

**Abstract**

*Rape is the act of sexual intercourse without the consent of the victim, no matter how slight the penetration. The issue of child rape is very critical because of its negative impact on the life of the child. Despite, plethora of laws on the protection of children from rape, paedophiles still violate children because the laws are rarely enforced, hence, the need for this study. The aim of this study is to advocate for the protection of children via legislative intervention. The work adopted doctrinal method, through the use of documentary sources, statute and case laws. The study reviewed legal frameworks that provide for protection of children and x-rayed factors that exacerbate child rape in Nigeria. The work discovered that there are many lapses inherent in our legal frame work .Apart from that, rape has serious health implication that impairs the physical, emotional and psychological wellbeing of the child. Furthermore, the work discovered that pandemic escalated child rape in Nigeria. The study advocates for review of our legal framework, for example Violence Against Person's (Prohibition) Act 2015, 1999 Constitution, Criminal Code etc.*

**Keywords:** Child Rape, Pandemic, Advocacy and Legislative Intervention.

**1. Introduction**

Rape is a public health epidemic that plagues Nigeria and other nations of the world. In fact, the 2009 National Demographic Health Survey (NDAS) reports show that over 25% of adolescence in Nigeria has been molested sexually<sup>1</sup> and 90% are violated by family members.<sup>2</sup>This issue is critical because of its negative impact on the health of children .Hence, victims remain susceptible because of various factors inherent in our institutional and legal framework, for instance undue technicalities in procedures required in the prosecution of rape cases is a clog. Other factors such as Covid-19 has increased the scourge of rape in Nigeria. Currently, Nigeria has recorded seven hundred and seventeen (717) rape cases from January to May, 2020.<sup>3</sup> While Abuja alone has recorded one hundred and five cases from the month of March till May, 2020.In fact, Inspector General of police opined that women and children are raped every five hours in Nigeria.<sup>4</sup> This ugly incident has brought a lot of agitation by women and other human rights activist to compel the Government to stem the tide. Precisely, on Monday June 9, 2020 a coalition of rights groups marched on the state parliament calling for a declaration of state of emergency on rape and sexual violence. In response to their action, the Legislators reviewed rape laws, however the crime still soars because of lack of enforcement, hence, the need for Legislative oversight. The paper, argues that, despite the current review of laws, the legislature should do more by monitoring the activities of the judiciary and executive for proper implementation of rape laws. Accordingly, in order to achieve the object of this study, the writer makes the following proposals: whether the current definition of rape is in consonance with global standard. Secondly, whether rape is a violation of human rights. Thirdly, whether there is a disparity between our legal framework and its enforcement. Fourthly, whether consent is a factor in child rape. Fifthly, whether, there is need for legislative oversight for enforcement of rape law. Finally, whether the Child's Right Act should be domesticated by every state in Nigeria for protection of children .Sixthly, whether child's marriage vitiates rape. Finally, whether, stiffer penalties should be enacted for protection of children.

**2. Rape and Concept of Human Rights**

Rape is a human right issue that can never be over emphasized because of it, physical, emotional psychological, social and other negative impact on children, hence, the need for urgent intervention to arrest this menace. It is apposite to note that the concept of human right concerns the relationship between the individual and the state, therefore, individual enjoyment of these rights depend on state responses to their international obligations to promote, protect, respect, enforce and fulfil rights of their citizens. At the municipal level, owing to the systemic discrimination and the conceptualized dichotomy of public and private sphere against the female sex, there is much contention and tension in actualizing the human rights of children as entrenched in numerous international and regional human rights standards. States should take all appropriate action to eliminate discrimination and ensure equality of sexes *de jure* and *de facto*. States often condone violations of women and child's rights and sometimes even use state apparatus to render their voices inaudible.<sup>5</sup>Currently, the menace of rape is visible in the polity like never before and Nigerians are looking up to the Government for serious action to eradicate this hydra headed monster that is terrorizing Nigeria .This is very critical because despite review of rape laws, child rape has eaten deep into the fabrics of the society. In fact, the Universal Declaration of Human Rights (UDHR

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<sup>1</sup> [www.globalginny.org/projects/rape-prevention](http://www.globalginny.org/projects/rape-prevention) accessed on 18/7/2020.

<sup>2</sup> *Ibid.*

<sup>3</sup>B. Adebayo, Nigerian Women are Taking to the Street in Protect against rape and sexual Violence [www.cnn.com/2020/06/09africa/nigeria-women-rape](http://www.cnn.com/2020/06/09africa/nigeria-women-rape) accessed on 21/6/2020.

<sup>4</sup> *Ibid.*

<sup>5</sup> J.N. Ezeilo, Women, *Law & Human Rights: Global and National Perspectives* (Nigeria: ACENA Publishers 2011) p.115.

1948), the foundation of the normative framework for international human rights, yet, sixty years after its adoption, human rights of women and children are yet to be realized. Also, the UN Convention on the Rights of the Child has provided copiously for the protection of the child at the international sphere, while Child's Right Act, has provided comprehensively for them. The question then is, why is there a huge disparity or gulf between the provisions of the law and the actual practice? Evidence has shown that the formal guarantee of equality does not necessarily result in substantive equality and the inevitable question, therefore is whether states are taking their accountability to implement the law.<sup>6</sup> Different legislation that have provided for the protection of human rights shall be discussed seriatim.

#### **Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The Constitution provides that every individual is entitled to right to life<sup>7</sup>to respect for the dignity of person<sup>8</sup>.Accordingly, no person shall be subjected to torture or to inhuman or degrading treatment .Also, every person is entitled to his respect, liberty and no person shall be deprived of such liberty<sup>9</sup>.Further, Section 42 (1) provides that citizens of Nigeria shall not be subjected to discrimination<sup>10</sup>. Rape offends constitutional provisions on the rights of children. It violates their right to life, right to reproductive health, right to dignity of human person. Rape offends principles of human rights which provide that children are entitled without iota of discrimination to equal protection of the law.<sup>11</sup> The basis and fundamental principles of non-discrimination portends that all individuals have right to live in dignity and freedom, without arbitrary, impermissible unacceptable stratification, categorization or division and distinction by any government. Therefore, discrimination on grounds of sex or sexual orientation will certainly amount to infraction and curtailment of human rights. This principle is also affirmed in international instruments. UDHR highlighted some areas of non-discrimination which areas have been more elaborately magnified by other human rights instruments and treaties such as the Convention on Elimination of All Forms Discrimination against Women (CEDAW), which defines discrimination to mean, any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, for human rights and fundamental freedom<sup>12</sup>.

#### **African Charter on the Rights and Welfare of the Child 1990**

This Convention<sup>13</sup> recognizes protection of human rights of people particularly the human rights of children. It notes with concern that the situation of most African children remains critical due to factors that exacerbate violence on them. It recognizes that the child, due to the needs of his physical and mental development require particular care with regard to health, physical mental, moral and social development and requires legal protection in condition of freedom, dignity and security. Further, it provides that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone, to protect children from social menace. Accordingly, every child is entitled to the enjoyment of the rights and freedom recognized and guaranteed in this charter irrespective of the child's sex or background.<sup>14</sup> It advocates for the best interest of the child, hence in all action that concerns the child, undertaken by any person or authority the best interest of the child shall be the primary consideration<sup>15</sup>.It provides for survival and development and aver that every child has an inherent right to life which shall be protected by law. Hence, state parties to the present charter shall ensure, to the maximum extent possible, the survival, and development of the child.<sup>16</sup>Hence, no child shall be subject to arbitrary or lawful interference with his privacy or to attack upon his/her honour or reputation.<sup>17</sup>Every child shall be protected from all forms of economic exploitation likely to be hazardous to his/her physical, mental, spiritual or social development<sup>18</sup> Furthermore, it provides against child abuse and torture and recommends that Governments shall take special legislative administrative social and educational measures to protect children from torture, sexual abuse such as rape.

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<sup>6</sup> *Ibid.*

<sup>7</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended) Sec. 33.

<sup>8</sup> *Ibid* Sec. 34.

<sup>9</sup> *Ibid* Sec. 35.

<sup>10</sup> *Ibid* Sec. 42.

<sup>11</sup> Universal Declaration of Human Rights. Adopted by General Assembly Resolution 217A(iii) of 10 December 1948. Article 7.

<sup>12</sup> C. Arinze-Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy* (Nigeria: Printing & Pub. Co. Ltd) p. 5.

<sup>13</sup>African Charter on the Welfare of the Child. Adopted and Opened for Signature 11 July 1990 and it entered into force 29 November 1999.

<sup>14</sup>*Ibid* Article 3.

<sup>15</sup> *Ibid* Article 4.

<sup>16</sup> *Ibid* Article 5.

<sup>17</sup> *Ibid* Article 10.

<sup>18</sup> *Ibid* Article 15.

### **UN Convention on the Rights of the Child**

This law<sup>19</sup> recognises the inherent dignity and inalienable rights of all members of the human family as the foundation of freedom justice and peace in the world. It indicates in the Declaration of the Rights of the child, that children by reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth. Hence, all actions concerning children, whether undertaken by public or private institution, the best interest of the child shall be upheld. It upholds the inherent-right to life.<sup>20</sup>It avers that, children should not be subjected to arbitrary or unlawful interference in their privacy, family or correspondence, nor to unlawful attacks on their honour and reputation.<sup>21</sup> While, article 34 provides that state parties undertake to protect the child from all forms of sexual exploitation and sexual abuse for this purpose, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity. Article 36 provides that States parties shall protect the child against exploitation prejudicial to the child's welfare.

### **Criminal Code**

The criminal Code<sup>22</sup>, defines the offence of rape as any person who has unlawful carnal knowledge of a woman or girl, without 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.<sup>23</sup>

### **Penal Code**

The Penal Code<sup>24</sup> provides that anyone who has sexual intercourse with a woman in any of the following circumstances: against her will, without her consent, with her consent obtained by putting her in fear of death or of hurt, 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 the man to whom she is or believes herself to be lawfully married. The above provision highlights that sexual intercourse by a man with his wife is not rape. One can easily infer that proof of consent by the accused or perpetrator can exonerate him from punishment. While, criminal laws of Lagos reiterate that rape is when a man has sexual intercourse with a woman or girl without her consent or with incorrectly obtained consent, either by force, impersonation, threat or intimidation of any kind. It could also be by means of false and fraudulent representation as to the nature of the Act. While, sexual intercourse by a man with his wife cannot be unlawful hence a man cannot rape his wife. This definition was upheld by per *Muntaka Coomasie, in Igbine v State*<sup>25</sup> and numerous cases on rape.<sup>26</sup> However, under the Penal Code (applicable in Northern part of Nigeria), it goes further to say even where the girl is a wife of the person, such person will be guilty of rape if she has not attained puberty. The case of the former Government of Zamfara State, who was alleged to have married a 13-year-old girl from Egypt comes in handy. In such situation, if the girl has not attained puberty and he has carnal knowledge of her, he will be guilty of rape. However, what will be regarded as attaining puberty under the law will probably be subject of debate<sup>27</sup>. Accordingly, it is apposite to note that many jurisdictions have enacted laws on marital rape averring that a man that have intercourse with his wife without her consent is rape, for example countries like Albania<sup>28</sup>, Andorra<sup>29</sup>, Argentina<sup>30</sup> have criminalized marital rape. It is therefore recommended that Nigeria should borrow a leaf from other jurisdictions to protect the rights of women and children. Many paedophiles hide under the cloak of religion or culture to molest children under the guise of marriage. Hence, legislators should play their oversight function by carrying out supervisory role in order to protect children.

### **Violence Against the Persons Prohibition Act (VAPPA) 2015**

This law<sup>31</sup> gives a very comprehensive definition of rape, as when a person intentionally penetrates the vagina, anus, or mouth of another with any other part of his/ her body or anything else without consent or with incorrectly

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<sup>19</sup> Adopted and Opened for Signature, ratification and Accession by General Assembly Resolution 44/25 of November 1989. Entry into force 2 September 1990, in accordance with Article 49.

<sup>20</sup> 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.

<sup>21</sup> *Ibid* Article 16.

<sup>22</sup> Sec. 357 of Criminal Code, Cap C38 of LFN, 2004.

<sup>23</sup> The Criminal Code LFN 2004 sec 357.

<sup>24</sup> Penal Code sec. 283.

<sup>25</sup> (1997) 9 NWLR (Pt 519) Jeede v State (2001) 14 NWLR (Pt.733).

<sup>26</sup> (2001) 7 S.C (Pt. D122).

<sup>27</sup> *Upahar v State* (2003) 6 NWLR Pt. 816 p. 230, *Ibo v Zaria N.A* (1962) NNCN 30, *Okoyomon v State* (1973) NNLR 292.

<sup>28</sup> The Criminal Code was amended in 2012 and 2013 to Criminalised Marital rape, Article 102.

<sup>29</sup> Rape including spousal rape can be punished by up to 15 years, imprisonment. The Penal Code does not exclude marital rape from its definition of rape Article 145.

<sup>30</sup> Rape of men and women include spousal rape, can be punished by imprisonment from six months upto 20 years. Spousal rape is criminalised by Article 5 (3) of the law of Comprehensive Protection of women (leyde proteccion integrals las mujeres) 2009.

<sup>31</sup> Violence Against Person Prohibition Act (2015) Sec. 1 (1).

obtained consent, where it is obtained by force, threats, intimidation by means of false and fraudulent representation as to the nature of the act by the use of substance capable of taking away the will of that person or by a person impersonating a married woman's husband in order to have sex. This definition is more comprehensive and elaborate however, its application is limited only to Abuja. currently, only eighteen states have domesticated it, while many have not, therefore the paper advocates for spontaneous response by other states, so that the child would be adequately protected.

### **Child's Rights Act**

Child Right Act (CRA) provides that sex with a child is rape and anyone, who has sexual intercourse with a child is liable to imprisonment for life upon conviction.<sup>32</sup> However, this law has not been adopted by many states in Nigeria. Generally, definition of rape and sexual violence in relation to children should be made in recognition of Article 34 on the Convention on the rights of the child.<sup>33</sup>It stipulates that where the definition of rape and sexual violence is based on force, threat of force or coercion, there is no need for statutory rape provisions, which specify an age limit below which it is assumed contact.it is assumed that a child cannot consent to sexual contact. Such statutory rape provision fails to do justice to victim where the age limit is set either too high or too low. Where the age limit is set too high, it denies adolescent the right to make their own choices relating to sexual activity as it makes them liable to criminal prosecution for exercising their human rights. Where the age limit is set too low, it tends to deny adolescents particularly adolescent girls, the protection of the criminal law but non domestication of this law has limited the rights of the child profusely.

Over the decades, many jurisdictions like South Africa have expanded the traditional definition of rape which was understood as the non-consensual penetration of vagina by a penis<sup>34</sup> to be revolutionised. Hence, in South Africa, the current definition of rape criminalises unacceptable social conduct that is in violation of constitutional rights. It ensures that the constitutional rights of women and children to be free from all forms of violence, whether public or private as well as the rights to dignity and equality are protected. Apart from the definition, they have also extended rape to include marital or spousal rape. The evolution of expansion of definition rape stems from the agitation of women to recognise women's right to equal protection with their male counterparts. Many, Nations like South Africa has widely accepted that sexual violence and rape not only offend the privacy and dignity of women but also reflect the unequal power relation between men and women in our society. The same evolution has<sup>35</sup> taken place in America, for example, in 2012, the America Federal Bureau of Investigation (FBI) changed their definition from the carnal knowledge of a female forcibly and against her will to 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. This definition recognises that any gender could be a victim of rape.

## **4. Factors that Exacerbate Rape in Nigeria**

### **Inherent Lapses in Legal Frameworks**

Lapses inherent in our courts have denied justice to rape victims thereby exacerbating the crime instead of curtailing it. One of the major lapses is the issue of undue technicalities required by the court in the prosecution of rape cases. With respect to child evidence, the court maintains that an accused would not be convicted without corroboration. The Supreme Court in stating what constituted corroboration evidence in *Iko v State* reiterated that, the evidence in connection must be independent testimony which affects the accused by connecting or contending to connect him, with the crime. In other words, it must be evidence which implicates him, that which confirms in some material particular not only had the evidence that the crime has been committed but also that the accused committed it. The court held that the fact that the prosecutrix averred that an accused inserted his penis into her vagina is not ipso facto a sufficient proof of penetration in the absence of corroborative evidence. He must go further to corroborate that assertion with evidence.<sup>36</sup> In *Sambo v State* the appellant was charged with rape of a 10 years old girl. At the trial, the trial court received the evidence of P.W.1 who is the child raped, on oath. The prosecution also called other witnesses but the appellant did not call any evidence. The trial court found the appellant guilty of the offence of attempted rape and sentenced him. Aggrieved by the decision of the trial court, the appellant appealed to the court of Appeal which dismissed the appeal and he further appealed to the Supreme Court contending among others that the High Court did not sufficiently conduct preliminary investigation prescribed by section 180 and 183 of the Evidence Act (now section 205 and 209 of the P.W.1), required

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<sup>32</sup> Child's Right Act 2003. Section 31(1) & (2).

<sup>33</sup> Which provides that state parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity. (b) The exploitative use of children in prostitution or other unlawful sexual practices. (c) The exploitative use of children in pornographic performances and materials

<sup>34</sup> *State v Ncanywa* (1992) (1) SA CRC.

<sup>35</sup> O.P Okonkwo, Conceptual Differentiation in the Definition of Law of Rape, The Nigerian [www.myobmag.com/square/article/26/rape-under...](http://www.myobmag.com/square/article/26/rape-under...)

<sup>36</sup> Evidence Act Cap 38 LFN 2004.

corroboration other than the evidence of P.W.2. P.W.4.<sup>37</sup> The Supreme Court in resolving the appeal considered the provision of section 183 of the Evidence Act now section 209 of the Evidence Act) among others and held that by virtue of section 180 and 183 of the Evidence Act (now section 205 and 209 of the Evidence Act, 2011), the court before receiving the evidence of a child must be satisfied that the child, knows the duty of telling the truth as well as the consequences of telling a lie. Additionally, he must possess sufficient intelligence to be able to understand the question put to him to satisfy the reception of the evidence. Hence, in taking evidence of a child on oath it is not only necessary for the trial court to state on the record of proceedings the conclusion as to whether the child knows the nature of an oath or possess enough intelligence before receiving the evidence. Accordingly, on appeal the court held that it is not disputed that at the time the offence was committed, the prosecutrix was only ten years old and therefore she was a child, she cannot in law give her consent to sexual intercourse and the child was denied justice. Further, in *Ngwuta Mbele v the State*<sup>38</sup>, the court opined that corroborative evidence must be evidence which confirms in some material particular not only that the crime has been committed but also that it was the appellant who committed it. Furthermore, the court held in *Akpan v the State*<sup>39</sup> as a matter of law sworn evidence of a child need not be corroborated but in sexual offences, it is expected that the prosecution must adduce evidence to corroborate the testimony of the victim in rape cases. Also, in *Iko v State*<sup>40</sup> the court held that it is an established practice in criminal law, that though corroboration of evidence of the victim in rape cases is not essential in law but in practice it is always looked for.<sup>41</sup> Thus, in *Okoyomon v State* the accused was charged with the offence of having unlawful carnal knowledge with a girl under fourteen years without her consent. The evidence was that:

The accused fell her down, removed her pant and his pair of shorts on her. She shouted and the accused covered her mouth with a piece of cloth. She was lying on her back as the accused lay on her and inserted his penis into her vagina, shaking his waist up and down on her.<sup>42</sup>

The Supreme Court set aside the conviction of the trial Court and held, it was not enough that the prosecutrix alleged the insertion of the accused's penis into her but evidence must be corroborated by another. Accordingly, the same position was taken by the court in *Jos Native Authority v Alla na Gana* and held that, the evidence that of blood on the girls' clothing and injury on her genital organs provides no corroboration because even though the girl has been sexually assaulted, the court further held that it is not evident that it is Alla Na Gana that assaulted her and justice was truncated. This problem was also re-echoed in the case *Francis Okpanefe v the State*<sup>43</sup>. According to the evidence of the complainant, on the second occasion when she was raped she was given ten kobo by the appellant because she was crying after the forced sexual intercourse and was in pain and could not walk properly. The complainant's mother also gave evidence which confirmed the story of the complainant as to finding her in distressed condition and said that ten kobo dropped from the complainant's clothes when she examined her. There was also a medical report, confirming that the little girl had sexual intercourse with "somebody". The trial judge found corroboration in the mother's evidence as set out above as well as in the medical report. He accordingly, convicted the complainant. On appeal, the Supreme Court evidence quashed the conviction of the complainant evidence. The court disregarded medical report as corroboration because at most, it confirmed the complainant story that someone had sexual intercourse with her but did not corroborate in any way her story that it was the appellant who did so. About the finding of ten kobo, the court held that it did not in any way implicate the appellant as the girl could easily have gotten the money from someone else. With regard to the girl's distressed condition, the court held that, whilst it might be indicative of an indecent assault upon her, that her condition did not show in any way, that it was the appellant who assaulted her and that little weight should be usually given to a complainant distressed condition in sexual cases.<sup>44</sup> The same decision was taken in case of *Oke v the Republic*,<sup>45</sup> and plethora of cases. With greatest respect the position of the court in these cases is a great affront to justice. The Court has stated in many cases<sup>46</sup> that the most important ingredient of the offence of rape is penetration and unless it is proved, the prosecution must fail. Sexual intercourse is deemed complete upon proof of penetration of the penis into the vagina. Any penetration however, slight is sufficient and it is not necessary to prove an injury or the rupture of the hymen to constitute the crime of rape. If the above is the position of the law why does the court require corroborative evidence in sexual offence? Why does the court create so many hitches on the path of justice? It is submitted that, this clog should be removed in order to protect child victims from unnecessary mental trauma. Nigeria should borrow a leaf from other jurisdictions to protect the child from further harm particularly in juvenile

<sup>37</sup> (1993) 6 NWLR (Pt. 300) 399 SC.

<sup>38</sup> (1990) 4 NWLR (Pt. 145) 484.

<sup>39</sup> (1967) NMLR at 185.

<sup>40</sup> (2001) 2 MJSC p.67.

<sup>41</sup> Criminal Code Cap 38 LFN Sec 218.

<sup>42</sup> (1992) 1 NWLR 292.

<sup>43</sup> (1969) 1 All N.L.R. 420.

<sup>44</sup> *Savidu Kaduna v Kano Native Authority* (1968) N.M.L.R 319.

<sup>45</sup> (1967) N.M.L.R. 69, see also *Mbele v State*.

<sup>46</sup> *Ezigbo v the State* (2012) 16 NWLR (Pt. 1326). P. 318.

proceedings. In other jurisdictions many factors are considered before taking the evidence of the child. In fact, in other jurisdictions court will usually discard evidence of the child where such evidence will harm the child. In United Kingdom the principle they use is known as the 'achieving best evidence (ABE)', this means using or applying any method that will elicit best evidence from a child without causing harm, for instance, they use video camera, especially in sexual offences, so that the child victim will not be physically present in court to give evidence. The quality of achieving best evidence interview will also be an important factor, as will be the nature of any challenge which the party may wish to make. While taking the evidence of a child, the court will consider the age and maturity of the child and the length of time since the events in question took place. This method reduces the risk of the child, to be traumatized. Their laws<sup>47</sup> provide variety of special measures to assist children (and other vulnerable witnesses) to give evidence in criminal cases such as screen lie television links, using video-recording as evidence in-chief, providing aids to communication and examining the witness through approved intermediary like video slides. All these avenues enable the child to reveal what happen to him or her in different ways in a more conducive environment.

### **Dearth of Correctional Homes**

Dearth of borstal and remand homes in Nigeria has led to rape of male and female children in correctional homes.<sup>48</sup> The scourge of rape in Nigeria Correctional Services has made the Controller General, Ja'afaru Ahmed to set up a panel to bring culprits to book.<sup>49</sup> Many male children that were kept in adult prisons in Nigeria are forced into homosexual acts by adult prison inmates. It is cardinal that Nigerian Government should protect children from this menace by establishing Remand Homes in every state in Nigeria. It is disheartening that out of thirty six states in Nigeria only about eight states have functional Remand and Borstal institutions.<sup>50</sup>

### **Lack of Adoption of Relevant Laws**

One of the factors that exacerbate child rape in Nigeria can be traced to none of adoption of Child's Right Act and Violence Against Person (Prohibition) Law. Although, these laws were passed at the federal level, they are only effective, if state Assembly enact it. Till date only, sixteen of the country's thirty-six, States have passed the Child's Right Act.<sup>51</sup> While, only eighteen states have domesticated, Violence Against Person's (Prohibition) Act. Hence, many children are subjected to obnoxious customary and religious practices that violate their reproductive health rights. They hide under such practices to silence the voice of rape victims. In fact, when the Government hide in the cloak of religion to encourage child marriage and tactfully refuse to adopt laws that is beneficial to children, the child becomes exposed to harmful practices like rape. It is therefore cardinal that the legislature should leave their drafting desk to check whether the laws they have enacted are really implemented and improve on enacted laws.

### **Covid-19 Pandemic**

The recent global pandemic has contributed to domestic violence and rape of women and children. In fact, from the month of February till date more than seven hundred cases of rape have been reported, according to the Inspector General of Police.<sup>52</sup> Even though, children do not die from pandemic like adult, but they suffer immensely as a result of the pandemic. It is necessary that Government rise up to stop this ugly menace that has crippled the economy and aborted destinies of many.<sup>53</sup> The lockdown has left many children in the hands of many sexual predators that molest them, while some due to harsh economic situations are trapped in the hands of rapist that have violated them.

### **Lack of Training of Juvenile Justice Administrators**

Juvenile Justice System comprises the police, the court and custodial institutions. Even though the Child Right has provided for training of the police for effective administration of juvenile justice, studies reveal that many police stations do not have such section. There is a lack of specialized training for police officers that handle child cases or victims of rape. Due to this challenge, forensic identification of suspects cannot be effectively carried out. Also biological evidence such as blood, semen, saliva, vagina epithelial cells relevant in rape cases are hardly obtained. With respect to the court, many are not trained in child matters, hence violation of the rights of children still persist. Therefore, it is recommended that adequate and continuous training should be given to the court and personnel like forensic psychologist should be employed to help ameliorate the plight of children within the juvenile justice system.

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<sup>47</sup> The Youth Justice and Criminal Evidence Act 1999 England.

<sup>48</sup> This offends provision of international, regional and domestic laws See sec17 and Sec 111 of Children and Young Persons Law(CYPA) Cap. 32, Vol.1 LFN, Childs Right Act 2003, section 1719(3)

<sup>49</sup> A. Adepegba, Punching.com/ncs-probes-alleged-bribery-sodomykoyiprisonOct.23, 2019 accessed on 30/7/2020

<sup>50</sup> Research carried out by the writer in 2017 during her PhD Dissertation. It was shocking to observe that Abuja, the Federal Capital does not have any facility for children in conflict of the law. Hence, many are lumped in adult prisons where they are sexually molested by criminals.

<sup>51</sup> UNICEF Nigeria- The Children- Child rights and participation, www.unicef.org/children- 1938.html accessed on 30/7/2020

<sup>52</sup> O. Adetayo Corvid 19: FCT records 105 sexual violence cases in two months.punchng.com/covid-19-fct-records-105-sexual. www. Vanguardngr.com/2020/07... , accessed on 30/7/2020. The vice president laments that between March 23 and May 29, the FCT sexual and Gender- Based Violence Response Team recorded an overwhelming 105 incidents of rape in Abua, inspector General of Police recorded about 717 rape incidents in country, while 799 persons have been arrested, 631 cases conclusively investigated and 52 are still under investigation.

### **Lack of Awareness**

Many children are not informed about the predatory nature of men. Hence, there is need to create awareness on how to avoid rape, thus awareness should be created from primary, secondary to tertiary level.

## **5. Rape Shield Law and Need for Legislative Oversight**

### **Rape Shield Law**

With respect to rape shield law, one would have thought that rape victims would have enjoyed absolute protection but they don't because the rape shield law is not absolute. Prior to provisions of section 234 which prevents rape victims from giving information of her rape history, section 234 provides inter alia that, where a person is prosecuted for rape, attempt to commit rape or indecent assault, except with leave, no question in cross examination shall be asked by or on behalf of the defendant about any sexual experience of the complainant with any person other than the defendant.<sup>54</sup> The study submits that this provision is not absolute because it gives the defendant a lee way to ask the prosecutrix questions about her sexual history; if he obtains the leave of the court. It is therefore submitted that Nigeria should take a leaf from other jurisdiction like, Canada which was given statutory recognition in Canada through the instrumentality of their Criminal Code of Canada.<sup>55</sup> However, the efficacy of this statutory provision that restrict questioning the victim of rape about past sexual relationship was short lived, as it was held to be unconstitutional in the case of Seboyer.<sup>56</sup> In this case of Seboyer, a young man was charged with sexual assault, he launched an appeal for the right to introduce evidence relating to the complaints sexual history before his case went to the Supreme Court of Canada and the majority decision of the court struck down most of the 1983 rape-shield provisions. It held that a blanket prohibition on the use of evidence of complainants past sexual history was too restrictive and jeopardizes an accused's right to fair hearing. While, section 146 of the Canada's Code<sup>57</sup> held it to be unconstitutional because it violated the Canadian Charter of Rights and Freedoms<sup>58</sup> that is the right to fundamental justice and fair trial. This immediately evoked public outrage in Canada because women's groups has assumed that the Criminal Code<sup>59</sup> would protect the use of irrelevant sexual history evidence.<sup>60</sup> They warned that victims would be unlikely to report rape once again because of apprehension that they would be subject to intense questioning about their sexual history<sup>61</sup>. In response, the Federal Government of Canada passed Bill C. 49, which embodied number of wide lines across-examination by the defence to re-establish the rape-shield. Accordingly, Nigeria should review our rape shield law by making it absolute for adequate protection of the child.

### **Need for Legislative Oversight in Rape Cases**

Legislative oversight is the process of surveillance by the legislators to forestall the enforcement of laws. The legislators leave their drafting desk to monitor the executive and judiciary for effective implementation of the law.<sup>62</sup> Hence, for the crime of rape to abate in this country, the law must be enforced for adequate protection of human rights. In the recent times, rape laws have been reviewed but Nigeria is waiting to see the efficacy of the law. The law will only become real and justice enjoyed when legislators provide mechanism to enforce the law. The rate of child rape is a serious concern because children are the future of Nigeria, hence the need to use constructive measures to protect them.

## **6. Conclusions and Recommendations**

The work observes that rape as violation of human rights, that must be addressed for effective national development. The study reveals that current global pandemic has exposed children to incessant rape. The work further revealed that despite, the review of extant laws, sexual violence still persists due to many factors that exacerbate rape, hence, the need for legislative oversight. The work recommends for total overhauling of our laws to make them to be in consonance with international best practices. Also there is need, for legislative oversight for effective implementation of relevant laws. There is need for adoption of Child's Right Act, hence the work recommends for urgent adoption of the Act for adequate protection of children. The work recommends for collaboration of Government and non-governmental organisation for protection of child's rights. Other necessary measures include effective legislative oversight, provision of correctional institutions, establishment of family courts in every state in Nigeria and adopting alternative best evidence in taking child evidence, domestication of the child's rights act and violence against person's (prohibition) act 2015, provision of conducive environment for the prosecution of rape cases, adoption of speedy trial, observance of constitutional rights in criminal and child justice administration, creation of awareness/continuous education to juvenile administrators, and employment of forensic psychologist in all the gamut of juvenile administration.

<sup>54</sup> Evidence Act Cap. 38 LFN 2011.

<sup>55</sup> Criminal Code Canada 1983, section 14

<sup>56</sup> (1991) 2 section. R. 557.

<sup>57</sup> Criminal Code Canada.

<sup>58</sup> Canadian Charter of Rights and Freedom section 7 and 11 (a).

<sup>59</sup> Criminal Code of Canada section 146.

<sup>60</sup> K. Tang Rape Law Reform in Canada the Success and Limits of Legislation International Journal of Offenders Therapy and Comparative Criminology (1993) pp.265-266.

<sup>61</sup> JJ Honer 'Sexual Assault: Public Debate and Criminal Law Reform' (Unpublished) Masters Theses (1995) University of British Columbia Canada.

<sup>62</sup> G.A, Arowolo, Oversight Function of the Legislature: An Instrument for Nation Building, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*; Vol 1, September, 2010