

REDEFINING RAPE IN NIGERIA: LESSONS FROM THE UNITED KINGDOM

By

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Abstract

Rape is a pervasive and complex issue that has long been a subject of intense legal and societal discourse, particularly in Nigeria. The traditional definition of rape, which is often centered around the use of physical force or the absence of consent, has been criticized for its narrow scope and failure to address the nuances of sexual violence. In recent years, the United Kingdom has taken significant strides in redefining the legal conceptualization of rape, with the aim of better protecting victims and addressing the evolving nature of sexual offenses. The authors explore the lessons that Nigeria can learn from the United Kingdom's approach to redefining rape, examining the key changes in the UK's legal framework, such as the expansion of the definition of consent and the recognition of non-physical forms of coercion. The authors critically analyze the current state of rape laws in Nigeria, identifying the shortcomings and limitations of the existing legal framework. Drawing on the UK's experience, the authors propose a comprehensive reform of Nigeria's rape laws, focusing on the need to broaden the definition of rape, incorporate a nuanced understanding of consent, and address the unique challenges faced by marginalized communities.

Keywords: Lessons, Nigeria, Rape, Redefining, United Kingdom

1.0 Introduction

Rape is a crime considered a moral wrong and disgust for the victim in most societies. The incident of rape is generally construed as that involving either forcefully having sexual intercourse with a female against her wish or other coercive approaches like luring or promising jobs or gainful employment with the intent to molest.¹ According to sociology, rape and other forms of sexual offences like incest, fondling, and sexual harassment are classified and defined as sexual crimes. In pre-colonial Nigeria, illicit sexual offences were individual familial matters. There were methods used to punish the rapist and restore the honour of the victim's family, and this involved court proceedings unique to the individual culture in which the rape occurred.²

Following colonial rule in Nigeria, rape and other forms of sexual offences were incorporated into Nigerian statutory, criminal laws under the Nigerian criminal code act of 1916 and the penal code act of 1959. There have been some loopholes in the statutory definition of rape offences in Nigeria, which

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¹ Definition of Rape & Sexual Assault by the UK Metropolitan Police available at <https://www.met.police.uk/advice/advice-and-information/rsa/rape-and-sexual-assault/what-is-rape-and-sexual-assault/#:~:text=All%20rape%20and%20sexual%20assault,without%20the%20other%20person's%20consent.> assessed on the 19/08/2024

² Idoko CA, Nwobodo E, Idoko CI (2020). Trends in Rape Cases in a Nigerian State. *Afr. Health Sci. Jun*; [2020] Vol. 20 (2) 668-675. Doi: 10.4314/ahs.v20i2.17. PMID: 33163030; PMCID: PMC7609073.

a review of the Nigerian rape statute attempted to address. Most cultures in Nigeria did not consider women worthy of the privileges, right, and freedom enjoyed by men. Although there is no objective measure of how deep rooted is the anti-women cultural bias, these cultural stereotypes against women have persisted in Nigeria since the inception of most indigenous cultures. Studies have shown that social stereotypes, stigma, and prejudice often against the victim's reek "common knowledge," "wisdom," or "wisdom stones" against the disclosure of illicit sexual offences.³ Unfortunately for Nigerian women, these cultural stereotypes and misconceptions have filtered into and are often observed by the conventional criminal justice system.

Rape has remained a profoundly complex social challenge in Nigeria, shaped by a backdrop of interethnic violence and religious conflicts. These factors compounded by a rapidly growing youth population, pervasive poverty, and unemployment levels that have reached 35% among educated youth, have created a favorable environment for the prevalence and perpetuation of violence against women and girls. Incidents of rape have proliferated in harrowing ways in fighting against the COVID-19 pandemic, which, unfortunately, coincided with the lockdowns imposed on numerous states, schools, markets, and worship centers.⁴ Public space and movement around communities either became impossible or reduced to a slim few during the lockdowns. Meanwhile, schools remained shut for nearly six months since late March 2020. This created a very unwholesome environment for many girls and women who became increasingly vulnerable to violence.

Despite the enactment of the Violence against Persons (Prohibition) Act (VAPP) in 2015 and its collective state accompaniments in recent years to prohibit domestic violence, harmful widowhood practices, female genital mutilation, abandonment of persons with disabilities, and similar acts, the already established social attitudes toward rape and societal frames have remained unchanged. Besides, the global and local media attention received by some high-profile rape incidents as well as the subsequent advocacy for justice in some cases have evidenced prayers for contemporary societal frames and attitudes toward rape in Nigeria. This outcome is by no means a coincidence with the recent global activism to end sexual harassment and violence against women in several occupational spaces. In this activism, many women courageously speak out and share the narratives of their experiences of harassment and violence.⁵

2.0 Historical Context of Rape Laws

Rape was traditionally understood at common law as an act of sexual intercourse with a woman, committed non-consensually and accompanied by the "carnal knowledge of a woman by force and against her will."⁶ In essence, rape is an offense committed by men against women, absent the agency of the women. Men who perpetrated sexual assaults were considered guilty of assault but not of a specific rape offense if the complainant was not a woman. The practice of excluding nonconsensual sex with men, minors, slaves, or individuals under the influence of drugs or alcohol from the crime of rape

³ A. Aborisade, 2014. Barriers to Rape Reporting for Nigerian Women: The Case of female University Students. *International Journal of Criminology and Sociological Theory*, Vol. 7, No. 2, December 2014, 1-14

⁴ Definition of Rape & Sexual Assault by the UK Metropolitan Police (n1)

⁵ Hanson-DeFusco J, Smith EG Jr, Ngafuan RF, Dunn WN (2018). Conducting Ethical Field Research on Rape in West African Settings: Case Study of 2018 Liberian Field Survey. *Healthcare (Basel)*. 2023 Nov 28;11(23):3053. doi: 10.3390/healthcare11233053. PMID: 38063621; PMCID: PMC10705962.

⁶ Adoch C. Defining Rape: The Problem with Consent. *Strathmore Law Journal*, Vol. 6, Issue 1, [2022] 71-92.

led to a narrowing and a selective dimension to the rape laws. During many centuries, sexual assault was generally classified into a spectrum of penalties based on the identity of the victim and the severity of physical injury.⁷

In 1994, and following sustained pressure from women's groups, the United Kingdom incorporated the recognition of digital penetration and strict liability offenses in the sexual assault laws. Now rape in the UK and as landed from the House of Lords decision in *R v. A (No. 2)*⁸ is considered a gender-neutral offense. The UK incorporated several suggestions from the Sex Offences Review chaired by Baroness Helen Kennedy and Lord Alf Dubs in 2000, and one of these was the recognition of the archaic components of rape to reflect the modern position of non-consensual sex involving only the male sex organ.⁹ These changes were seen to make the laws reflective of the modern majority understanding of rape, while providing an inclusive platform about consent, rather than adherence to the traditional definition of rape as being penile-vaginal intercourse. The modified laws provided a statutory context for the judgments in *R v. Healy*¹⁰ and the New Zealand case of *DPP (NZ) v Taito*.¹¹

2.1 Evolution of Rape Laws in Nigeria

Before the advent of the British colonialists, people living in the area now known as Nigeria had principles against the act of rape, as they do now. Indigenous law-making bodies, both in centralized societies, made laws against the act of rape and established sanctions to discourage the prevalence of these uncivilized acts. In particular, Festus Okada Obi asserts that "In communal settlements, the power to make laws to regulate the affairs of the community with the legal force of sanctions came from within" - the "Council of Elders and Chiefs". The traditional method of crime minimization was based on the premise that morality was important for the smooth functioning of society.¹²

In later years, with the advent of formal colonial rule in Nigeria, the British imposed laws against the act of rape, based largely on their portrayal of traditional laws. From the definition of laws imposed, it is clear that the main purpose of these criminal laws was to preserve and protect women, who have always been seen as the weaker sex in Nigerian society - a society that is patriarchal in nature, whether it be community or society at large - from the evils of rape. Rape was seen to be a crime against the husbands or heads of households whose duty it was to protect and preserve the chastity and purity of the women within their household. Rape was seen as an assault on the purity of the women within, degrading to the owner of such a wife.¹³

Rape laws in Nigeria, before and after colonization, reflect, in most parts, the values of British colonialists and imperial values. Hence, the jurisprudence of rape laws in Nigeria, from western-based

⁷ Mastel A. Emotional Responses of College-Age Women Who Have Experienced Non-consensual Sex Not Traditionally Considered Rape: A Grounded Theory. (2022) Available at <https://www.proquest.com/openview/356adbb060397247ee1c41e39a7f005d/1?pq-origsite=gscholar&cbl=18750&diss=y> assessed on the 16/08/2024

⁸ *R v A (No.2)* [2001] UKHL 25; [2002] 1 AC 45

⁹ Dowds E. *Redefining consent: rape law reform, reasonable belief, and communicative responsibility*. *Journal of Law and Society*. (2022); 49:824-847.

¹⁰ [1999] VSCA 219

¹¹ [2010] NZCA 556

¹² Abimbola, Foluke Olujemisi, Stanley Osezua Ehiane, and Roman Tandlich. Women's Rights in Nigeria's Indigenous Systems: An Analysis of Non-Discrimination and Equality under International Human Rights Law. [2023] *Social Sciences* 12: 405.

¹³ Kokpan, Bariyima and Agunia, Billion and Nwini, Faith Yigabari. Nigerian Women and the Law: A Protectionist Approach (November 25, 2021). *Boston University Public Interest Law Journal*, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=4017430> or <http://dx.doi.org/10.2139/ssrn.4017430> assessed on the 16/08/2024

criminal codes, by way of Roman Dutch laws, is based on British colonial values and is tainted with over 400 years of supreme prejudice. It has seen little or no consideration given to the true experience of the full force of rape by the victims of male rape and sodomy, who used to be seen as objects. Rape laws in Nigeria are based on a socio-historical hierarchy of values of sensuality and sexuality and are severely limited in failing to address the anguish of the victims.¹⁴

2.2 Evolution of Rape Laws in the United Kingdom

The offence of rape in the United Kingdom, apparently, developed out of the common law, preserving the requirement of no defined legal contemplation. This fact ensured the muddled application of the common law definitions, imposing male penetration, completion, the use of force, and at least negligible consent. However, reforms commenced in 1956 as private member's bills were introduced into the UK Parliament to expand the definition of the offence.¹⁵

The recommendations of the Criminal Law Revision Committee for the enactment of the Sexual Offences Bill, and consequently the passage of the said Bill in 1956, made a significant impact on rape laws in the United Kingdom.¹⁶ Firstly, it is to be noted that they recommended a largely gender-neutral definition, empowering either gender to commit the offence of illegal sexual intercourse. Further, it suggested reducing the scope of force required by including gross penetration, and that consent should be statutorily defined to denote conscious, deliberate, and informed consent. Also, the Commission had already recommended that certain classes of women - those lacking legal capacity, or victims of threats, or deception, or whose capacity is diminished by intoxication - ought to be deemed unable to consent. This recommendation, predating the actual reforms, was also duplicated in the aftermath to ensure that those incapacitated readily do not become the victims of a potentially creation of a consent mystique.¹⁷

3.0 Current Legal Frameworks

The major implication of the distinction between the legal framework in England and Wales and Nigeria is that there are unwarranted delays in the trial of alleged sex offenders in Nigeria. Oyebode claimed that while the British system allows sex offence cases to be heard in a maximum of 13 weeks, cases are sometimes tried the same day or in a few days. The Nigerian system allows trials to go between 5 – 10 years.¹⁸ It is strongly argued that the huge difference in trial time is due to the quality of the legal framework – that is the procedures for trial.

Speaking of the entire legal framework, the focus is on identifying the various issues in specific sections of the Penal Code, Cap. 89, Laws of Northern Nigeria, 1963 (hereinafter, Penal Code). The Penal Code is the applicable law in the North of Nigeria. Other than polygamy, adultery, and marriage contracts,

¹⁴ Ogunfolu A., Adejumo, O. *The Role of the Courts in Addressing Sexual Harassment in Nigeria*. In: Durojaye, E., Nabaneh, S., Adebajo, T. (eds) *Sexual Harassment, Law and Human Rights in Africa*. (Palgrave Macmillan, Cham. 2023) https://doi.org/10.1007/978-3-031-32367-6_11

¹⁵ Cowan C. & Munro V. E. Seeking campus justice: challenging the 'criminal justice drift' in United Kingdom university responses to student sexual violence and misconduct. *J Law Soc.* [2021]; 48:308–333. Available at <https://doi.org/10.1111/jols.12306>, assessed on the 16/08/2024

¹⁶ Alencar T., Conditional Consent and Sexual Crime: Time for Reform? *The Journal of Criminal Law* [2021], Vol. 85(6) 455–465

¹⁷ Murray, K. L. & Beattie, T., Conditional Consent and Sexual Offences: Revisiting the Sexual Offences Act 2003 after Lawrance. *Criminal Law Review* [2021] (7), 556–574.

¹⁸ Hanson M.D., An Examination of Challenging Issues on Sexual Offences in Nigerian Criminal Law Jurisprudence. *International Journal of Recent Research in Social Sciences and Humanities (IJRSSH)* [2023] Vol. 10, Issue 2, 140–149

the Penal Code addresses rape. First, and ironically, despite the passing of the Child Rights Act (CAP 6, Laws Federal Republic of Nigeria, 2003) and the Permission of Habeas Corpus Act, in Section 282, the Penal Code defines a child as a person of less than fourteen years.¹⁹ Second, even the definition of rape fails to specifically define the crime.

3.1 Comparison of Nigerian and UK Rape Laws

Before tracing the extensive and nuanced evolution of the rape laws in the United Kingdom and comparing them to the laws of Nigeria, it is of utmost importance to begin by comprehensively understanding these laws and precisely defining the offence of rape. Within the United Kingdom, the definition of rape has sparked intense debate and controversy, primarily surrounding the requisite level of *mens rea*.²⁰ The esteemed Lord Steyn astutely acknowledged this contentious issue in the landmark case of *R. v Morgan*²¹ by eloquently stating the following: Rape, without question, represents one of the most gravely heinous offenses that society abhors. This alarming recognition is precisely why the rape statutes identify it as an offence of unparalleled severity to the point that, when unable to prove rape, the prosecutorial authorities may choose to pursue a charge of indecent assault, which, although serious in its own right, pales in comparison. The quandary arises as to how far the requirement of *mens rea* should be mitigated when the accused's belief is founded on grounds that can only be described as, at best, tawdry and, at worst, reprehensible. The common law embodies society's collective judgement that, save for the most extraordinary circumstances, within a civilized jurisdiction, the *mens rea* requirement should be inviolable, without any exceptions.²²

This intricate legislative framework within the United Kingdom is derived from a combination of influential statutes, namely the Sexual Offences Act of 1956, the Criminal Law Amendment Act of 1976, the Criminal Law Act of 1977, and the Sexual Offences Act of 2003. These statutes collectively shape and delineate the legal landscape surrounding rape within the United Kingdom, reflecting the evolution and development of the law over time to address pressing concerns and adapt to shifting societal values. Through a detailed analysis of these legal instruments, it becomes evident that the United Kingdom has strived to establish a comprehensive and effective legal framework that upholds the rights of victims, prosecutes offenders, and seeks to eradicate the abhorrent crime of rape from society. By delving into the historical context and legislative updates, it is possible to gain a profound understanding of the factors that have influenced and shaped the current state of UK rape laws.²³

Conversely, to undertake a meaningful comparison between the rape laws of the United Kingdom and those of Nigeria, it is crucial to examine the unique historical, cultural, and legal contexts that have shaped the legal systems of both countries. Such an analysis will illuminate the divergences and convergences between the two jurisdictions, shedding light on the differing approaches, priorities, and challenges faced by each country in combating the heinous crime of rape. By undertaking a comparative exploration, it is possible to identify best practices, evaluate shortcomings, and foster a mutually

¹⁹ Leverick, F. (2021) Improving the management of sexual offence cases in Scotland: the Dorrian Review. *Edinburgh Law Review*, [2021] 25 (3), 385-393.

²⁰ Brewis B., & Jackson, A., Sexual Behaviour Evidence and Evidence of Bad Character in Sexual Offence Proceedings: Proposing a Combined Admissibility Framework. *The Journal of Criminal Law*, [2020] 84(1), 49-73.
<https://doi.org/10.1177/0022018319891260>

²¹ [1976] A.C. 182

²² Alencar T. (n16)

²³ Cowan C. (n15)

beneficial exchange of knowledge and experiences between the United Kingdom and Nigeria in the pursuit of justice and protection for victims of rape.²⁴

4.0 Challenges and Criticisms

Scholars have pointed to the challenge that may arise in the adoption and use of consent by the courts, given the wide disparity in the perceived understanding of what really amounts to consent between men and women.²⁵ In the UK, judges have, particularly in the 1980s and 1990s, been accused of testing sexual activities that were brought before the courts against the backdrop of what judges were prepared to define as non-consensual sexual activities, thereby denying most deserving victims access to the only available legal route.²⁶ The criticism has gone as far as to label this the second rape. Judges were often testing victim action against the backdrop of white and middle-class relationship norms and returning verdicts that either absolved the defendant or resulted in a trivial charge against the defendant, due to the jurors assessing the complainant's conduct against what they saw as acceptable female behavior.²⁷

This challenge may be more severe for Nigeria, as the average Nigerian has a different or even no understanding of consent at all. The challenge will be even greater for courts as a consequence of the existence in Nigeria of a number of cultures with disparate social and cultural norms that clearly dictate what is seen as consensual and non-consensual sex. Thus, any attempts to redefine rape to enable some amount of workability into the definition, particularly when it is not borne out of a bottomless and broad-based well of understanding of the term, as may be the motivation for assaults by English courts, are bound to generate opposition and therefore fail.

4.1 Implementation and Enforcement Issues

The UK has shown that a broadened definition of rape may be combined with some form of check on official discretion. Its Criminal Justice and Public Order Act provides that statement extracts by or on behalf of the DPP should be made publicly available, either by drawing up a scheme 'under which certain documents or classes of documents could be made available to the public' or by entering into an appropriate agreement with any person, allowing access to those documents. The Act contains a provision that a Secretary of State's consultation process seeking consensus from the various interest groups in its Legislatures should accompany any refusal. When the decision is taken, the grounds for refusal should be communicated to the parties.²⁸

While these safeguards against legislative arbitrariness and executive excess are necessary for they can perhaps be manipulated or otherwise abused – they would not suffice without much more rigorous monitoring of the system by the criminal justice community, the community in which the justice process takes place, and the informed media. Given the social nature of justice, all these groups must apply

²⁴ Ogunfolu A (n14)

²⁵ Leahy, S., Female Sex Offenders in Ireland: Examining the Response of the Criminal Justice System. *Journal of Contemporary Criminal Justice*, [2020] 36 (4), 539-558. <https://doi.org/10.1177/1043986220936116>

²⁶ Lindsey J, Harding R. Capabilities, capacity, and consent: sexual intimacy in the Court of Protection. *J. Law Soc.* [2021] 48:60–83. <https://doi.org/10.1111/jols.12278>

²⁷ Brewis B. (n 20)

²⁸ Sleath, E., & Bull, R., Police perceptions of rape victims and the impact on case decision-making: A systematic review. *Aggression and Violent Behavior*, [2017] 34, 102–112.

renewed energy to the task of persuading juries about their responsibilities.²⁹ Even when there are practical difficulties of getting evidence in a given case, a constant emphasis on the way the legal structure for the judgment of the reasonableness of a 'mistaken belief' operates, particularly in the context of existing social perspectives about the process of 'seduction' and the role of African women in this process, is required.³⁰ Only then could we be confident that juries were basing their decisions on more rational foundations. If the legal change is not supported by a perceived change in the social meaning of consent, it is hard to see how women who fall outside the 'citizenship' relationship will be advantaged.

4.2 Societal Attitudes and Stigma

The societal value attached to purity influenced historical cases of rape trials, but its influence today seems somehow weakened. Nonetheless, society generally looks askance at the exhibition of certain forms of non-normative sexual behavior, and victims are distinguished for discriminatory treatment.³¹ The rules relating to admissibility of evidence are not necessarily reflective of this social reality, which makes the sparsity of evidence due to concomitant delays in reporting, the state of the evidence, or the jury's bearing rather unfortunate. Public opinion against laws that reduce the complainant's sexual history to evidence in the courts does not help either. The truth is that public opinion is always likely to be split on the balance to be struck between the rights of the defendant and the need to prosecute effectively. Refusing to level the playing field will certainly be against the interests of the criminal justice system.³²

The preparation of the complainant for what may amount to public dissection cannot cater for the full protective needs of the complainant. If anything, Women's Aid Federation of England says of its victims of rape "they suffer physical illness, self-harm, low self-esteem, long-term emotional problems, and disturbed sleeping patterns."³³ Since there continues to be a stigma attached to being a victim of rape, many suffer this indignity and health problems without telling anyone. This is not only disabled, very young, old, or particularly feeble complainants or those outside the protection of anonymity. The other "class of subjects that have been traditionally the least required" suffers in this manner.³⁴ Rape victims remain stigmatized by lawyers and the process at all times, at least partly because of the intense spotlight on their sexual behavior and history. In the end though, the need for a fair trial will always prevail.

5.0 Victim Support and Justice

The position of the Minister for Women and Equality (MWE) in the United Kingdom is that "rape is one of the most intrusive forms of violation capable of being committed. It is about power and control;

²⁹ Marie Manikis, Conceptualising the Victim in England and Wales and the United States within a Spectrum of Public and Private Interests, *Oxford Journal of Legal Studies*, [2021] Vol.41 (1), 219–242, <https://doi.org/10.1093/ojls/gqaa032>

³⁰ Findlay Stark, Judicial Development of the Criminal Law by the Supreme Court, *Oxford Journal of Legal Studies*, [2021] Vol. 41, (1), 1–29, <https://doi.org/10.1093/ojls/gqaa031>

³¹ Klement, K.R., Sagarin, B.J. & Skowronski, J.J. The One Ring Model: Rape Culture Beliefs are Linked to Purity Culture Beliefs. *Sexuality & Culture* [2022] 26, 2070–2106. <https://doi.org/10.1007/s12119-022-09986-2>

³² : Tenaw LA, Aragie MW, Ayele AD, Kokeb T, Yimer NB Medical and psychological consequences of rape among survivors during armed conflicts in northeast Ethiopia. *PLoS ONE* [2022] 17(12): e0278859. <https://doi.org/10.1371/journal.pone.0278859>

³³ Weare S., "I Feel Permanently Traumatized by It": Physical and Emotional Impacts Reported by Men Forced to Penetrate Women in the United Kingdom. *Journal of Interpersonal Violence*, [2021] 36(13-14), 6621-6646. <https://doi.org/10.1177/0886260518820815>

³⁴ Hendrikx LJ, Williamson V, Murphy D, *BMJ Mil Health* [2023] 169, 419–424

about humiliation and domination."³⁵ This powerful statement underlines how deeply the victim of rape is affected, both psychologically and physically. Because of the trauma and deprivation that result from being raped, discrepancies exist between the aim of the law and the reality of the situation, particularly if it is maintained that where nationalism prevails or societal inequality gives rise to an unduly parliamentary over-stating of disapproval and strictness in an area.³⁶

The anxiety of the policy is to seek to reinforce the willingness to take action against the crime. The argument underpinning both the anxiety of the policy and the judiciary is that encouraging victims to report rape will enable such cases to be brought before the court.³⁷ This, in turn, will make it more likely for some – and preferably all – rapists to be convicted. If victims avoid the criminal justice system, the offender will remain free, and he will be free to perpetrate the same offense again on someone else. However, justice has always been a double-edged sword because of physical and psychological symptoms and expert pressure on victims themselves, which the legal process may bring to them.³⁸ The aim is therefore two-fold. First and foremost, it is to provide the victim with the care and support she requires to obtain physical and psychological recovery. Secondly, it is to gain her trust and encourage her to move forward through the criminal justice system. Yet although the United Nations (UN) and the European Union (EU) both recognize the need for this, they are met with a series of recommendations for the states. Such recommendations are not enforced, hence the response from the international law forum is acquiescence and little else.³⁹ Yet both the UN and EU will come into conflict with the states, not only because they deny the reality of the situation but also because the organizations ostensibly ignore the political and influential power of world nation-states. As the phenomenon of rape crosses governments' striving for dominance, it inevitably becomes a matter of national importance, and such reforms as might suffice as warnings to individuals to avoid the harm that might be done to them are overshadowed and lost in the greater scope of national interest.⁴⁰

5.1 Support Services in Nigeria and the UK

Support from both non-governmental organizations (NGOs) with a core focus on sexual violence services, and those without a core focus on sexual violence, among others, is critical to rape victims at different stages of the criminal justice system. Many NGOs have influenced government policies on sexual violence, in addition to providing free support services to victims.⁴¹ The UN Chief, in a speech,

³⁵ Barn, R., & Powers, R. A., Rape Myth Acceptance in Contemporary Times: A Comparative Study of University Students in India and the United Kingdom. *Journal of Interpersonal Violence*, [2021] 36(7-8), 3514-3535. <https://doi.org/10.1177/0886260518775750>

³⁶ : Cowan C. & Munro V. E. Seeking campus justice: challenging the 'criminal justice drift' in United Kingdom university responses to student sexual violence and misconduct. *J Law Soc.* [2021] 48, 308–333. <https://doi.org/10.1111/jols.12306>

³⁷ Spohn CW, Sexual assault case processing: The more things change, the more they stay the same. *International Journal for Crime, Justice and Social Democracy* [2020] 9(1), 86-94. <https://doi.org/10.5204/ijcjsd.v9i1.1454>

³⁸ George, S. St., Verhagan, M., & Spohn, C. Detectives' Descriptions of Their Responses to Sexual Assault Cases and Victims: Assessing the Overlap Between Rape Myths and Focal Concerns. *Police Quarterly*, [2022] 25(1), 90-117. <https://doi.org/10.1177/10986111211037592>

³⁹ Hail-Jares, K., Lowrey-Kinberg, B., Dunn, K., & Gould, J. B., False Rape Allegations: Do they Lead to a Wrongful Conviction Following the Indictment of an Innocent Defendant? *Justice Quarterly*, [2018] 37(2), 281–303. <https://doi.org/10.1080/07418825.2018.1486449>

⁴⁰ Lovell R. E., & Dissell, R., Dissemination and Impact Amplified: How a Researcher–Reporter Collaboration Helped Improve the Criminal Justice Response to Victims with Untested Sexual Assault Kits. *Journal of Contemporary Criminal Justice*, [2021] 37(2), 257-275. <https://doi.org/10.1177/1043986221999880>

⁴¹ Emeka Thaddues Njoku & Joshua Akintayo, Sex for survival: Terrorism, poverty and sexual violence in north-eastern Nigeria, *South African Journal of International Affairs*, [2021] vol. 28 (2), 285-303, DOI: 10.1080/10220461.2021.1927166

noted the central role of women activists in getting the government of a country to make the appropriate legislative changes to recognize that sexual violence in war is indeed a crime. Many NGOs have also worked with both victims and the media to reduce the stigmatization that victims may encounter, which can be severe due to the sexual nature of the crime. NGOs can also provide support in the immediate aftermath of the crime.⁴²

The importance of victims reporting crime to the police within policy responses to sexual violence issues is widely recognized by commentators. This importance is reflected in research findings showing a low level of reporting of sexual violence, in comparison with other crimes. Due to the prevalence of the under-reporting of sexual violence by victims, official statistics on this crime are 'tip-of-the-iceberg' material. Under-reporting might put pressure on limited resources, with serious implications for the management of the police service, including the poor availability of resources. Nonetheless, the distinct orientation in the literature to the low number of reported cases to the police should not obscure the fact that there are instances of sexual violence resulting in formal law-enforcement responses.⁴³

6.0 Legal Reforms and Recommendations

It is my view that the current Nigerian legal framework criminalizes incidents similar to rape, but rather than label these incidents as rape, we absolve them into other defilement categories. Legal restructuring is thus imperative. The view should be that a focused and strict rape law, assessed by established legal tests of necessity and proportionality, could serve either as a deterrent, victim's protection, and punisher. This could be done by simplifying the elements of rape further - it should be non-consensual penile-vaginal penetration. One may ask, and it can be said that the pros and cons of other forms of penile penetration have been weighed, but relieving the connotations of rape by confining it to penile-vaginal penetration could potentially toughen the punishment so that only the most violable, despicable, reprehensible of gravitational offenses constitutes rape.

Since sexual gratification, rape cannot be defined solely on the basis of a culprit's pleasure or satisfaction, conformity to a broader perception of rape will typically be disputed.⁴⁴ As Canada's parliament passed a bill in 1980, which was subsequent to more generally define rape, in countries such as Canada and Australia, traditional prohibitions have replaced broader prohibitions, primarily with respect to consent, through case law.⁴⁵ Only in certain jurisdictions (such as England), however, has the law been reshaped by legislation. In our view, and is confirmed in the dialogue, changing attitudes towards rape and achieving law reform calls for hard, difficult, long-winding work. It is necessary, there has to be policy change, followed by enforcement and, using what Oluwole very resolutely terms "re-education," there is a belief that societal attitudes have to go alongside the reforms.⁴⁶

6.1 Proposed Changes in Nigeria

⁴² Eisenberg, M. E., Lust, K., Mathiason, M. A., & Porta, C. M., Sexual Assault, Sexual Orientation, and Reporting Among College Students. *Journal of Interpersonal Violence*, [2021] 36 (1-2), 62-82. <https://doi.org/10.1177/0886260517726414>

⁴³ Horvath, M. A. H., Tong, S., & Williams, E., Critical issues in rape investigation: An overview of reform in England and Wales. *The Journal of Criminal Justice Research*, [2011] 1, 1-18.

⁴⁴ G., Lise. "Policy Discourses on Sexual Violence: From the Royal Commission to the (Post-)Neoliberal State". *Feminism's Fight: Challenging Politics and Policies in Canada since 1970*, edited by Barbara Cameron and Meg Luxton, (University of British Columbia Press, 2023), 153-176. <https://doi.org/10.59962/9780774868051-007>

⁴⁵ Aluko-Arowolo S, Lawal SA, Adedeji IA, Nwaobilor S., Ethical Relativism and Circumstances of Social and Cultural Contingencies on Informed Consent in the Conduct of Research: Clinical Trials in Nigeria. *Asian Bioeth Rev.* [2022] 13;15(1), 37-52. doi: 10.1007/s41649-022-00223-4. PMID: 36618955; PMCID: PMC9816358.

⁴⁶ Lovell (n 40)

The operation of the 'mistaken belief clause' should be taken seriously, especially in situations where the charge is rape. It seems that Nigerian legislators neither have a clear public policy as to where the mistakes of facts regarding consent for the woman stop, nor are they enforcing that policy. The call to enact the new statutory definition of rape largely remains unattended to. All states in Nigeria still employ the General Act, which is ancient and does not even capture focus areas in sentencing, such as the use of explicit violence. Instead of using the element of force or threat of force as a condition for consent, it is submitted that consent in respect of sexual offences should only be real for adult women (there is no consent in sex for children).⁴⁷

Just like in the UK, a factual belief in consent should replace the statutory belief. The significance of the word "knowingly" in proving the *mens rea* for the offence should be crystallized through fair knowledge tests. Once it has been proven that the accused possessed the factual knowledge regarding the absence of consent, the burden should shift to the defendant to disclaim possession of fair knowledge.⁴⁸ A similar reasoning should be applied to negligence by the accused and ignorance or emotional compulsion on the part of the complainant, where both were speculatively present as to the complainant's absence of knowledge. The argument that some evidential corroboration or causal link should exist before the accused can be convicted would take precedence over reasonableness of an individual self-defence or mistake as assumptions, and is in line with the civil liberty analysis here as well. If UK judges are at their wits' end, there is no doubt that the so-called high standard should be worrying the conscientious Nigerian judge as well.

6.2 Lessons from UK Reforms

The Sexual Offences Act, 2003 has effectively swept aside most of the difficulties with the manner in which rape had previously been defined. It now provides that a man commits rape if: he has penile penetration of the vagina, anus or mouth by the penis with any person; the penetration is sexual; and, the victim does not consent to the penetration and the defendant does not reasonably believe that the victim consents. The act also provides that a woman, the Vaginal Sex Offences Act 2003 criminalizes non-consensual vaginal penetration of another person by what amounts to false representation - namely the use of false consent or the representation that there is no risk of disease from intentional transmission of infection. The act expressly provides for some circumstances that negate the accused belief.⁴⁹

The current definition of rape is by no means ideal. The compromise reached was supposed to work for some time until a comprehensive Bill on the laws against sexual offences could be discussed. Efforts are currently ongoing by the UK Home Office to introduce new reforms in this area. It might therefore be difficult to argue that the statutory definition in the UK is very much superior to the rather awkward hodgepodge of colonial enactments in Nigeria's criminal codes.⁵⁰ However, the process by which the UK has long recognized and dealt with various forms of sexual assaults is significant.⁵¹ It offers important lessons to Nigeria in terms of the recognition and criminalization of non-penetrative sexual

⁴⁷ Aligba, Tijah & Raphael, Evolving Trend and Spike in Incidents of Rape in Nigeria: An Analysis Of Penal Legislation. *AJLHR* [2021] 5(2)

⁴⁸ C. Onyeaku, Gender-Based Violent Crime in Nigeria: Implication for Women's Right under the Constitution and Human Rights Instrument. *AFJCLJ* [2021] 6

⁴⁹ Glendinning, I., Should Mistaken Consent Still Be Consent? In Defence of an Incremental Understanding of Consent in the Sexual Offences Act 2003. *The Journal of Criminal Law*, [2021] 85(3), 223-231. <https://doi.org/10.1177/0022018321998239>

⁵⁰ Farah, R., Identity in Sexual Offences Law. In: Rereading Identity Deception in the UK Sexual Offences Act 2003. Springer Briefs in Law. Springer, Cham. [2023] https://doi.org/10.1007/978-3-031-44475-3_3

⁵¹ Aluko-Arowolo (n 45)

assaults and reforming the law of rape. One lesson in particular should be stressed: a revision of the law of rape can be undertaken together with a general re-analysis of sexual offences. Unlike the proposed Bill, it would not be necessary to devote an entire section to recognize common peculiarities or exceptions to the rules regarding what counts as sexual intercourse, penetration by the penis, and so on.

7.0 Conclusion

This article has examined the response of the Nigerian Penal Code to the problem of inability to convict in cases of marital rape against its United Kingdom counterpart. The analysis has, however, shown that despite the vast developments in the law in the United Kingdom, the Nigerian Penal Code has failed to keep up with these developments. It has also been shown that the Nigerian interpretation still draws from the pre-19th century conception of rape that marginalizes married women. Unlike the countries that has taken realistic steps in addressing the problems of proving rape by neutralizing in law, or in the case of declaratory legislation, opting for total abolition of the rape. The Nigerian criminal code has maintained a middle position of retaining the act with its unrealistic elements. These elements have served as barriers to the conviction of marital rapists.⁵²

The aspects of Nigerian law that require changes include the use of violence evidence. This evidence, as argued, should not be a necessary requirement in rape cases, notwithstanding in the case of stranger rape. The reformation of the reckless requirement, the reasonable evidence requirement, and the procedural requirement such as time of reporting are further roadblocks to the conviction of marital rapists.⁵³ These amendments may prompt other desirable men in Nigeria that may not otherwise be available in rape cases. The current state of the law sharply contrasts the level of Nigeria's development in many areas. It is this misalignment between the country's level of economic development or reforms, proved helpful in eroding objectifiability in marital rape cases. Yet, Nigerian courts have not ventured into the realm for fear of challenge for taking jurisdictional and constitutional powers. It is therefore submitted that it is desirable to export portions of contemporary developments in English pools to the construction of rape.⁵⁴

⁵² Olusegun, O. O., & Oyelade, O. S., Access to justice for Nigerian women: A veritable tool to achieving sustainable development. *International Journal of Discrimination and the Law*, [2022] 22(1), 4-29. <https://doi.org/10.1177/13582291211043418>

⁵³ Bature E.A., Gender, Culture and Domestic Violence: Interrogating the Criminal and Penal Code in Nigeria. *KIU Journal of Humanities*. [2010] 4(4), 145-154

⁵⁴ Onyeaku (n 48)