

**THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015 & THE CRIMINAL CODE: ANALYTICAL
DIFFICULTIES REGARDING THE DEFINITION OF RAPE AND REFORM**

Onyeukwu Clinton Chinaecherem¹

Law Student, Imo State University, Owerri.

¹ Onyeukwu Clinton Chinaecherem || Law Student, Imo State University, Owerri.

INTRODUCTION

The definition of aggravated sexual assault as contained in the Violence Against Persons (Prohibition) Act 2015 raises major concerns. Its broad definition of rape creates absurdity and interpretational problems in the administration of justice. This article aims at juxtaposing the definition of rape as contained in the Violence Against Persons (Prohibition) Act, hereinafter referred to as VAPPA, and the definition contained in the Criminal Code which is applicable in southern Nigeria. This article will also highlight the major problems arising from the definition of the VAPPA and the criminal code. However, emphasis will be placed on the VAPPA. A reform will be proposed thereafter.

For clarity, the reason behind legal pluralism in Nigeria with respect to her criminal jurisprudence will be given. Nigeria is a diverse country. It is made up of different tribes and different ethnic groups. Nigeria consists of over 300 ethnic groups². Thus, there are different beliefs, religions, societal values and morals. It is due to the moral and religious divergence between the southern part of Nigeria and the Northern part of Nigeria that the Penal Code was introduced to regulate and guide the conduct of the people in the north. The Penal Code was modeled after the Indian Penal Code. The Criminal Code was introduced by the British in 1904, during the era of its stronghold on Nigeria.³ There have been various arguments for the unification of the criminal laws; however, one of the few steps which have been taken towards legal unification is the enactment of the Administration of Criminal Justice Act (ACJA) 2015. The ACJA is an adjectival law which regulates criminal proceedings in Nigeria. It operates both in the north and in the south. It repealed both the criminal procedure act and the criminal procedure code, which were operative in the southern and northern parts of Nigeria, respectively.

The Violence Against Persons (Prohibition) Act 2015 was enacted by the national assembly of Nigeria and was endorsed by Goodluck Jonathan, the former president of the Federal Republic of Nigeria.⁴ From the provisions of the act, one can deduce that the primary object behind its enactment is to curb all forms of violence against persons. Surely, the Nigerian law makers aim to use the act to prevent both public and private violence. The act covers a wide range of violent crimes, ranging from rape to spousal battery, to female genital mutilation. Our main focus in this article is the wordings of the VAPPA in respect of the offense of rape. Basically, as earlier mentioned, we will be looking at the definition of rape as contained in both the VAPPA and the Criminal code and the difficulties that arise due to the wordings of both statutory enactments.

AGGRAVATED SEXUAL ASSAULT (RAPE)

Undoubtedly, rape is a very sensitive issue and can be a triggering topic for victims. However, it is pertinent to note that the analysis of the offence as contained herein is strictly for educational and academic purposes, the aim of which is to ascertain the practicability of the definitions contained in the Nigerian criminal laws.

² Osy E.Nwebo, *Critical Constitutional Issues in Nigeria* 110 (3rd ed 2011)

³ Okorie C. Kingsley, *Criminal law: The general part* 20 (1st ed 2022)

⁴ Refugees, United Nations High Commissioner, Nigeria: VAPPA 2015, 2022

In ordinary parlance, rape is sexual intercourse with a person against the person's will; it is done with force and without the consent of the victim. It usually leaves long lasting negative psychological effect on the victim, this is one of the reasons rape is treated as a serious offence. In most jurisdictions, the offender is severely punished. The Oxford Advanced Learner's Dictionary defines rape as the crime of forcing somebody to have sex when they do not want it or are not able to agree to it.⁵ In the case of *R. v. Seid*⁶ the court held that sexual intercourse with a woman without her consent amounts to rape, the court further stated that sexual gratification without penetration does not amount to rape. Thus, in the case of *Breddy v. Commonwealth*⁷ the Virginia Supreme Court set aside the conviction of the appellant on the ground that, being impotent, the accused could not have committed rape.

From what has just been stated, it is clear that rape occurs when there is vaginal penetration by the penis of a man without the woman's consent. It is pertinent to note that infants, particularly girls below 18 years and girls of unsound mind cannot give consent. This means that even if consent is expressly given by them, it is void.

ANALYSIS OF THE DEFINITION CONTAINED IN THE VAPPA & THE CRIMINAL CODE

The Violence Against Person's (Prohibition) Act defined rape in section 1. It states:

A person commits the offence of rape if-

he or she intentionally penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else;

the other person does not consent to the penetration; or

the consent is obtained by force or means of threat or intimidation of any kind or by fear on 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.⁸

From the foregoing, it is apparent that the code's definition of the offence of rape rests in the midst of conjecture and confusion. However, credit must be given to the law makers for recognizing the fact that men can be victims of rape, the use of the pronouns "he or she" denotes that both females and males can be victims of the offence. Notwithstanding what was stated, the texts "*he or she intentionally penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else...*" raises serious questions as to whether or not the mere putting of an object, without the apprehension of any element of indecency, in the mouth of another constitutes rape. At most, such interference with the body of another would constitute an assault. The question remains, even if an offender has the requisite sexual intention during the commission of such act, would it be reasonable to say that the offender has committed rape? See

⁵ Oxford Advanced Learner's Dictionary

⁶ (1960) WRWL 32

⁷ (1949) 184 VA, 765

⁸ The Violence Against Persons (Prohibition) Act 2015, 1(1) (a) (b) (c).

the case of *Okogomon v. State*.⁹ In the aforementioned case the court stated, inter alia, that where there is no sufficient evidence of penetration of the vagina, the accused will not be convicted for rape. Professor U.U. Chukwumaeze, SAN, a renowned professor of law and criminal law expert, stated that rape is satisfied when there is non-consensual penetration of a female's vagina. He further stated that the element of penetration is satisfied when there is a slight touch of the labia minora in the course of committing the offence.¹⁰ Thus, according to him, there need not be penetration.

Again, we shall ask ourselves, does anal penetration constitute rape, where it is done without the victims consent? Does oral sex, without the consent of the victim, constitute rape?

With respect to anal penetration, it seems like the VAPPA merged the crime of sodomy with rape. The channel through which justice can be delivered in respect of these offences has been gravely compromised by the provisions of the VAPPA. The crime of sodomy and rape as mentioned in the VAPPA's definition of rape are mutually exclusive offences which have been separately provided for by the Criminal Code. The offence of sodomy as codified in section 214 of the Criminal Code is as clear as crystal. From the wordings of the section, it is multi-directional, which means that it can be committed by a man with a man, and man with woman.¹¹

With respect to oral sex or the putting of an object in the mouth of another, analysis will be made in the light of indecent assault and assault, respectively. We shall not ignore the fact that that particular provision of the VAPPA is conflicting with provisions of the criminal code. In defining assault, the criminal code stated:

*A person who strikes, touches or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstance that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.*¹²

From the above definition, the text "...applies force of any kind to the person of another, either directly or indirectly, without his consent.." denotes that force of any kind applied to another directly or indirectly, without his consent, constitutes an assault. The words on which emphasis should be placed are "force of any kind". Thus it is reasonably believed that any force or physical interference which does not amount to unlawful sexual intercourse will inevitably constitute an assault or an indecent assault, unless such force results in the death of another, then it would amount to culpable homicide; murder or manslaughter, as the case may be. It is submitted that where one puts an object in the mouth of another, with hostility and without consent he or she should be charged with assault.

⁹ (1973) ANLR

¹⁰ Chukwumaeze U. Uchefula, Criminal Law Lecture Note, Abia State University.

¹¹ Chukwumaeze U. Uchefula, Op cit.

¹² Criminal Code 2004, 252

Indecent assault is assault which is accompanied with an element of indecency, see the case of *State v. Adegboye*.¹³ In the foregoing case the accused called a girl of 9 years old into his house and inserted his finger into her vagina, the court held that he was guilty of indecent assault. The facts of the case can be contrasted with a scenario where a man puts his private part in the mouth of a woman without her consent. At most, such an act should amount to an indecent assault.

The Criminal Code provided for the offence of rape in section 357. It states:

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 impersonating her husband, is guilty of an offence which is called rape.

Unfortunately, the Criminal Code does not recognize the fact that men can be rape victims. It also failed to define the term “carnal knowledge”. Presumably, everyone knows the meaning of the term. This goes to show that the definition of rape as contained in the Criminal Code is narrow, and the definition of rape as contained in the VAPPA is ridiculously broad. However, until these two laws have been reconciled, I suggest that all offences of rape be brought pursuant to the provisions of the criminal code.

RECOMMENDATIONS & CONCLUSION

Briefly, I suggest that the section of the VAPPA which provides for the offence of rape be amended.

However, to achieve unification one of the provisions regarding the offence in question has to be repealed, as there are multiple criminal laws in force in Nigeria.

BIBLIOGRAPHY

Breddy v. Commonwealth (1949)184 VA, 765

Chukwumaeze U. Uchefula, Criminal Law Lecture Note, Abia State University.

Criminal Code 2004, 252

Osye E.Nwebo, Critical Constitutional Issues in Nigeria 110 (3rd ed 2011)

Okorie C. Kingsley, Criminal law: The general part 20 (1st ed 2022)

Okogomon v. State (1973) ANLR

Oxford Advanced Learner's Dictionary

Refugees, United Nations High Commissioner, Nigeria: VAPPA 2015, 2022

R v. Seid (1960) WRWLR 32

State v. Adegboye (1971) ANLR 404

¹³ (1971) ANLR 404

The Violence Against Persons (Prohibition) Act 2015, 1(1)(a)(b)(c).