

THE SENATE
FEDERAL REPUBLIC OF NIGERIA
NATIONAL ASSEMBLY

**COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND
LEGAL MATTERS**

REPORT

ON

**A BILL FOR AN ACT TO AMEND THE CRIMINAL CODE ACT CAP. C.38,
LAWS OF THE FEDERATION OF NIGERIA, 2004 TO DELETE THE STATUTE
OF LIMITATION ON DEFILEMENT, INCREASE PUNISHMENT FOR THE
OFFENCE OF KIDNAPPING, REMOVE GENDER RESTRICTIONS IN THE
OFFENCE OF RAPE AND FOR RELATED MATTERS (SB.02)**

JUNE, 2020

REPORT OF THE SENATE COMMITTEE ON JUDICIARY, HUMAN RIGHTS AND LEGAL MATTERS ON A BILL FOR AN ACT TO AMEND THE CRIMINAL CODE ACT CAP. C.38 LAWS OF THE FEDERATION OF NIGERIA, 2004 TO DELETE THE STATUTE OF LIMITATION ON DEFILEMENT, INCREASE PUNISHMENT FOR THE OFFENCE OF KIDNAPPING, REMOVE GENDER RESTRICTIONS IN THE OFFENCE OF RAPE; AND FOR RELATED MATTERS.

1.0 BACKGROUND

The Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004 (Amendment) Bill, 2019 (SB.02) was sponsored by *Distinguished Senator Oluremi Tinubu* (Lagos Central Senatorial District). The Bill was read for the *First Time* on Tuesday, 24th September, 2019. On Tuesday, 26th November, 2019, the Senate deliberated on the general principles of the Bill. After extensive debates, it was read the *Second Time* and referred to the Senate Committee on Judiciary, Human Rights and Legal Matters, for further legislative action, (vide Order of Referral dated Tuesday, 26th November, 2019), to report back with its recommendations.

2.0 METHOD OF WORK

After the referral, the Committee held a series of meetings and agreed on the following legislative framework:

- (a) to consult widely and seek views of stakeholders on the justifications for the passage of the Bill; and
- (b) to resort to any other matter incidental thereto, which would assist the Committee in the discharge of its assignment.

3.0 OBJECTIVES OF THE BILL

Mr. President, Distinguished colleagues, the objectives of the Bill, among others, are: to delete the statute of limitation on defilement in Sections 218 and 221 of the Criminal Code Act Cap. C.38 LFN, 2004 and amend the definition of rape in Section 357; and provide stringent punishment for the offence of kidnapping in section 364 of the Criminal Code Act.

4.0 LEGISLATIVE ACTION

In furtherance of this assignment, the Committee relied on the legislative framework, earlier agreed upon as the way forward. Accordingly, in addition to the wide consultations that were made with relevant stakeholders in order to elicit their inputs on the proposed legislation, the Committee also considered divergent views expressed by Distinguished Senators on the merits of the Bill during the Second Reading stage.

Mr President, Distinguished colleagues, I wish to state here for the avoidance of doubt that, from views expressed on the Bill, there were opposing arguments on the passage of the Bill by the National Assembly. It will interest Distinguished Senators to note that the Committee scrutinised in detail, all the views canvassed for and against the passage of the Bill, taking into account, extant Laws on the subject matter. Below, are the highlights of the views expressed by stakeholders on the proposed legislation.

4.1 *Highlights of Views*

Mr President, Distinguished colleagues, let me commend once again, the Sponsor of the Bill for this laudable piece of legislative proposal. It is apposite to state that an effective criminal justice system is fundamental to

the maintenance of law and order and since criminal justice addresses behavioural issues, it must be dynamic and proactive.

The aim of criminal law and criminal justice system is not only for punishment but also for deterrence, retribution, restoration and rehabilitation of offenders. And where a law fails to achieve any of these objectives, it becomes inherently defective, hence the need for the amendment/review of such law(s) to bring them into conformity with best practices. This amendment is a response to these anomalies and is also within the legislative powers of the National Assembly, to make laws that are responsive to the yearnings and aspirations of the people and to also amend obsolete laws that will enhance effective justice system and ensure good governance. Therefore, the amendment to the Criminal Code Act that is being proposed, is a welcome development to our criminal justice system.

Firstly, it should be noted that the proposition to delete statute of limitation on the prosecution of offences under section 218 and 221 of the Criminal Code Act, is a welcome development as the statute of limitation, placed on defilement and rape, negates the principles of natural law, equity and good conscience. There is no gainsaying the fact that anyone who has carnal knowledge of a girl under the age of thirteen (13) or a girl being of or above the age of thirteen (13) and under the age of sixteen (16) or attempts to commit same offences, may not be punished, as prosecution of such offence is barred after the expiration of two (2) months from the date of commission of the offence by virtue of statute of limitation.

Secondly, the stakeholders contended that the use of the words "idiot or imbecile" in Section 221 of the Act, has pejorative connotations, which have become derogatory and obsolete. As such, their usage should no longer exist in our laws, hence the need for this amendment. This is also a

welcome development and a modern trend in legislative drafting and best practice world over.

Furthermore, section 357 of the Criminal Code Act, defines rape as an offence against women. However, in recent times, there are incidences of non-consensual sex, perpetrated against the male gender. Therefore, the passage of this Bill will ensure that our laws and jurisprudence evolve in tandem with the rest of the world.

Finally, they submitted that the frequency of kidnapping across the Federation and the resultant trauma, not to mention the number of lives lost to the crime, makes it imperative to review our laws with a view to ensuring appropriate punishment for perpetrators as well as serve as deterrence to would be perpetrators. Thus, the passage of this Bill would proffer a life sentence for persons found guilty of kidnapping as against the provisions of section 364 of the Act, which proffer the punishment of imprisonment for a term of ten (10) years, where the offence of kidnapping is established.

Mr President, Distinguished colleagues, at this juncture, we wish to state that a cross-section of stakeholders opposed the passage of the Bill, based on the substantive and procedural laws on the subject matter. Hence, they submitted as follows:

Firstly, they stated that the statute of limitation, regarding the prosecution of the offence of defilement that must commence within two (2) months from the date the offence was committed, which is the absurdity that this Bill seeks to address, has been cured by virtue of section 45 (1) and (2) of the Violence Against Persons (Prohibition) Act, 2015, as such, the amendment should be discountenanced. For the avoidance of doubt, the section provides as follows:

"(1) Any offence committed or proceedings instituted before the commencement of this Act under the provisions of the –

(a) Criminal Code, Cap. LFN, 2004

(b) Penal Code, LFN, 2004

(c) Criminal Procedure Code, Cap. LFN, 2004

(d) Any other law or regulation relating to any act of violence defined by this Act shall as the case may require be enforced or continue to be enforced by the provisions of this Act.

(2) Any provision of the Act shall supersede any other provision on similar offences in the Criminal Code, Penal Code and Criminal Procedure Code".

Secondly, it was contended that since the Violence Against Persons Act, 2015, has addressed the gender neutrality issue on rape or defilement, as there is no longer distinction regarding the classification of all acts of sexual penetration of persons, such as rape or defilement in this Act, it is needless to amend the Criminal Code Act in that regard. Thus, section 1 (1) (a) of the Act, states as follows:

"1. (1) 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"

From the standpoint of this provision, they argued that it is clear, gender neutrality introduced in the definition of rape in this Bill, has already been addressed, as such, the Criminal Code Act should not be amended.

Thirdly, they argued that the passage of the Administration of Criminal Justice Act, 2015, has, to a great degree, helped in the administration of justice generally in the Federal Capital Territory and Federal Courts, across the country, which is the uniform procedural law that applies in these Courts. Therefore, they emphasised the urgent need to comprehensively and holistically review all obsolete existing criminal laws, including the Criminal Code Act and the Penal Code Act to pave way for uniformity and suitability in our country instead of embarking on piecemeal amendment, as is being sought by this Bill.

Finally, it was posited that in as much as the National Assembly has the power to make laws for the peace, order and good government of the Federation, it does not have the constitutional competence to legislate on crimes that do not fall within the contemplation of the *Exclusive Legislative List*. Hence, the National Assembly cannot amend the Criminal Code and Penal Code for the States.

5.0 OBSERVATIONS/FINDINGS

Flowing from the analysis of submissions made by the stakeholders on the Bill and based on our subsequent consideration of the Bill in our mark-up session, the Committee hereby makes the following observations and findings:

1. That the introduction of the Bill is laudable and commendable as its passage into law, will address the lingering issues of status of limitation in the prosecution of rape/defilement cases and the incessant kidnapping menace, which are on the rise, in recent times;
2. That even though statute of limitation has been deliberately omitted from the VAPP Act, 2015, which is the prevailing law on the subject matter, intended to give room for prosecution of offences of this nature, it is not of general application. As such, this proposed amendment, is a welcome development;
3. That by virtue of Section 315 of the Constitution of the Federal Republic of Nigeria 1999, as amended, dealing with savings and transitional provision, the National Assembly has the legislative competence to amend the Criminal Code Act as an Act of the National Assembly by its virtue of being an existing law;

4. That the National Assembly can amend the Criminal Code Act in line with the aforesaid provision, which gives it power to take over all existing laws, made prior to its existence, and subject such laws to necessary modifications in order to bring them into conformity with the Constitution;
5. That contrary to views canvassed by those opposing the passage of the Bill by the National Assembly, on the ground that its passage will usurp the powers of the States to legislate on the subject matter, it should be stated for the avoidance of doubt, that the proposed Bill seeks to amend the Criminal Code Act of 1916 and not Criminal Code Law of the States; and
6. That the Bill, when enacted, will apply to the Federal High Courts, in the southern part of the country, where the Criminal Code Act, is applicable and operational.

6.0 RECOMMENDATION

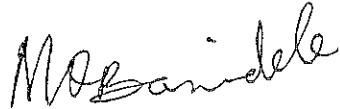
The Senate Committee on Judiciary, Human Rights and Legal Matters, to which this Bill was referred, having considered same, recommends as follows:

"That the Senate do pass the Criminal Code Act Cap. C38, Laws of the Federation of Nigeria, 2004 (Amendment) Bill, 2020, as amended".

WE SO MOVE.

7.0 CONCLUSION

On behalf of members of the Committee, I wish to express our gratitude for this opportunity to serve you, our colleagues and our nation, Nigeria.

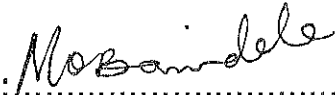
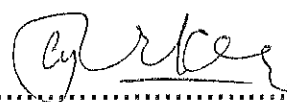
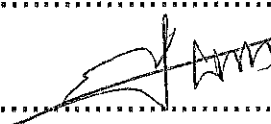
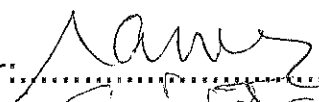
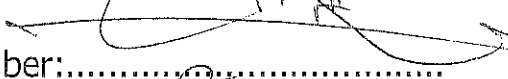
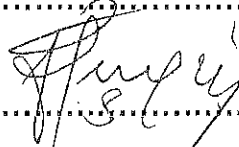

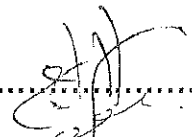

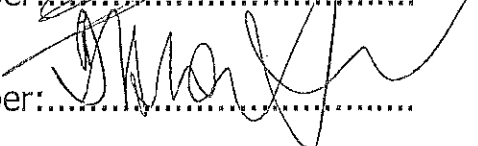



Senator Michael Opeyemi Bamidele
Chairman

ENDORSEMENT PAGE

Senate Committee on Judiciary, Human Rights and Legal Matters

Membership

1. Senator Michael Opeyemi Bamidele - Chairman: 
 2. Senator Orker-Jev Emmanuel Y. - V/Chairman: 
 3. Senator Bala Ibn Na'Allah - Member:
 4. Senator Abdullahi Adamu, CON - Member:
 5. Senator James E. Manager, CON - Member: 
 6. Senator Ike Ekweremadu - Member: 
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 8. Senator Gabriel T. Suswam - Member: 
 9. Senator Aishatu Ahmed Dahiru - Member: 
 10. Senator Ajibola Basiru Surajudeen - Member: 
 11. Senator Peter O. Nwaoboshi - Member: 
 12. Senator Ibrahim Hassan Hadejia - Member: 
- Charles Luri Bala Esq. - Committee Clerk: 



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REMOVE GENDER RESTRICTIONS IN THE OFFENCE OF RAPE AND FOR RELATED
MATTERS (SB.02)**

JUNE, 2020

CRIMINAL CODE ACT (AMENDMENT) BILL, 2019

Arrangement of Clauses

Clauses:

1. Amendment of CAP C38 LFN 2004
2. Amendment of Section 218
3. Amendment of Section 221
4. Amendment of Section 221
5. Amendment of Section 357
6. Amendment of Section 364
7. Citation

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3. Amendment of Section 221
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PROVISIONS OF THE PRINCIPAL ACT	PROVISIONS OF THE BILL	COMMITTEE'S RECOMMENDATION	REMARKS
<p>1. The Criminal Code Act Cap. C38 LFN, 2004.</p>	<p style="text-align: center;">Amendment of Cap. C38 LFN, 2004</p> <p>1. The Criminal Code Act Cap. C38 LFN, 2004 (referred to as "the Principal Act") is hereby amended as set out in this Bill.</p>	<p style="text-align: center;">Amendment of Cap. C38 LFN, 2004</p> <p>1. The Criminal Code Act Cap. C38 LFN, 2004 (referred to as "the Principal Act") is hereby amended as set out in this Bill.</p>	
<p style="text-align: center;">Defilement of girls under thirteen</p> <p>2. Section 218 - A prosecution for either of the offences defined in this section of this Code shall be begun within two months after the offence is committed.</p>	<p style="text-align: center;">Amendment of Section 218</p> <p>2. Section 218 of the Principal Act is amended by deleting in line 5 the words; "A prosecution for either of the offences defined in this section shall be commenced within two months from the date the offence is committed".</p>	<p style="text-align: center;">Amendment of Section 218</p> <p>2. Retained as in the Bill</p>	
<p style="text-align: center;">Defilement of girls under sixteen and above thirteen, and of idiots</p> <p>3. Section 221 - (2) knowing a</p>	<p style="text-align: center;">Amendment of Section 221</p> <p>3. Section 221 of the Principal Act is</p>	<p style="text-align: center;">Amendment of Section 221</p> <p>3. Section 221 of the Principal Act is</p>	

<p>woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her,</p> <p>A prosecution for any of the offences defined in this section of this Code shall be begun within two months after the offence is committed.</p>	<p>amended by deleting in line 10 the words; "A prosecution for either of the offences defined in this section shall be commenced within two months from the date the offence is committed".</p>	<p>amended as follows:</p> <p>(a) in line 4, by substituting for the words 'an idiot or imbecile', the words "mentally challenged", and</p> <p>(b) in line 10, by deleting the words: "A prosecution for any of the offences defined in this section of this Code shall be begun within two months after the offence is committed".</p>	<p>The usage of the words "an idiot or imbecile" is derogatory, hence the amendment.</p> <p>The amendment is intended to remove the statute of limitation</p>
<p>Defilement of girls under sixteen and above thirteen, and of idiots</p> <p>4. Section 221 - (2) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her,</p>	<p>Amendment of Section 221</p> <p>4. Section 221 is amended in line 4 by substituting for the words 'idiot or imbecile', the words 'mentally challenged'.</p>	<p>Amendment of Section 221</p> <p>4. Deleted</p>	<p>This clause has been recommended to be deleted because the drafting instruction ought to be part of clause 3, being a part of the provision of section 221 (2) above.</p>
<p>Definition of rape</p> <p>5. Section 357 - 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</p>	<p>Amendment of Section 357</p> <p>5. Section 357 of the Principal Act is amended in line 1 by substituting for the words, 'woman or girl, without her consent, or with her consent', the words, 'any person, without consent, or with consent,'</p>	<p>Amendment of Section 357</p> <p>5. Section 357 of the Principal Act is amended as follows:</p> <p>(a) in line 1, by substituting for the words 'woman or girl, without her consent, or with her consent', the words "any person, without consent, or with consent",</p>	<p>This clause was amended to maintain gender neutrality as the offence can be committed by either gender.</p>

<p>as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.</p>		<p>(b) in line 3, by substituting for the words 'in the case of a married woman, by personating her husband, is guilty of an offence which is called rape' in line 3, the words 'in the case of a married man or woman, by personating his wife or husband, is guilty of an offence which is called rape'.</p>	
<p>Definition of rape</p> <p>6. Section 357 - 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 personating her husband, is guilty of an offence which is called rape.</p>	<p>Amendment of Section 357</p> <p>6. Section 357 of the Principal Act is amended in line 3 by substituting for the words, 'in the case of a married woman, by personating her husband, is guilty of an offence which is called rape', the words, 'in the case of a married man or woman, by personating his wife or husband, is guilty of an offence which is called rape'.</p>	<p>6. Deleted</p>	<p>This clause has been recommended to be deleted because the drafting instruction ought to be part of clause 5, being a part of the provision of section 357 above.</p>
<p>Kidnapping</p> <p>7. Section 364 - (2) unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is</p>	<p>Amendment of Section 364</p> <p>7. Section 364 (2) of the Principal Act is amended in line 5 by substituting for the words, "is guilty of a felony, and is liable to imprisonment for ten years", the words, "is guilty of a felony and is liable to imprisonment for life".</p>	<p>Amendment of Section 364</p> <p>7. Section 364 (2) of the Principal Act is amended in line 5 by substituting for the words "is guilty of a felony, and is liable to imprisonment for ten years", the words "is guilty of a felony and is liable to imprisonment for life".</p>	<p>This clause is amended in order to make the punishment of the offence of kidnapping stringent in order to deter perpetrators of the crimes.</p>

<p>imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned.</p>			
<p>Citation</p> <p>8. This Act may be cited as the Criminal Code Act.</p>	<p>Citation</p> <p>8. This Bill may be cited as the Criminal Code Act (Amendment) Bill, 2019.</p>	<p>Citation</p> <p>8. This Bill may be cited as the Criminal Code Act (Amendment) Bill, 2020.</p>	
	<p>EXPLANATORY MEMORANDUM</p> <p>This Bill seeks to amend the Criminal Code Act Cap. C38 Laws of the Federation of Nigeria, 2004 to delete the statute of limitation on defilement, increase punishment for the offence of kidnapping and remove gender restrictions in the offence of rape.</p>	<p>EXPLANATORY MEMORANDUM</p> <p>Retained</p>	