

Legal Explainers

The Federal Republic of Nigeria

The Federal Republic of Nigeria (henceforth, “Nigeria”) is the most populous country in Africa and the seventh most populous in the world. It formally became an independent federation in 1960 and is divided into 36 states.

Similar to the United States of America, Nigeria has also adopted a Presidential system of governance with Abuja as its capital. Nigeria is unique as the northern half primarily accommodates a Muslim population while the southerners are predominantly Christian. Case in point, while Nigerian civil law does not recognise polygamy, 12 out of the 36 states are governed by Sharia Law and equate monogamous marriages to polygamous unions.

With respect to laws governing gender based violence and harassment, there are federal laws, policies, and general legal frameworks in place. However, as is with any federation, unless individual states expressly adopt a federal legislation, its applicability is not uniform.

The following legal resources cover only federal laws passed by the Nigerian government and exclude state laws such as The Lagos State Protection against Domestic Violence Law, 2007, and the Ekiti State Gender-Based Violence (Prohibition) Law, 2011.

[Violence against Persons \(Prohibition\) Act, 2015 \(VAPPA\)](#)

VAPPA is the first federal law that specifically addresses **sexual harassment** and **domestic violence** in Nigeria.

Harassment includes stalking, repeated phone calls to another person, and repeated delivery of information through letters, emails, text messages, etc. Sexual harassment, sexual abuse, sexual assault, sexual exploitation, and sexual intimidation have been explained at length in the Act.

Domestic violence refers to any act which can potentially cause harm to the safety and well-being of a person in a *domestic relationship* i.e., marriages, live-in-relationships, between parents and their children, and so on.

What does VAPPA do?

It prohibits violence against people, offers remedies to victims, and punishment for offenders. This law currently applies to Federal Capital Territory (FCT) of Nigeria and only 13 other states have adopted this legislation within their territories.

Rape:

What is rape under VAPPA? Is there legal recognition of rape perpetrated against a man?

Under Section 2, rape can be committed by **either a man or a woman** if

1. the person penetrates the vagina, anus, or mouth of another person with any other part of his or her body, or any other object;

2. the person has not consented to the penetration; or
3. the consent is obtained by threat, force, intimidation, fear of harm, impersonation, or false representation.

VAPPA is the first law to acknowledge that even men can be raped, demonstrating the progressive and radical nature of this law.

What is the punishment for rape?

If convicted, a person can be imprisoned for life (minimum 12 years) and be fined, *unless* the offender is below 14 years of age.

Where a person is gang raped, all offenders will be imprisoned for a minimum period of 20 years and fined. Victims are entitled to compensation and a register containing a list of convicted sexual offenders, accessible by the public, will be maintained.

Dangerous sexual offenders:

The court, under Section 43, can declare a person convicted of a sexual offence a dangerous sexual offender if the person has:

1. more than one conviction for a sexual offence;
2. been convicted of a sexual offence which was accompanied; or
3. been convicted of a sexual offence against a child.

Offensive Conduct:

What constitutes offensive conduct?

Offensive conduct is where a person compels another, by force or threat, to engage in sexual conduct or otherwise, that may affect the victim's physical and psychological state. The person can be convicted and imprisoned up to 2 years under Section 5 of the Act.

Even attempting or abetting the commission of any offensive conduct is punishable by imprisonment up to 1 year, fine, or both.

Female Circumcision or Genital Mutilation:

Section 6 of VAPPA prohibits female genital mutilation or circumcision. Circumcision of a girl or woman means cutting off all or even a part of the external sex organs of a girl or woman other than on medical grounds.

A person who performs such circumcision or mutilation commits an offence under the Act and is punishable by imprisonment up to 4 years, fine, or both. Attempt or/and abetment of such offence is also punishable by imprisonment for a period of 2 years, fine, or both.

Domestic violence:

Ejection from home:

Where a person forcefully evicts his or her spouse from their marital home, (s)he can be imprisoned up to 2 years, fined, or both, under Section 9 of the Act. Attempt or abetment to evict a person is punishable by imprisonment up to 1 year, fine, or both.

Harmful widowhood practices:

Under Section 15 of the Act, a person who subjects a widow to harmful traditional practices can be imprisoned up to 2 years, fined, or both. Attempt or/and abetment to commit such offence is punishable by imprisonment up to 1 year, fine, or both.

Harmful traditional practices denotes any practice that has a negative effect on the fundamental rights of a person such as denying inheritance or succession rights of a person, female genital mutilation or circumcision, and forced marriage.

Abandonment of spouse, children or other dependants:

If a person abandons their spouse, children, or any other dependant without any means or ways of sustenance, (s)he can be imprisoned up to 3 years, fined, or both, under Section 16 of the Act. Attempt or/and abetment to commit such offence is punishable by imprisonment up to 2 years, fine, or both.

Abandonment means deliberately leaving a person penniless and without any way to make ends meet.

Spousal battery:

Under Section 19, a person who strikes or physically abuses his/her spouse can be punished by imprisonment up to 3 years, fined, or both. Attempt or/and abetment to commit such offence is punishable by imprisonment up to 1 year, fine, or both.

Incest:

Section 25 punishes any person who is incestuous or has a carnal relationship with a person falling within the prohibited degrees of blood relations. For example, a grandparent or parent is prohibited from having any sexual relations with their grandchild or child.

A person who commits this offence will be imprisoned for a minimum period of 10 years, and if the parties voluntarily consent to incest, they will be imprisoned for a minimum period of 5 years.

Stalking:

What is stalking?

Stalking means the repetitive watching or loitering near a person's place of residence, business, or otherwise, or following a person making them fearful or anxious.

Stalking, attempt or/and abetment to stalk are punishable offences under Section 17 of the Act with imprisonment up to 2 years and 1 year, respectively, fine, or both.

Indecent exposure:

What is indecent exposure?

Indecent exposure is when person intentionally exposes his/her genital organs to

1. cause distress to the other person; or
2. force the other person to touch or massage the organ to derive sexual pleasure.

It is a punishable offence under Section 26 by imprisonment up to 1 year, fine, or both.

Protection Order:

VAPPA under Section 30 allows Courts within FCT Nigeria to issue a protection order to

1. protect the victim/applicant from domestic violence;
2. prevent the accused person from entering the victim's residence, place of employment, specific area in a shared household, etc;
3. seize dangerous weapons from the accused;
4. order the accused to temporarily relocate.

Police powers:

Section 32 of the Act allows a police to:

1. assist a victim to file a complaint regarding an act of violence;
2. give or make arrangements for safe transport for the victim to a shelter, different residence or hospital for treatment;
3. accompany the victim to his/her residence to collect their personal belongings;
4. remove dangerous weapons from a shared residence
5. remove a person from a shared residence;
6. any other act deemed necessary to ensure the victim's safety.

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It is necessary to point out yet again that VAPPA has jurisdiction only within FCT Nigeria and until all 36 states enact a corresponding legislation, the impact of these laws on domestic violence and sexual harassment are vague and debatable. Unfortunately, female genital mutilation continues to be very common in Nigeria.

Other initiatives against violence:

The following section deals with laws, conventions, protocols, charters, and policies apart from VAPPA that prohibit gender based and sexual violence in Nigeria.

[Penal Code Act, 1960](#)

This law applies to FCT Nigeria and overrides punishments under customary laws.

Rape:

How has rape been defined under the Penal Code Act?

Under Section 282 of the Act, a **man** has committed rape if he has sexual intercourse with a woman:

1. against her will;
2. without her consent;
3. with her consent but obtained through force, coercion, impersonation, or false representation;
4. with or without her consent if she is below 14 years of age or of unsound mind.

This law only punishes men for rape and also excludes marital rape as an offence.

What is the punishment for rape?

Section 283 punishes rape offenders with life imprisonment and fine.

Incest:

Incestuous relationships (sexual relations between blood related family members) are punishable by imprisonment for 7 years and fine under Section 390 of the Act.

[Criminal Code Act, 1990](#)

The Criminal Code Act applies to the southern, Christian states of Nigeria.

Unlawful Carnal Knowledge:

Unlawful carnal knowledge means any carnal or sexual relationship other than between a husband and wife and is complete upon penetration.

Unlawful carnal knowledge with a girl below 13 years of age is a felony, punishable by life imprisonment, caning, or both. The *attempt* to engage in such a relationship with a girl below 13 years of age is punishable by imprisonment for 14 years, caning, or both.

Unlawful carnal knowledge and/or the attempt with a girl above the age of 13 years but below 16 years is punishable by imprisonment for 2 years, caning, or both (Section 218).

Rape:

What is rape under the Criminal Code Act?

Section 357 defines rape as a person who has *unlawful carnal knowledge* of a woman or girl

1. without her consent;
2. with her consent but obtained through threat, intimation of fear or harm, false representation, or impersonation.

What is the punishment for rape?

A person convicted of rape will be imprisoned for life, caning, or both (Section 358), while the *attempt* to commit rape is punishable by imprisonment for 14 years, caning, or both (Section 359).

[Constitution of the Federal Republic of Nigeria, 1999](#)

Chapter IV of the Nigerian Constitution lists 14 fundamental rights which are inalienable and integral to every Nigerian citizen. In the context of gender based violence and discrimination, the relevant rights in this context are:

1. Right to life (Section 33)
2. Right to dignity of human persons (Section 34)
3. Right to personal liberty (Section 35)
4. Right to freedom from discrimination (Section 42)
5. Restriction on and derogation from fundamental human rights (Section 45)

What are the implications of these rights?

As a girl, woman, and as a *person*, every Nigerian has to right to life – the *right to exist*. Along with this right to life, citizens are allowed to live with dignity and should not have to endure any inhuman, degrading treatment. Women being forced to do sexual labour would definitely violate this right. Lastly, citizens are protected from discrimination on the basis of sex, religion, or political opinions.

While domestic violence is a violation of these fundamental rights, Section 55 of the Penal Code (which applies to the Northern states) legalises and even encourages violence against women in the form of *corrective beating* of the wife as long as it does not cause grievous harm. This ambiguity in the application of laws is opens another jar of problems.

[Child's Rights Act, 2003](#)

This law has been adopted by 24 out of 36 states in Nigeria and protects the rights and interests of children.

Buying, selling, hiring children:

The Act prohibits people from buying, selling, or hiring children to be used for begging, prostitution, domestic or sexual labour, or for any other unlawful or immoral purpose. Section 30 punishes the offender by imprisonment for 10 years.

Sexual exploitation of children:

Rape:

Section 31 punishes any person who has sexual intercourse with a child i.e. rape, with life time imprisonment.

Sexual abuse:

A person who sexually abuses or exploits a child will be imprisoned for 14 years (Section 32).

The definition of sexual offence, violent offence, sexual abuse, and exploitation are defined under the respective criminal codes applicable to states. The Criminal Code Act, 1990, applies to the southern, Christian states while the Penal Code, 1960, applies to the northern, Muslim states.

[The Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa \(MAPUTO Protocol\)](#)

Nigeria ratified the MAPUTO Protocol in 2004 which in turn mandates it to follow the principles mentioned in the protocol.

The protocol requires State Parties to give more attention to human rights of women to eliminate all forms of discrimination and gender based violence against women.

Violence against women includes any physical, sexual, psychological, and economic harm, as well as depriving a woman of her fundamental freedoms in her private or public life.

Elimination of discrimination against women must be carried out through national laws on gender equality and prohibition of discrimination that risks the health of women, and through institutional measures like policies, development plans, programmes and activities. (Article 2)

State Parties must also adopt measures to

1. protect a woman's dignity and against any sexual or verbal violence (Article 3);
 2. enforce laws prohibiting any violence against women including forced or unwanted sex and punishing the offenders,
 3. offer rehabilitative programmes for victims, promote education to remove traditional beliefs that legitimise violence against women (Article 4);
 4. prohibit female genital mutilation, provide legal support, and psychological counselling to victims (Article 5);
 5. provide asylum to women against violence, rape or any other sexual exploitation (Article 11);
 6. protect women (including children) from sexual harassment at schools and other institutions and place of employment, as well as offer counselling and rehabilitation to victims (Article 12 and 13);
 7. protect elderly women and women with disabilities from violence, sexual abuse, and discrimination based on age or disability (Article 22 and 23).
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[African Union Gender Policy](#)

The African Union Gender Policy, 2009, takes into account the global commitments on gender equality and women empowerment. The African Union's commitment to gender equality is rooted in the Banjul Charter and MAPUTO Protocol, amongst others.

The policy was created to influence other policies and practices which would help in the achievement of gender equality, gender justice, non-discrimination, and fundamental human rights in Africa.

The AU Gender Policy was also introduced to

1. address inequalities between men and women;
2. offer protection to women against sexual violence and rape;
3. develop local/state guidelines and enforcement measures against sexual and gender-based violence at the workplace; and
4. eliminate discrimination against women and gender mainstreaming.

The African Union has 55 Member States (including Nigeria) and Part IV of this policy discusses its implementation through various state bodies. Additionally, every Member State is required to harmonise their national gender policies with the AU Gender Policy

Cyberspace and Sexual Violence Laws:

[Cybercrimes \(Prohibition, Prevention, etc\) Act, 2015](#)

This law prohibits, prevents, prosecutes, and punishes cybercrimes in Nigeria. It also protects national information and promotes cybersecurity across the country.

Child Pornography:

Child pornography refers to any material that visually portrays a child/minor (below 18 years of age) engaged in *sexually explicit conduct* (genital-genital, oral-genital, between children, or between an adult and a child).

Any person who owns, produces, sells, or distributes child pornography via a computer, commits an offence under this law and shall be punished by imprisonment, fine, or both. Section 23 also punishes a person who uses a computer to meet a child to engage in any kind of sexual activity with the child.

Cyberstalking:

A person who spreads pornographic, indecent, obscene content, or false information through a computer or network to create a fear of death, violence, or harm to another person commits the offence of cyberstalking.

What is the punishment for cyberstalking?

Under Section 24, the offender will be punished by imprisonment for 10 years, fined, or both.

Crimes against humanity:

Using a computer or network, a person who circulates any racist, xenophobic, or any other material justifying rape, torture, sexual slavery, forced prostitution, or sexual violence, shall be punished by imprisonment up to 5 years, fined, or both (Section 26).

Conventions and Charters prohibiting discrimination against women:

[Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW)

Nigeria ratified this Convention in 1985 and thereafter had to adopt and implement the following principles in its national laws:

1. prohibit all forms of discrimination against women and protect rights of women through tribunals or public institutions;
2. abolish laws and customs which are discriminatory;
3. promote equality of social, economic, political, civil and cultural rights amongst men and women;
4. in situations of poverty, provide women with the minimum access to food, health, education, and employment training;

Nigeria also ratified the [African Charter on Human and Peoples' Rights](#) (ACHPR) / Banjul Charter in 1983 which prohibits discrimination against women and children. While this Charter is significant in the protection of human rights in Africa, it has been criticised for not specifically addressing the problems faced by African women.

There are several positive and commendable steps taken by the Nigerian government to reduce the inequities faced by women including

1. Adoption of the African Union Gender Policy;
2. The Trafficking in Person's (Prohibition) Law Enforcement and Administration Act;
3. National Policy on HIV/AIDS and female genital mutilation;
4. Establishment of women development centres in all 36 states.

However, the government has also been unsuccessful on many fronts. It failed to pass the Gender and Equal Opportunity Bill *and* the Sexual Offences Bill. Additionally, it took a step backwards by passing the Same Sex Marriage (Prohibition) Act, 2013. These are a few flaws are apart from the conflict of provisions between state and federal laws. Nigerian laws against gender based violence and sexual harassment have a long way to go before they meet international standards.