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# INCESSANT RAPE VIOLENCE IN NIGERIA AND SOUTH AFRICA: EXPLORING LEGAL STRATEGIES TOWARDS REVAMPING WOMEN RIGHTS TO HUMAN DIGNITY

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## ABSTRACT

Acts of sexual violence / rape is a manifestation of power disproportions across different categories of people. Thus, in most cases, it is based on the particular environment, climate change, family settings, workplaces, educational settings, or religious institutions. The escalating rate of rape in South Africa and Nigeria thus constitutes a violation of “Women” human rights, and jeopardizes their constitutional rights immeasurably. Series of violent rape cases were recorded in Nigeria and South Africa within 2019 and 2024. This led to public protests, and consequently in 2020 the Nigerian Government declared a state of emergency on sexual offences. Invariably, most perpetrators usually kill their victims, meanwhile, only a minimal percentage of perpetrators are arrested and convicted. Using data from government sources and other entities as well as primary and secondary sources of law including case law, and relevant internet materials, this paper evaluates the adequacy or otherwise of the extant legal framework on the offence of rape in the selected countries. Noting the role of law in deterring potential offenders and mitigating incidents of prohibited activities, the paper advocates having in place a more robust legal framework on rape designed to strengthen the current systems and provide Investigators and Prosecutors with appropriate legal and administrative tools to tackle the menace.

**Keywords:** Incessant Rape; Human right violation; Deterrent Strategy; Legal Framework.

## 1. Introduction

In terms of Section 1(1) (a)-(c) of the Violence Against Persons (Prohibition) Act, 2015, (VAPPA)<sup>1</sup>:

*A person commits the offence of rape if –*

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

*(b) the other person does not consent to the penetration; or*

*(c) the consent is obtained by force or means of threat or intimidation of any kind or fear of the harm or by means of false and fraudulent representation.*

The prevailing rape incidents in South Africa and Nigeria is an impediment to the attainment of the notion of human dignity, liberty, and socio-economic goals.<sup>2</sup> Invariably, most perpetrators usually kill their victims, meanwhile, only a minimal percentage of perpetrators are arrested and convicted. This paper examines the legal framework of both countries and proposes a more robust legal framework on rape designed to strengthen the current systems through efficient investigative and prosecutorial strategies with appropriate legal and administrative tools to tackle the menace.

The paper contends that there should be adequate legislations for effective implementation and enforcement of the rights and principles enshrined in the international instruments which includes the Universal Declaration of Human Rights, and the Declaration on the Elimination of Violence against Women at the 1995 Beijing World Conference on Women, in emergency and humanitarian situations.

In exploring legal strategies towards combating offence of rape in the selected countries. the paper compares analytically, the South African and Nigerian legal framework on offence of rape, towards ascertainment of the best model.

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<sup>1</sup> Hereinafter referred to as VAPPA.

<sup>2</sup> UN Declaration on the Elimination of Violence Against Women, 1993, p. 2

## 2. Contemporary Issues

Advocating gender fairness is a commitment to advancing human rights globally towards attainment of peaceful co-existence, and sustainable development. Rape incidence in both countries cut across different religions, and social classes, thus culminating in disaster; socio-economic peril, and health catastrophes, as it is perpetrated by different categories of actors, including intimate partners; superior leaders, friends; associates; or strangers. Invariably, all categories of female are susceptible to this menace regardless of its adverse consequences on such victims. In 2020, an accused person in Nigeria confessed to the police that he raped over 40 women including an 80year old woman within a year.<sup>3</sup> Also, in June 2020, the Nigeria Inspector General of Police,<sup>4</sup> stated that 717 rape cases were recorded between January and May 2020, while 799 suspects had so far been arrested.<sup>5</sup> Furthermore, in May and June, 2020, series of violent rape cases were recorded. Three of such cases were reports of Barakat Bello who was raped and killed in her home, and Vera Uwa Omozuwa who was raped and killed inside her church in Benin City, also, a 12year old girl was raped by a gang of eleven men in Jigawa, Northern Nigeria.<sup>6</sup> According to United Nations, 11,200 rape cases were reported in Nigeria in 2020, including children who were raped to death.<sup>7</sup> Consequently, the alarming rate of sexual violence in Nigeria has culminated in protests by various groups.<sup>8</sup>

Similarly, in South Africa, the South African Police Service (SAPS)<sup>9</sup> quarterly crime statistics reveals that about 10,000 people were raped between July and September 2022.<sup>10</sup> In November 2022 a South African court found a man guilty of ninety rapes and convicted him.<sup>11</sup> However, Wikipedia crime report revealed that only a minimal percentage of perpetrators of rape are

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<sup>3</sup> "Rape Statistics in Nigeria 2020" – Mansur Abubakar, BBC News: <https://www.bbc.com/pidgin/tori-52990153>

<sup>4</sup> At a Press Conference with the State House Correspondents at State House, Abuja "Confronting the Menace of Rape in Nigeria and Helping Survivors to Heal": Alliance Law Firm – [alliancelf.com/confronting-the-menace-of-rape-in-nigeria-and-helping-survivors-to-heal/](https://alliancelf.com/confronting-the-menace-of-rape-in-nigeria-and-helping-survivors-to-heal/) July 10, 2020.

<sup>5</sup> "Confronting the Menace of Rape in Nigeria and Helping Survivors to Heal" - Alliance Law Firm: [alliancelf.com/confronting-the-menace-of-rape-in-nigeria-and-helping-survivors-to-heal/July 10, 2020](https://alliancelf.com/confronting-the-menace-of-rape-in-nigeria-and-helping-survivors-to-heal/July%2010,%202020)

<sup>6</sup> Nigeria declares "State of Emergency" on Rape and Sexual Assault: [globalvoices.org/2020/07/03/Nigeria-declares-state-of-emergency-on-rape-and-sexual-assault/](https://globalvoices.org/2020/07/03/Nigeria-declares-state-of-emergency-on-rape-and-sexual-assault/)

<sup>7</sup> Punch Newspapers, *11200 Nigerian women, children raped in 2020*: <https://punchng.com/2020/07/03/11200-nigerian-women-children-raped-in-2020/>

<sup>8</sup> Nigeria declares "State of Emergency on Rape and Sexual Assault" [globalvoices.org/2020/07/03/](https://globalvoices.org/2020/07/03/)

<sup>9</sup> Hereinafter referred to as SAPS.

<sup>10</sup> The Citizen, "More than 10 000 people raped in South Africa between July and September 2022": <https://www.citizen.co.za/2022/11/09/more-than-10-000-people-raped-in-south-africa-between-july-and-september-2022/>

<sup>11</sup> Africanews.com, "90 times rapist convicted in South Africa": <https://www.africanews.com/2022/11/09/90-times-rapist-convicted-in-south-africa/>

convicted in South Africa.<sup>12</sup> Hence Ndaba an activist,<sup>13</sup> called for harsher penalties for sexual offences. Furthermore, a report titled: Rape Justice in South Africa, conducted by the Medical Research Council (MRC) on behalf of the National Prosecuting Authority (NPA),<sup>14</sup> revealed that only 8% of rapists brought to court are convicted.<sup>15</sup> Particularly, in 2015/2016, there were 51,895 cases of sexual assault reported to SAPS, also, the 2018/2019 SAPS reports revealed that 52,420 cases of sexual offences were recorded. Invariably, most perpetrators usually kill their victims, and eventually escape arrest. For instance in 2019, Janika Mallo a 14year old girl, after been violently raped, the perpetrator hit her head with a concrete block, killing her instantly and escaped arrest;<sup>16</sup> Usynime Mrwetyana a girl of 19years was mercilessly raped and bludgeoned to death; Jesse Hess as well (19 years of age) was raped to death on her bed; and the perpetrator escaped arrest. Consequently, in 2019, this incessant violent rapes culminated in street protests whereby public protesters in South Africa signed about 500,000 online petition demanding the reinstatement of death penalty for sexual offences and violent crimes.<sup>17</sup>

Impunity is one of the factors that encourage perpetrators of sexual violence., and tends to constitute an impediment to reporting of such cases. About 185% of people who were convicted of violent offence and sentenced to death since 1972, have eventually been pardoned by the various State Governors based on the power of “Prerogative of Mercy” enshrined in Section 175 of the 1999 Constitution of Nigeria.<sup>18</sup> In a bid to decongest the prisons, many criminals are being sent back to the communities. In December 2021, the Chief Judge of Katsina State, Nigeria released several inmates in order to decongest the prisons.<sup>19</sup> This may likely expose witnesses in such cases to danger and attack by such criminals. the ‘EndSARS’ crisis in 2020, 1,993 inmates

<sup>12</sup> Wikipedia: [https://en.wikipedia.org/wiki/sexual\\_violence\\_in\\_South\\_Africa](https://en.wikipedia.org/wiki/sexual_violence_in_South_Africa)

<sup>13</sup> ‘South Africa Struggles with Second Pandemic of Violence Against Girls, Women’: Anita Powell – June 24, 2020: Voice of America: <https://www.voanews.com/africa/south-africa-struggles-second-pandemic-violence-against-girls-women>.

<sup>14</sup> Hereinafter referred to as NPA.

<sup>15</sup> Graeme Hosken, Sowetan Live, “*The 8% conviction rate is disturbing’ – How the justice system fails rape victims*: [www.sowetanlive.co.za](http://www.sowetanlive.co.za) October 30, 2017.

<sup>16</sup> BBC News: “Cases that have caused outrage in South Africa since August” : <https://www.bbc.com/news/world-africa-49606146>

<sup>17</sup> “I was raped, now I fear for my daughter” – Sarah Midgley, BBC News: <https://www.bbc.com/news/world-africa-49606146> .

<sup>18</sup> Igwenyi B., Igwe C, and Igwenyi, “*Abolition of death penalty in Nigeria: Juristic Issues and Solutions*”: European-American Journals (eaj): [www.eajournals.org/journals/global-journal-of-politics-and-law-research-giplr/vol-7-issue-7-november-2019/abolition-of-death-penalty-in-nigeria](http://www.eajournals.org/journals/global-journal-of-politics-and-law-research-giplr/vol-7-issue-7-november-2019/abolition-of-death-penalty-in-nigeria) .

<sup>19</sup> “*Katsina State Chief Judge Grants Bail to Several Inmates in a Bid to Decongest Prisons*” Halima Abiola, 22.December, 2021 <https://loyalnigerianlawyer.com/kastina-state-chief-judge-grants-bail-to-several-inmates-in-a-bid-to-decongest-prisons/>

escaped from Oko and Benin Prisons in Edo State, Nigeria, however ten of them later committed various crimes and were re-arrested. One of them went back to his village immediately he escaped from the prisons and killed the person who testified against him in the case that led to his conviction,<sup>20</sup> also, in 2021, in South Africa, the Special Investigation Unit witness and Gauteng Department of Health senior official Babita Deokaran was gruesomely murdered.<sup>21</sup>

Victims can be traumatized when law enforcement or judicial personnel fails to provide necessary supports, particularly where it concerns persons with disabilities. Also, victims are usually required to disclose their status and identity or putting themselves at greater risk of violence, thus culminating in low reporting of such cases. It may be argued that a crucial factor is to encourage victims to lodge reports of violence in a confidential manner.

### 3. Nigeria Legal Framework on Offence of Rape

Section 357 of the Criminal Code Act,<sup>22</sup> defines offence of rape as follows:

*Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape.*<sup>23</sup>

Similarly, the Penal Code Act,<sup>24</sup> section 282 (1) defines rape as follows:

*“A man is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances:*

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<sup>20</sup> Bridget Edokwe, ‘How Inmate who fled in Edo Killed Neighbour who testified against him in Court’ <https://www.barristerNG.com/how-inmate-who-fled-in-edo-killed-neighbour-who-testified-against-him-in-court/> (accessed 9 October 2020).

<sup>21</sup> News24, “Their high profile cases gripped SA in 2021 and now they’ll be spending first Christmas behind bars”: Liwandile Bhengu, [www.news24.com/news24/southafrica/news/their-high-profile-cases-gripped-sa-in-2021-and-now-they’ll-be-spending-first-christmas-behind-bars/](http://www.news24.com/news24/southafrica/news/their-high-profile-cases-gripped-sa-in-2021-and-now-they’ll-be-spending-first-christmas-behind-bars/) (accessed 25 December 2021).

<sup>22</sup> Applicable to Southern Nigeria

<sup>23</sup> S. 358 C.C. provides that any person found guilty of rape shall be liable to imprisonment for life, with or without canning. See S.283 P.C. for similar provision.

<sup>24</sup> Applicable to Northern Nigeria

*“(a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt; (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (e) with or without her consent, when she is under 14 years of age or of unsound mind”*<sup>25</sup>

Evidence of defilement of girls under 14 years under Section 282(1) (e) of Penal Code is the same as rape except that in defilement there is no requirement of consent. The requirement of corroboration in rape cases as provided in Section 179(5) of the Evidence Act, Cap.112 Laws of the Federation of Nigeria, 1990, has been repealed by the current Evidence Act, 2011. However, it has not been repealed from the substantive law. In certain instances, the only evidence available to the prosecutor is the testimony of the victim, a minor. Though, the Penal Code is silent on the issue of corroboration, in *Habibu v. Musa*,<sup>26</sup> the Supreme Court observed inter alia that *“it has to be restated that in offences of a sexual nature, it is very desirable that the evidence of the prosecutrix or complainant is buttressed by other pieces of evidence implicating the accused in a substantial way...”*

**3.1.** In Nigeria, there are series of enactments on rape, meanwhile, incidence of sexual violence is rampant. In June, 2020 a group of women activists,<sup>27</sup> protested and demanded urgent and effective implementation of the VAPPA. However, only a few out of the 36 states in Nigeria have incorporated VAPPA into their laws. Professor Jay Ezello and Omolara Oriye considered the issue of rape across the country and noted that *“there is low accountability to violence perpetrated against the female gender...”*<sup>28</sup>

**3.2.** In terms of the Nigeria Police Force (Establishment) Act, 2020, Section 66(2), police officers who are not legally trained are allowed to prosecute offenders. Hence, it is necessary that the various investigating units be trained in computerized case management to ensure a central record system accessible by the office of the Director of Public Prosecutions for

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<sup>25</sup>See the Criminal Law Sexual Offences and Related Matters Amendment Act (Act No. 32), 2007; Regarding offence of rape, lack of consent is material, while consent is immaterial regarding defilement. It must be noted that intercourse means physical sexual contact while carnal knowledge means sexual intercourse, especially with a minor. In terms of the aforementioned provisions, rape can be committed on a minor or an insane, thus, the notion of consent of a minor or an insane is not necessary.

<sup>26</sup> (2013) ANLR, 3628 (S.C)

<sup>27</sup> Nigeria declares “State of Emergency” on Rape and Sexual Assault: [globalvoices.org/2020/07/03/Nigeria-declares-state-of-emergency-on-rape-and-sexual-assault/](https://globalvoices.org/2020/07/03/Nigeria-declares-state-of-emergency-on-rape-and-sexual-assault/)

<sup>28</sup> “The Rape Scourge in Nigeria” Thisday – <https://www.Thisday/live.com> : editor, June 30, 2020

efficient legal advice. Considering the prosecutorial powers of Nigerian Police, Bamigboye, Shosanya, observed that *“Judges have not only dismissed cases for want of diligent prosecution by the police but also lampooned the police for miscarriage of justice”*<sup>29</sup> In this respect, Justice Umukoro,<sup>30</sup> deliberated on the need to stripe the Nigeria Police of power to prosecute criminal cases, and confirmed that:

- (i) *“Nigerian Police lacks the required skills to prosecute offenders, in consequence of which the Magistrates sometimes play the role of assistants to the police prosecutors;*
- (ii) *They cannot competently respond to legal issues, therefore they have to transfer case files between their office and the office of the State Attorney General for advice, thus causing delays in justice dispensation;*
- (iii) *Hence, defence counsels often utilize this shortcoming to defeat police prosecutors, and in most cases the offenders walk away unpunished”.*<sup>31</sup>

In *Inusa Saidu v The State*,<sup>32</sup> the court remarked that *“It does not give the court joy to see offenders escape the penalty they richly deserve, but until they are proved guilty under the appropriate law, in our law courts, they are entitled to walk about in our streets and tread the Nigerian soil, breathe Nigerian air as free and innocent men and women”.*<sup>33</sup>

**3.3.** This paper reveals that rape cases could only be efficiently investigated by officers who are conversant with the relevant provisions of the law and, for effective performance of the investigative role, it is necessary for investigators to have a sound knowledge of the law of evidence and the relevant statutory provisions relating to bail and trial proceedings. Investigators need to understand the provisions relating to admissibility of evidence and the provisions of Criminal law relating to elements of offence of rape, as the knowledge will guide the investigator appropriately particularly in drafting the statement of the accused, and acquaint the investigator with the requirements of the law in an instance where accused pleads *“alibi”*

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<sup>29</sup> *“Administration of Criminal Justice Act 2015- Furore over Police Prosecutorial Powers”* Daily Trust, Nigeria: [www.allafrica.com/stories/201509081281.htm/](http://www.allafrica.com/stories/201509081281.htm/) (accessed on July 31,2017).

<sup>30</sup> Ibid. Umukoro: *“Judiciary and the Criminal Justice System: Odds and Ends -Stripe Police* [www.premiumtimes.com/news/headlines/222178](http://www.premiumtimes.com/news/headlines/222178) .

<sup>31</sup> Justice M. Umukoro *“Judiciary and the Criminal Justice System: Odds and Ends –Stripe Police of Power to Prosecute Criminal Cases”* –Judge advises Nigerian government –January 31, 2017. Agency Report, Premium Times, 24, 2017 –[www.premiumtimes.com/news/headlines/222178](http://www.premiumtimes.com/news/headlines/222178).

<sup>32</sup> (1982) 4, Supreme Court Cases (SC.) p. 41

<sup>33</sup> Ladapo *“Effective Investigations, A Pivot to Efficient Criminal Justice Administration: Challenges In Nigeria”*, African Journal of Criminology and Justice Studies: AJCJS, Vol.5, #s1 & 2, ISSN 1554-3897 at p. 71.

or any other defence in extenuation. In this respect, Justice Helen Ogunwumiju,<sup>34</sup> in her article titled: “*The road to successful prosecution of cases of sexual offences, kidnapping and ritual killings in Nigeria*”, observed that, the first step towards a successful prosecution of an offender, is to draft an appropriate charge which highlight the essential elements of the offence, and, this is largely dependent on the facts disclosed by the investigators.<sup>35</sup>

The establishment of investigating units headed and supervised by legally trained prosecutors in terms of “sensitive cases”, as proposed by the former Attorney General of the Federation of Nigeria, Malami, is therefore supported.<sup>36</sup> In this regard, it may be argued that all rape cases should be classified as “sensitive cases”

At the same time, the importance of information in criminal prosecution is immeasurable. The relevant information relating to the rape, if adequately collated by the investigator, will aid the prosecutor in establishing the case beyond reasonable doubt

**3.4.** “Consent” is not clearly defined under the Nigerian law. Under the UK Sexual Offences Act, consent is comprehensively defined, whereby, offence of rape extends to such instances where a man continues sexual intercourse after a woman withdraws her consent.<sup>37</sup> Also, in India, a consensual sex based on fake promise of marriage constitutes rape.<sup>38</sup>

It is observed that the mode of conducting cross examinations of victims on the requirement of consent in rape cases in Nigeria, is unregulated as it usually cause victims embarrassment and ridicules during trials in the court. This seems to discourage most victims from pursuing the course of justice, thus, most rape cases are neither investigated nor prosecuted.<sup>39</sup>

**3.5.** Furthermore, the degrading attitude of Nigerian Police towards rape victims, is an aberration. According to C.O. Adekoya:<sup>40</sup>

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<sup>34</sup> Justice H. Ogunwumiju “*The Road to Successful Prosecution of Cases of Sexual Offences, Kidnapping and Ritual Killings in Nigeria*” - Dispensation of Substantial Justice in the Eyes of the Law: Ondo State Judiciary Chief Judge’s Seminar Series, Vol.1, 2017, p.107-149

<sup>35</sup> Ibid, p.116-117

<sup>36</sup> Malami, “*Justice Ministry to Co-ordinate Criminal Investigation*” <https://www.thecable.ng/amid-failed-court-trials-agf-sets-panel-probe-sensitive-cases>, August 30, 2017,( accessed on August 31, 2018).

<sup>37</sup> See Sections 75-76 of the Sexual Offences Act, 2003.

<sup>38</sup> See Section 375 & 376 of the Indian Penal Code

<sup>39</sup> See Abraham Onoja, “Prevalent Rape Cases: Cause, Prevention and Way out”. June 18, 2020: [www.businessday.ng/opinion/article/prevalent-rape-cases-cause-prevention-and-way-out](http://www.businessday.ng/opinion/article/prevalent-rape-cases-cause-prevention-and-way-out)

<sup>40</sup> C. O. Adekoya: “Using Law to Serve the Purpose of Women in the 20<sup>th</sup> Century” – Akungba Law Journal, Vol.1, No. 2, January 2008, p. 176



*“The police in most cases demonstrate insensitivity to the plight of victims when they lodge complaints with the police by subjecting them to ridiculous questions ... and laughing at the victim and jesting as she recounts her harrowing experience...”*

**3.6.** The role of witnesses in criminal prosecution is very crucial, hence, they must be afforded adequate protection and be assisted appropriately. However, the Nigeria Administration of Criminal Justice Act, 2015 (ACJA),<sup>41</sup> Section 251 provides that, a person who attends the court as a State witness *“Shall be entitled to payment of reasonable expenses as may be prescribed ...”* and, if a party to the proceeding seeks adjournment when the other party is yet to testify, the court may order him to pay the sum payable to the witness under Section 251. It is observed that this provision is beclouded with uncertainty.

#### **4. South Africa Legal Framework on Rape**

In South Africa there are various legislations on sexual offences: the South Africa Police Services (SAPS) National Instruction 22 / 1998; the Domestic Violence Act,<sup>42</sup> the Criminal Law Sexual Offences and Related Matters Amendment Act 2007.<sup>43</sup> Section 3 of the 2007 Act defines rape as follows: *“Any person who unlawfully and intentionally commits an act of sexual penetration with a complainant without the consent of the complainant is guilty of the offence of rape”*

**4.1.** Incidence of sexual violence is alarming. Hence, the South Africa President Rama Phosa, at his State of the Nation Address in February 2020,<sup>44</sup> proposed a deterrent strategy when he announced that the Sexual Offences Act would be amended *“to broaden the categories of sex offenders whose names must be included in the National Register for sex offenders”*.

**4.2.** The evidence involved in sexual cases is usually of scientific and complex nature and thus make it difficult to secure a conviction in sexual offences, hence, only a minimal percentage of perpetrators of rape are convicted in South Africa.<sup>45</sup> Meanwhile, a large percentage of National Prosecuting Authority (NPA) and SAPS officials lack the required technical training. Vinesh

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<sup>41</sup> Hereinafter referred to as ACJA

<sup>42</sup> Act No. 116 of 1998.

<sup>43</sup> Act No. 32 of 2007.

<sup>44</sup> More names to be added to the National Register for sexual offenders – Karabo Mafolo: 14 Feb. 2020, Daily Maverick: [www.dailymaverick.co.za/article/2020-02-14-more-names-to-be-added-to-the-national-register-for-sexual-offenders/](http://www.dailymaverick.co.za/article/2020-02-14-more-names-to-be-added-to-the-national-register-for-sexual-offenders/)

<sup>45</sup> Wikipedia: [https://en.wikipedia.org/wiki/sexual\\_violence\\_in\\_south\\_africa](https://en.wikipedia.org/wiki/sexual_violence_in_south_africa).

Basdeo,<sup>46</sup> in his article “*Policing Sexual Violence in South Africa: Problems and Challenges*”,<sup>47</sup> observed that successful prosecution of rape cases depends on the appropriate investigation by the police, but viewed that a large percentage of South African Police are not adequately trained for their task, hence, he suggested that more women be employed as investigators in Sexual Violence Units, and adequate facilities be put in place for effective training of SAPS and Criminal Justice Officials.

**4.3.** In consequence of the high incidence of sexual offences in South Africa, the South Africa Constitutional Court in 2018, in the case of *Levenstein .v. Estate of Frankel*,<sup>48</sup> held that the twenty year statute of limitations for sexual offences other than rape was irrational and arbitrary, thus, proposed that the statute of limitation, be removed so that there will be no time limit for instituting action for any form of sexual offence, and the distinction between rape and sexual offences, should be removed as well. This is highly commendable.

**4.4.** In terms of the South Africa Constitution, Section 179 (5)(a) & (b), and the National Prosecuting Authority (NPA) Act,<sup>49</sup> the National Director of Public Prosecution (NDPP), is empowered to issue the prosecution policy directives which must be observed in the prosecution process. In this regard, Schonteich,<sup>50</sup> observed that, the SAPS and NPA are two distinct and separate institutions, meanwhile the successful prosecution of an offender depend largely on the efficient investigation of the crime, hence, it is expedient for the two units to be of high expertise and to work in collaboration with each other. Matthews,<sup>51</sup> an experienced trainer, facilitator, and Project Manager within Crime Prevention and Criminal Justice System, noted that the decision to prosecute an offender lies solely with the prosecutor, “*who does not know about the trends of the investigation,*” and his duty only commences when the police hand over the docket to him. Meanwhile, he has discretionary power to decline to prosecute the case,

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<sup>46</sup> “Policing Sexual Violence in South Africa: Problems and Challenges” by Vinesh Basdeo, University of South Africa: 2018 International Journal of Criminal Justice Sciences (IJ CJS), Vol. 13, Issue 1, January-June-2018

<sup>47</sup> Ibid. p.117-120

<sup>48</sup> *Levenstein. Estate of Franke*, 2018 (8) B.C.L.R. 921 I(Ce), International Federation for Human Rights:fidh.org/en/region/Africa/SouthAfrica/no-more-time-limit-to-prosecute-sexual-offences-in-South-Africa. 14 June, 2018.

<sup>49</sup> Act 32 of 1998 (As Amended),

<sup>50</sup> M. Schonteich: “Assessing The Crime Fighters – The Ability of the Criminal Justice System to Solve and Prosecute Crime” –Institute for Security Studies, Occasion Paper No.40, Sept. 1999.

<sup>51</sup> I. Matthews: “National Prosecuting Authority’ Criminal (IN) Justice in South Africa: A Civil Society Perspective” –Institute for Security Studies (ISS), 2009, Pretoria, South Africa. p. 98, 103, 104.

and while making decisions as to whether to prosecute or decline, does that without due recourse to the victims or their relations, thus undermining their faith in justice system.

Certain foreign models may be emulated. In the Netherlands,<sup>52</sup> victims (and the legal person promoting an interest that would be directly affected by the decision not to prosecute) can lodge an appeal with the court against the prosecutor's "decision not to prosecute".<sup>53</sup> In line with this, the National District Attorneys Association National Prosecution Standards,<sup>54</sup> standard 4-1.8 requires the prosecutor to promptly respond to inquiries from those who are directly affected by a declination to prosecute, and in terms of standard 1-5.4, each prosecutor's office is required to develop written and electronically retrievable statements of policies and procedures regulating the exercise of prosecutorial discretion.

**4.5.** Furthermore, most NPA members lack the skill and experience required for efficient inspection of the crime docket, and, in most cases subpoena is inappropriately processed and thus culminating in witnesses not attending the court.<sup>55</sup> A large percentage of NPA and SAPS officials lack the required technical training. Beatri Krugger,<sup>56</sup> deliberated on the "challenges in prosecuting sexual offences", and opined that prosecutors must be knowledgeable about the quality control and quality assurance procedures that must be followed in the laboratory in order to ensure that the DNA profiling required for a case of rape is valid.<sup>57</sup> It is necessary for investigators to have a sound knowledge of law of evidence and the relevant statutory provisions relating to bail and trial proceedings, In terms of Section 35(5) of the South African Constitution 1996, any evidence obtained in a manner that violates the provision of the Bill of Rights will be inadmissible if it is contrary to the interest of justice, accordingly, evidence that was obtained under duress or during torture will be inadmissible.<sup>58</sup>

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<sup>52</sup> Ibid. Alexander Heinze & Shannon Pyfe, *"The Role of the Prosecutor"* Part 111 – Criminal Justice and Procedure, Cambridge University Press. 19 Dec. 2019.

<sup>53</sup> See Groenhuijsen and Simmelink, *'Criminal Procedure'* (2008), 462.

<sup>54</sup> National District Attorneys Association, *"National Prosecution Standards"* Third Edition with Revised Commentary. These standards merely serve as aspirational guide to prosecutors in respect of the performance of their prosecutorial function.

<sup>55</sup> Ibid. Matthews

<sup>56</sup> "Sexual Offences Courts in South Africa – Quo Vadis? " - B. Krugger & M. Reyneke, University of Free State: <https://www.researchgate.net/publication/318055289>. January 2008, 2008 Journal for Juridical Science 33(2): 32-75

<sup>57</sup> Ibid. at p. 34

<sup>58</sup> See generally S. 35 of the South Africa Constitution (Act 108 of 1996). See also S. 36 which provides that the Rights enshrined in the Bill of Rights may be limited only in accordance to the law of general application where it is expedient and justifiable.

## 5. Juxtaposition

**5.1.** The role of witnesses in rape cases is very crucial. The South African NPA Witness Protection Unit<sup>59</sup> provides protection to vulnerable and intimidated witnesses and related persons in order to enable them testify in the court without intimidation, fear or danger. For easy access there are nine regional offices for witness protection, one in each of the Provinces. Meanwhile, the provision of section 251 of the ACJA on witness protection in Nigeria is in sharp contrast to the South Africa witness protection provision. It lacks precision, and it is not comprehensive.

**5.2.** In contrast to Nigeria context, in South Africa, prosecution of rape cases is conducted by legally trained prosecutors under the umbrella of the NPA. Between April and June 2022, 286 rapists were successfully prosecuted and convicted.<sup>60</sup> However, despite the resources and modern facilities put in place by the South African government, incidence of sexual assaults and rape is alarming while investigative and prosecutorial failures pervade the South African Justice System.

**5.3.** The Criminal Code Act (Cap C. 38 LFN), 2004, Section 218, prescribes a limitation period of two months within which a case of rape or sexual offence must be instituted in Nigeria. This provision has, for decades, hindered effective prosecution of rape cases in Nigeria because most rape victims are not enlightened as to the appropriate procedures and steps to be taken immediately after such incidence. However, due to the current alarming rate of rape incidence, the Nigeria Senate, in July 2020, passed a bill <sup>61</sup> to amend the provision of this Criminal Code Act. The bill seeks to remove the limitation period, hence there will be no time limit for institution of action for rape cases, also the bill seeks to recognise male as rape victim. If implemented, it will serve as an effective strategy towards efficient prosecution of rape cases in Nigeria. The South Africa Constitutional Court in 2018, in the case of *Levenstein .v. Estate of Frankel*, <sup>62</sup> also adopted similar position.

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<sup>59</sup> The Office for Witness Protection, established by the Witness Protection Act, 1998 (Act 112 of 1998)

<sup>60</sup> South African Police Service (SAPS): <https://www.gov.za/newsroom> 19 August 2022

<sup>61</sup> "A Bill to amend the Criminal Code Act Cap C. 38 Laws of the Federal Republic of Nigeria. 2004": Queen Esther Iroanusi : Premium Times (Abuja), 14 July, 2020: Nigeria: Updated-Senate Removes Time Limit On Rape Charge, Prescribes Life Jail for Kidnapping: <https://allafrica.com> .

<sup>62</sup> *Levenstein. Estate of Franke*, 2018 (8) B.C.L.R. 921 I(Ce), International Federation for Human Rights: [fidh.org/en/region/Africa/SouthAfrica/no-more-time-limit-to-prosecute-sexual-offences-in-South-Africa](https://www.fidh.org/en/region/Africa/SouthAfrica/no-more-time-limit-to-prosecute-sexual-offences-in-South-Africa). 14 June, 2018.

**5.4.** The evidential burden and complex procedure involved in the prosecution of rape cases usually result in acquittal: it is often difficult to get eye witnesses to corroborate and strengthen the case of victims as CCTV systems are not common in Nigeria and South Africa compared to U.K and USA; coupled with incompetent forensic units and rape kits; shortage of technically trained investigators; lack of effective collaboration between investigating and prosecuting departments. According to Justice Ogunwumiju,<sup>63</sup> prosecutorial success depends on investigative success.

**5.5.** Furthermore, lack of uniformity of the legislations on rape in Nigeria is a pertinent issue. For instance, in the Northern part of Nigeria, the penalty for offence of rape is stiffer than that of Southern part of Nigeria.<sup>64</sup> Nigeria Administration of Criminal Justice Act 2015 is the principal criminal legislation in Nigeria, however, most States in Nigeria have not adopted it, also, the Child's Rights Act (CRA) 2003<sup>65</sup> is only applicable in a few states that have adopted it, and only a few out of the 36 states in Nigeria have adopted the 2015 Violence Against Person Prohibition Act (VAPP).

## **6. Recommendation and Conclusion**

**6.1.** Considering the aforementioned impediments together with the humiliating attitude of the police towards rape victims, it is viewed that more women be employed as investigator in sexual offences units, and adequate facilities be put in place for the training of police and criminal justice officials, and legislations be strengthened towards effective prosecution of offenders.

**6.2.** This paper posits that prosecutorial success depends largely on investigative success. In Nigeria, investigative failures in rape cases pervade the Criminal Justice System due to incompetent investigative services and ineffective prosecution of perpetrators by police officers.<sup>66</sup> coupled with unavailability of funds, inadequate forensic facilities and modern equipment, shortage of trained expert crime scene technicians. However, in contrast to Nigeria

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<sup>63</sup> Justice H. Ogunwumiju "The Road to Successful Prosecution of Cases of Sexual Offences, Kidnapping and Ritual Killings in Nigeria" - Dispensation of Substantial Justice in the Eyes of the Law: Ondo State Judiciary Chief Judge's Seminar Series, Vol.1, 2017, p.107-149

<sup>64</sup> "Governor El-Rufai of Kaduna State has signed the Kaduna State Penal Code(Amendment) Law 2020 – which updates the penalties for offence of the rape of a child: [www.vanguardngr.com](http://www.vanguardngr.com)

<sup>65</sup> It was enacted by the federal government in May 2003.

<sup>66</sup> Nigeria Police Force (Establishment) Act, 2020, Section 66(2) empowers Police officers without legal training to prosecute offenders in the law courts.

context, in South Africa, prosecution of offenders is conducted by legally trained prosecutors under the umbrella of the National Prosecuting Authority. It is expedient victims have access to justice in order to hold perpetrators liable as a deterrent technique. Hence, the government must fund the investigation and prosecution of such cases using a victim-centered approach for achieving justice for victims and render perpetrators accountable.

**6.3.** Considering the evidential burden and complex procedure involved in the prosecution of rape cases, often results in acquittal of perpetrators because it is always difficult to get eyewitnesses to corroborate and strengthen the testimony of the victim, hence, prosecutors must be well informed as to the DNA profiling and preservation of other relevant evidence of scientific nature. It is therefore paramount that the government rehabilitate the police and the prosecuting agencies through regular trainings on how to utilise CCTV surveillance system and forensic evidence. Furthermore, it is recommendation that, in such instances where perpetrators are caught while perpetrating the unlawful killing, a summary trial system should be adopted in order to facilitate justice dispensation without undue delay in the light of incessant jailbreaks in Nigeria and the implications on the prosecution witnesses. During

**6.4.** In 2020 the South African government established Gender Based Violence Command Centre, which is a call centre to support victims of gender-based (GBV), and it recorded more than 120,000 victims in the first three weeks of the lockdown.<sup>67</sup> Also, in Enugu, Nigeria, the government set up Tamar Sexual Assault Centre (TSAC) in 2014.<sup>68</sup> TSAC provides adequate and confidential medical treatment to victims of sexual violence, and encourages reporting of rape and other sexual assaults so that justice can be achieved. It provides counselling and other support services. The Centre is accessible to victims of sexual assault everyday including weekends and public holidays, meanwhile a total of 516 victims of sexual assault had reported to the TSAC within April 2014 and June 2016.<sup>69</sup> It is expedient that this strategic policy be extended to the other states in Nigeria.

**6.5.** The government in both countries is expected to strengthen legislation so that those found guilty of rape be severely punished in order to deter perpetrators.

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<sup>67</sup> Christopher Isike, "Change what South African men think of women to combat their violent behaviour": The Conversation, [www.theconversation.com](http://www.theconversation.com) October 4, 2021.

<sup>68</sup> Idoko, Nwobodo, Idoko, "Trends in rape cases in a Nigerian state", *state. Afri Health Sci.* 2020; 20(2): 668-675. <https://doi.org/10.4314/ahs.v20i2.17>

<sup>69</sup> Ibid. "Trends in rape cases in a Nigerian state",

**6.6.** Furthermore, the government must encourage the citizens to be diligent in employing domestic servant, and organize seminars to enlighten and guide the community, particularly children, concerning miscreants.

**6.7.** In such instances where the female folk deliberately implicate the defendant in order to embarrass or punish him, it is expedient that she must tender apology through the media and compensate the defendant appropriately.