

**VIOLENCE AGAINST WOMEN AND GIRLS – RAPE AND DEFILEMENT BY HON. JUSTICE  
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It gives me great pleasure to be present at this conference and I thank the organizers for inviting me.

Rape is a crime under Nigerian Law and is defined as forcible unlawful sexual intercourse without a woman's consent. Section 357 of the Criminal Code reads:

'Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if consent is obtained by force or by means of threat or intimidation of any kind, or by fear of harm, or by any 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 called rape'.

The punishment for rape under section 358 is life imprisonment. As you can see, rape is a crime Nigeria takes very seriously because it is violence against women. The United Nations regards rape committed during wartime as crimes against humanity. From the definition of the crime, there are many elements or situations that constitute rape.

(1) First there must be unlawful carnal knowledge. You may ask, under the law what is unlawful carnal knowledge? The Criminal Code defines carnal knowledge in section 6 thus:

'When the term 'carnal knowledge' is used in defining an offence, it is implied that the offence, so far as regards that element of it is complete upon penetration'.

The same section 6 further defines 'unlawful carnal knowledge' as carnal connection which takes place otherwise than between husband and wife.' Therefore under Nigerian law, a husband cannot rape his wife.

There is also a similar crime called defilement which is defined under section 218 of the Criminal Code thus: Any person who has unlawful carnal knowledge of a girl under the age of 13 years is guilty of a felony and is liable to imprisonment for life.

As you may be aware, crimes are offences against the state and are prosecuted by the State through the Police and the Ministry of Justice. The victim is the complainant who reports the case to the authorities and gives evidence against the accused in court. Proof of penetration by the Prosecutor, establishes the offence of rape.

(2) Another important element to prove is consent. Did the victim consent to the sexual intercourse? The duty of the Prosecutor and the complainant therefore is to prove to the court that she did not consent to the rape. Of course the Accused person and his lawyer will struggle strenuously to prove to the court that there was no rape, first by demolishing any evidence of carnal knowledge. If however the Prosecution is able to prove that there was Carnal Knowledge, then the Defence will move to prove that the victim consented to the sexual intercourse.

A careful reading of the definition of rape in our law shows that consent may be obtained by force, threat or intimidation, fear of harm or by false and fraudulent misrepresentation. Please can someone from the audience give me an example of circumstances that may be regarded as intimidation?

Under our legal system, a case is proved by evidence led. This evidence must be believable, credible and consistent. Under our criminal justice system, the Prosecution must prove its case beyond all reasonable doubt. Once doubt is established in the mind of the Judge, the case will fail. Our system is what we call the adversarial system. The defense's duty therefore, is to create a doubt in the mind of the Judge.

As a former Public Prosecutor in the then Bendel State Ministry of Justice, I can assure you that the offence of Rape is one of the most difficult crimes to prove in court. Meaning the accused persons usually goes Scot free. Why?

Let us first look at the offence. Forcible intercourse is not what is usually done in the public. There are usually no eyewitnesses to the crime. It is usually the complainant's words against the accused person's to therefore secure a conviction, the Prosecution therefore also depends heavily on circumstantial evidence.

Another challenge is poor police investigation. A case is usually won or lost depending on the quality of police investigation. When a rape is report to the police, the investigating officer is expected to rush the victim to the hospital immediately. There the doctor would examine, treat and record the medical condition of the victim. If force was used it would be obvious on the body of the victim. If there was penetration and ejaculation, the Medical Doctor would be able to extract the rapist's bodily fluids for forensic analysis. Medical evidence is crucial in supporting the victim's testimony.

Unfortunately in Nigeria, rape investigation is very shoddy. There was a case I handled where the police did not conduct medical examination until 10 days after. Obviously the doctor cannot be expected to make any worthwhile examination or conclusions. There was however another rape case I did where the doctor was able to identify a similar strain of STD on both the victim and the accused.

My wish is that our medical and forensic examinations here in Nigeria, advances to what obtains in the West, where minutest clues are able to identify suspects. We need to be able to use DNA to conclusively link accused persons with crimes.

Another challenge faced in rape investigations is the dearth of female police officers. Male police officers from my experience are not sufficiently sensitive to the plight of the victims. A rape victim is psychologically traumatized and may not even be coherent when making her complaint. My experience is that the male desk sergeant is usually unsympathetic and they treat the victims as if they asked for it. Even when they are sympathetic, how many females can discuss such a traumatic and dehumanizing experience with another man? The details are too intimate. I once did a defilement case where the Investigating Police Officer was female, the police Prosecutor was female, I was there holding a brief on behalf of the complainant and the Magistrate was female. What do you expect, everything about the case was well executed and I am happy to announce that the Accused was convicted and sentenced to 7 years in Oko Prisons.

Another challenge faced by victims is during trial, when the Defence Counsel will do everything in his power to discredit the complainant. They would try to show that she was loose morals or that she seduced him or encouraged him one way or the other.

The Defence Counsel and the Accused would usually intimidate the victim, who usually when she sees the Accused, is still afraid of him and would begin to relive the experience all over again.

In compliance with the provisions of Section 358, penetration has to be proved. How do you do that? By leading evidence to show that intercourse took place. This is usually very explicit and most victims are very embarrassed giving such evidence in court.

However if it is not explicit, the court will hold that penetration was not proved by the Prosecution. It is therefore not enough for the victims to say he used me, or he had sex with me. It must be explicit.

I pray that you may never experience rape or defilement in your life. There is now a growing incidence of gang rape, which was previously not too common in Nigeria. Since 2001 our organization releases a yearly report on recorded instances of violation of women's rights. Rape is real and we owe it to ourselves to do everything possible to prevent it. We have published 2006 reports and at pages 86, 88, 94, 95, 96-98 you can read about cases of rape that occurred in 2006. Our research has shown that rape, defilement and gang rape are on the increase most especially in urban areas. Only recently a newspaper reported that a pregnant woman was gang raped to death in Abuja. It is therefore better for us all to be proactive and security conscious because as they say 'prevention is better than cure'.

Rape often occurs in lonely places, in the dark or sometimes in the home. It is therefore important that we do not expose ourselves unnecessarily to risk. In a case I handled, a victim was gang raped when she was walking alone at 11 pm on the Lagos-Ugbowo expressway. The men, who were on a motorbike, simply pulled her to the nearby bushes. Can you imagine! I consider her action a huge risk! Rape or gang rape can also occur at parties where your drinks may be spiked without you knowing. You are all aware of the case of Cynthia whose drink was spiked by her facebook friends, she was subsequently gang raped and murdered. Always be on the alert, don't ever leave your drinks unattended to and make sure bottles are opened in your presence.

Another source of risk are commercial motorbike riders. I know of two cases where girls were raped by Okada riders who picked them up from the motor parks. The girls were travelers and did not really know their way around. The riders took them to their den and gang raped them there. I was in two separate police stations here in Benin City when the reports were made. Gang rape is also common during armed robbery attacks. Well in this case there is nothing we really can do except hope and pray that we are never victims of armed robbery, or if we are, that it never occurs to the robbers to commit rape.

You owe it to yourselves to be security conscious in order to keep your lives healthy, safe and happy.

Thanks for listening to me.

Hon. Justice Nogi Imoukhuede Nogi Imoukhuede, Project Coordinator, Women's Rights Watch

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