I want to argue that we have to build within them a defense every bit as strong as the defense without. I also want to emphasize that danger lies not at the hands of strangers, but in the hands of those we are oft too quick to trust.⁶⁷

What sex education will do is to build within the children a defense or fortress of protection against sexual abuse perpetrators, be it strangers or known persons like male paedophiles. Also, parents should not expose their children to members of the opposite sex no matter how close they may be to them, for example, uncles, cousins, family friends, etc.

Furthermore, children are not too small to understand. We are in a jet age where everything is moving fast, and as a result of technology, they come across information beyond their age or level. A colleague told me about her friend who gave her almost two years old daughter sex education. Part of what she told her little daughter is that no one, except her, that is, the mother; the daughter herself; her aunty at school; and her elder cousin is permitted to touch or clean her private part, and that if any male tries it, she should cry, shout and scream at the top of her voice to attract the attention of the public.

Thereafter, the mother travelled overnight and the following morning as the father was trying to clean her private part while giving her a bathe, she screamed and did not keep quiet. The father was shocked and warned her to be quiet but she screamed the more. Her scream attracted her elder cousin's attention who was in the house with them. The latter subsequently cleaned her private part, and afterwards, the daughter gave her father some sex education.

⁶⁷ Harmony R Moore, Generations of Virtue: Childhood Sexual Abuse, <https://www.generationsofvirtue.org/childhood-sexual-abuse/?gclid=CNXKjOmOztECFUa6GwodoCsGSQ#.WIEUxPTDPIV> 20th January, 2017

The father was so glad that such education has been taught his daughter. The point is that if the daughter could react like that to her father, she could to any other male, even much more.

The third aspect to be discussed is protection. This the community can implement by teaching new values. The cultures of silence, or suffering in silence as a result of stigmatization should be erased from the minds of the people, rather, we should introduce and encourage the cultures of 'No to silence, No to stigmatization.' Victims of these crimes should not be quiet but inform their closest relatives and friends. The latter should support the victims by reporting the incidence immediately to the appropriate authorities, like the Police, Ministry of Justice or some Non-Governmental Organisations (NGOs) fighting against these crimes, so as to deal with the perpetrators. It is when we do this that the society will be a safe haven for us, our children and generations yet unborn.

Finally, as a form of protection, individuals and government can set up more organisations like the Ceceyara Foundation and RAINN, which are non-governmental organisation for prevention of child sexual abuse, and United States' largest anti-sexual violence organisation respectively. Such organisations do conduct programs to prevent sexual violence, support victims, and also make sure that perpetrators are brought to justice.

6. CONCLUSION

To address the menace of rape and child defilement generally, a major step to be taken is that of redefinition of rape and child defilement in Nigeria in order to align extant definitions with those of developed jurisdictions, thereby fitting into the modern conceptions of these crimes. The Criminal Justice System should be overhauled and the actors in the system should be sufficiently trained and orientated to develop positive attitudes, responses and best practices towards the trial and prosecution of offenders of rape and child defilement. Likewise, preventive steps such as sexual education should be given by parents and other adults. Sufficient and modest sex education will make children less vulnerable to sexual predators of whatever motives and capacities. The cultures of silence by victims, and their discrimination by the society should be discouraged. Government and inspired individuals should establish organisations that will provide services like counselling, legal advocacy, medical help, and other social services to the victims.