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# THE LEGAL FRAMEWORK FOR THE PROMOTION OF ACCESS TO JUSTICE FOR WOMEN IN NIGERIA

**By**

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## Abstract

*Respect for human rights and access to justice is pivotal to the growth of any nation. The Judiciary which is the last hope of the common man in Nigeria should be independent, and must act without fear, favour or illwill. They should be seen to do justice at all times. In most societies, women and children are the most endangered species. Access to justice ensures that women get timely justice to redress their wrongs. This is because for every wrong there is a remedy hence the latin maxim ibi jus ibi remedium. Section 36(6) of the constitution provides for access to justice for all citizens in Nigeria. Access to justice promotes the achievement of sustainable development as it promotes the participation of citizens of a country, reduces poverty, increases the productivity of persons and strengthens the peace and development of nations. This article addresses violence against women, traditional harmful practices and discusses the legal framework for the protection of access to justice in Nigeria, and proffers recommendations for the strengthening of the country's legal framework.*

## Introduction

Every society wrestles with the nature of justice, punishment, fairness and order. For many, the iconic image of a blindfolded woman welding a set scale, or a sword has endured as a symbol around the world. The concept of justice is difficult to define. In the case of *H.A Willoughsy v. International Merchant Bank (Nig) Ltd.*[1] Justice Kayo Eso of blessed memory stated that "justice as a concept is not easy to define despite postulations by great jurists from time immemorial''. It is perhaps for the reason of difficulty of an objective definition of justice that it has been considered safe to regard justice to be done once it is according to law. Justice is the process through which laws and institutions resolve conflicting claims and provide remedies for various forms of abuse and exploitation. Access to justice extends beyond an individual's ability to get legal representation in courts and includes the ease and extent to which people can obtain reliefs for the violation of their rights as well as the fairness and efficiency of such reliefs. This means that individuals do not have access to justice when they are terrified of the rigours attached to the process of obtaining justice, as this affects their decision to speak out against abuse.

*In Edu v Odan community*[2], Anthony Aniagolu JSC emphasized the need for the Supreme Court to promote justice when he said that "The court of last resort will indeed do justice, but must do the justice by procedures laid down by the law and the constitution. The moment a court ceases to do justice in accordance with the procedures laid down for it, it ceases to be a regular court to become a kangaroo court". In Nigeria, people experience difficulties in accessing justice, both in civil and criminal matters, which particularly affects women and creates room for impunity and further denial of rights. The extent to which women access justice determines whether a nation observers the rule of law, has an effective judicial system and takes the human rights of its citizens seriously.[3]

## Gender Based Violence

Gender-based violence is a phenomenon deeply rooted in gender inequality, and continue to be one of the most notable human rights violations within all societies. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence but the majority of victims are women and girls.

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(1987) NWLR (pt. 48)105

[2] (1980) NWLR pt 11, 103

[3] Committee on the Elimination of Discrimination against Women, 2015

The World Bank's Inter Agency Standing Committee defined gender-based violence (GBV) as "any harmful act that is perpetrated against a person's will and that is based on socially ascribed (gender differences between males and females. GBV leads to trauma, depression, physical injuries, suicidal thoughts and even death. It also affects the ability of women to care for their children as well as hinders their development which affects the overall development of the nation.

The most common form of GBV is intimate partner violence which is defined as "abuse within the home with the effect of causing harm and violating the rights of its victims". Intimate partner violence is hardly reported and women who seek help usually turn to their family members instead of taking legal actions.

**Harmful Traditional Practices**

Harmful traditional practices constitutes another form of GBV. These are cultural based acts which cause harm to members of the communities that practice them. For instance, widowhood rites, where women are either forced to drink the water used to wash their husband's bodies, shave their heads and sleep besides their husband's corpses. Other harmful cultures includes female genital mutilation and child marriages. A principal legislation is the Violence Against Persons (Prohibition) Act, 2015. It criminalizes harmful cultural practices like FGM and harmful widowhood practices as well as other forms of violence such as spousal battery, emotional, verbal and psychological abuse.

**Sexual Harassment at Workplace**

Sexual harassment is the unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or submission to or rejection of such conduct by an individual and is used as a basis for employment decisions affecting such individual; or such conduct has the purpose of effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Unwelcome behaviour is the critical word, unwelcome does not mean "involuntary". A victim may consent or agree to a certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment or joke depends on all the circumstances.[4]

In the case of *Ejieke Maduka v Microsoft Nigeria Limited and 3 Ors*[5], the National Industrial Court of Nigeria notes that sexual harassment is contrary to the provisions of section 34(1)(a)[6] together with Articles 2 and 5 of the African Charter which recognizes respect to the dignity of persons as a human right and prohibits all forms of degrading treatment. Women are harassed sexually in the workplace in Nigeria, either at the point of seeking for employments or as full employees. Sexual harassment in the workplace involves unequal power relations between the employee and employer. The employee is offered some benefits for sexual relations with her supervisors, also known as *quid pro quo*. Another form involves hostile work environments where the perpetrator creates an uncomfortable and intimidating environment to the extent that it causes anxiety for the victims and lowers their productivity. Sexual harassment in the workplace portrays the idea that women in professional settings have lesser status than men. Women surely need access to justice for the protection against sexual harassment in the society.

A sexual Harassment Bill was passed by the Senate on the seventh of July 2020 and thereafter forwarded to the House of Representatives for deliberations. This bill sought to curb the harassment of students in tertiary institution and prescribes up to 14 years imprisonment for various offences. The Bill has however been criticized for limiting its scope to only cover the educators, excluding support staff and

[4] Preventing sexual harassment (BNA Communication INC) SDE 1P; 73
[5] NICN/LA/492/2012
[6] Constitution of the Federal Republic of Nigeria 1999 (as amended)

students in tertiary institutions. Condemnations also follow the exclusion of sexual harassment in the workplace as well as other educational institutions like primary and secondary schools.

**Legal Framework for the Protection of Access to Justice of Women in Nigeria**

Laws provide a good foundation to finding solutions and deterring acts that cause any mayhem in the society. It must be noted that the enactment of laws is not enough to curb societal ill. These laws enable women to enjoy their human rights to accessing justice in all facets of life. Below are some of the laws discussed here under.[7]

**(1) Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The Constitution of the Federal Republic of Nigeria is supreme to all other laws and is binding on all authorities and persons in Nigeria. Section 6,[8] provides that the judicial powers conferred on the court shall extend to all matters between persons, or between government and citizen for the determination of the rights and obligations of every person. The right to fair hearing of every person is guaranteed by section 36,[9] and it includes the right to have any question relating to the rights and obligations of any person determined within a reasonable time by impartial and independent courts and tribunals. S. 36(6)[10] provides that people suspected of committing crimes should be given the opportunity to defend themselves either in person or by their legal practitioners. Furthermore, section 42(1)[11] protects Nigeria citizens from administrative action of the government.

No person shall be condemned unheard while every accused person shall be presumed innocent until the contrary is proved by the state[12]. Pending the conclusion of trial, an accused person is entitled to bail. Every person charged with a criminal offence shall be informed of the details of the nature of the offence and be given adequate time and facilities for the preparation of his defence. The suspect is entitled to self-defence or defence by lawyers of choice and the assistance of an interpreter if the person does not understand the language used at the trial. No person shall be tried twice for the same offence.

Access to justice is a fundamental and basic requirement of any system of justice in granting legal rights to the citizens. It is clear that the spirit and the intent of the constitution is to promote good governance and welfare of all persons in our country on the principles of freedom, equality and justice. This can be seen in the preamble of the constitution. Therefore, any law or policy that deviates from the promotion of justice to all and sundry is inconsistent with the letter and spirit of the constitution.

The constitution has made express provision for access to justice as one of the fundamental rights guaranteed to every individual. Section 36(1) of the constitution provides:

> "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality"[13]

From the above provision, it is clear that anyone who feels he has a claim against an individual or government department or institution can approach the law court for the determination of that claim.
Similarly, S. 46(1) makes specific reference to fundamental rights. It provides thus:
"Any person who alleges that any of the provisions of the chapter has been or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress"
This gives every person the right to seek redress in a High Court located in any state where the violation of their fundamental right has occurred or may occur. The application of access to justice is that

[7] Constitution of the Federal Republic of Nigeria 1999 (as amended)
[8] *Ibid*
[9] *Ibid*
[10] *Ibid*
[11] *Ibid*
[12] *Ibid,* S. 36(5)
[13] Constitution of the Federal Republic of Nigeria 1999 (as amended)

everybody is given equal rights before the law, irrespective of gender, status or class. The Constitution thus is the major legal framework for the protection of access to justice of women in Nigeria.

**(2) Violence Against Persons Prohibition Act, 2015**

The Violence Against Persons (Prohibition) Act was enacted in Nigeria in order to comply with CEDAW's recommendations which enjoined parties to take legal measures to protect women against gender-based violence. The Act is comprised of 48 sections and 9 schedules consisting of 6 forms. The object of the Act is to eliminate violence of all forms in both private and public life by providing adequate protection and remedies for victims and punishment of offenders. It covers most of the prevalent forms of violence in Nigeria ranging from economic, physical, psychological and sexual violence such as rape. It covers violence relating to traditional practices such as circumcision or genital mutilation and harmful traditional practices.

The Act also covers socio-economic and political violence as well as domestic offences such as abandonment of children, forceful ejection from home, spousal battery and incest. It also made provision for the protection, rehabilitation and compensation for victims. Beyond domestic violence, the Act covers electoral violence, offensive conduct, emotional, psychological, verbal abuse, spousal battery, violence by state actors, forced isolation, separation from family and friend, stalking, harmful widowhood practices, incest, indecent exposure etc.

The Violence Against Persons (Prohibition) Act has made adequate provisions for vulnerable persons. Under the law, victims of domestic violence are at liberty to apply to a court for a protection order to restrain an individual or state actor from committing acts of violence against them. One laudable aspect of the Act is the criminalization of acts that were previously not regarded as offences under Nigeria law, including harmful traditional practices, FGM,[14] emotional, verbal and psychological abuse, harmful widowhood practices, and abandonment of spouse, children and other dependents without sustenance[15]. Persons convicted of these offences will either be sentenced to imprisonment ranging from 2 years to life imprisonment or asked to pay fines.

Furthermore, the VAPP Act expanded the definition of Rape. Section 1,[16] defines rape to "include where a person intentionally uses any part of the body or thing to penetrate the vagina, anus or mouth of another person provided the other person did not consent or the consent was not obtained by fraud or by any other unlawful means or means of threat 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 the use of any substance or addictive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse. By this definition, both males and females are protected against rape. Again, apart from the punishment meted out to a perpetrator of rape, their victims can now be given appropriate compensation, depending on the circumstances of the case[17]. A sex offender register has also been established under the Act; where persons convicted of sexual offences will be registered to prevent them from committing further assaults as well as deter prospective offenders.[18] Victims of domestic violence can apply for protection orders to prevent further acts of violence against such a person.[19]

However, the Act has been criticized for not mentioning clearly that violence against women is a discriminating practice and a violation of their human rights, as recommended by the United Nations model framework for legislation on Violence Against Women. Furthermore, the Act authorizes the National Agency for the Prohibition of Trafficking in Person (NAPTIP) to enforce the provisions of the Act.[20] The NAPTIP is a specialized agency established to combat trafficking in persons through the trafficking in persons (Prohibition) Law Enforcement and Administration Act of 2003.

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[14] VAPP Act 2015, S. 6
[15] VAPP Act 205, S. 16
[16] VAPP Act, 2015
[17] VAPP Act 2015, S. 38(1)
[18] VAPP Act 2015, S. 42
[19] *Ibid,* S. 38(1) (c) (iii)
[20] VAPP Act, 2015, S. 44

Despite the laudable provisions of the Act, the provisions of Section 27(A) and 46 of the Act poses a major setback to the elimination a violence in our society. Section 46 of the Act has limited the application of the Act to the Federal Capital Territory, Abuja. This provision shuts out other parts of the federation from the benefits of this laudable Act. Section 27(a) empowers only the High Courts of the Federal Capital Territory, Abuja to grant applications brought under the Act. The combined effect of these provisions is that the Federal High Court is excluded from the operation of the Act.

### 3. Legal Aid Council

In order to facilitate access to justice by indigent citizens, the government has established some institutions to provide free legal services. Thus, pursuant to the Legal Aid Act, the legal Aid council is required to assign legal practitioners to appear for indigent citizens charged with any offence in any criminal court in the country. If such indigent persons have civil claims the council will assign lawyers to handle them.

Each of the state government has created the office of the public defenders to provide legal services to women, children and other vulnerable members of the society. These are non-governmental organizations that are involved in defending the rights of women and other vulnerable people in the society through such NGO's laws and policies which discriminate against women have been declared unconstitutional while a few others have been repealed by the National Assembly.

### 4. Sexual Offences Bill 2013

The Sexual Offences Bill was introduced and sponsored by Senator Anyanwu (a female legislator). The Nigeria Senate passed the Sexual Offences Bill in 2015. The Bill is modelled after the Kenyan Sexual Offences Act, No. 3 of 2006. Both the Nigerian and Kenyan laws are based on the Sexual Offences Act 2003 of the United Kingdom (UK).[21]

However, due to misconceptions and controversies concerning some provisions of the bill (for example the age of consenting the bill is yet to be assented to by the president of Nigeria). SOB contains provisions on stalking, cultural and religious practices that are discriminating against women and sexual harassment amongst others. The bill repeals the sexual assault provisions of the Criminal Code Act. It repeals sections 21, 29 and 30 of the Criminal Code which covers sexual offences and gives a more cogent definition of rape than the one stated in the VAPP Act. The Bill also regulates new sexual offences including indecent exposure (Clause 22), gang rape (Clause 9), child pornography (Clause 30), incest (Clause 18) and non-disclosure of conviction of sexual offences (Clause 36), Clause 31 protects vulnerable witnesses which include the alleged victim, a child or a person with mental disabilities. The alternative measures to giving testimony in court provided by sub-section 4 will improve the access to justice of women who would otherwise have been reluctant to testify in court. Clause 35(4) provides that the cost of medical treatment or professional counseling of a victim of a sexual offence shall be taken up by the state.[22]

Also, it has been stated that the definition of rape in the sexual offences Bill is clearer than the provisions in the VAPP Act. Section 2(1)(a) provides that rape is where a person intentionally and unhappily commits an act which causes penetration by or of the victim with his or her own genital organ. Section 50[23] defines genital organ to include the anus and the breast. In effect "rape is limited to penetration of the vagina and the anus with the penis".

The Sexual offences Bill has been applauded for its ability to promote the rights of women in addition to improving the criminal justice system in Nigeria. However, the Bill has been condemned for being a replica of the Kenyan Sexual Offence Act.

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[21] O. Osinuga, Nigeria's Sexual Offences Bill 2013: Matters Arising, 2015, https://papers.ssrn.com/So13/papers.Lfn?abstract_id=2634134 Accessed 8 August 2022)

[22] Sexual Offences Bill 2013

[23] Sexual Offences Bill 2013

## 5. The Child Rights Act (2003)

The Children's Right Act of 2003 extends the human rights bestowed to citizens in the constitution of the Federal Republic of Nigeria, 1999 (as amended). This law was passed at the Federal level, and it is only effective if state assemblies also codify the law. The bill was first introduced in 2002, but did not pass because of opposition from the Supreme Council for Sharia. The Act was officially passed into law in 2013 by former President Chief Olusegun Obasanjo as the Children Right Act 2003. In large part because of the media pressure that national stakeholders and international organizations put on the National Assembly.

Child's Right Act (2003) is the law that guarantees the rights of all children in Nigeria both male and females. A child as defined by the Act is any person under the age of 18. The Act mandates that when a child is concerned their best interest is to take precedent. It goes on to state that the parent or legal guardian is obligated to fulfill the duty to give the child basic protection. It specifies that the Article iv of Nigeria's constitution and any other federal law which deals with fundamental right should be seen as being part of the Act[24].

The Act discusses the ways in which a child shall be protected. These include protection from child marriage as well as the punishments for the act to the adult parties involved, other protections include: not being harmed (including being marked with tattoos) or from sexual violence, being shielded from exploitative labour, or being enlisted in any military operation. It also lists the reasons when a child assessment order may be sought as well as the reasons and duration which emergency protection orders shall be given to the child. It is also made clear the obligations of a state government when it is disclosed to that institution that a child is being harmed. It also lists the duration when emergency protection orders shall be given to a child. It also made clear the obligations of a state government when it is disclosed to the institution that a child is being harmed. It also indicates the circumstances in which a child shall be brought to court in order to determine if they need protection. This part also stipulates the type of person who shall be allowed to make such a decision using the guidelines detailed in this section.

## 6. Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act 2015 is divided into 48 parts with 495 sections. It Merges the two principal legislation, the Criminal Procedure Act (CPA)[25] and the Criminal Procedure Code (CPC)[26]. Thus, the Act repealed the CPA, CPC and the Administration of Criminal Justice Act[27].

Substantially, the provisions of the Act preserved the existing criminal procedure systems, but it introduces innovative provisions that could enhance the efficiency of the justice system. The Act adopts a more acceptable trend used in the Evidence Act 2011, where persons standing trial for criminal offences are not described as "accused persons but as defendants". The provisions of the Act apply to criminal trials for any offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. However, it does not apply to a court martial.[28]

The objective of the Act is captured in section 1 which read thus: "The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspects, the defendant, and the victim". The purpose of the Act as captured above is a deliberate shift from punishment as the main goal of our criminal justice to restorative justice which pays more attention to the needs of the society, the victims, vulnerable persons and the rights and interest of a defendant.

A laudable innovation in the Act is the right of women to stand as sureties. The current practice in Nigeria where women are routinely denied the right to stand as sureties for the purpose of entering into recognizance for bail received the attention of the Act. Section 167(3) provides that no "person shall be

[24] Child's Right Act (2003)
[25] CAP (41, LFN 2004)
[26] CAF L42, LFN, 2004
[27] CAP A3, LFN, 2004
[28] ACJL 2015, S. 2(2)

denied, prevented or restricted on the ground only that the person is a woman". This provision is in line with the Constitution and the Convention on the Elimination Against Women (CEDAW) which has been ratified by Nigeria.

### 7. Gender and Equal Opportunities Bill 2019

The GOE bill was severally rejected by the National Assembly, first in 2006, then in 2010 and 2015. In 2019, a new Bill titled 'Gender and Equal Opportunities (GEO) Bill 2019 was re-introduced, having addressed some of the initial concerns highlighted by the senators. The bill seeks to give effect to chapter II and IV of the CFRN, which contains fundamental objectives and directive principles of state policy and the fundamental human rights, respectively, in addition to certain provisions of CEDAW and the protocol to the African Charter on the rights of Woman in Africa (Maputo Protocol). The GOE promotes access to justice for women by stating in Clause 316(2) that women are to be treated 'equally with men in all stages of proceedings in courts and tribunals." Furthermore, the Bill prohibits discrimination against women in political and public life (Clause 6), employment (Clause 8), health (Clause 10) as well as discrimination based on age, marital status and disability (Clause 5). Socio-cultural practices which promote discrimination as a result of gender stereotypes and prejudices are to be modified. By virtue of clause 2 of the Bill, the enactment of the GEO Bill will invalidate existing laws, regulations customs or practices which discriminate against women. The Bill is to be implemented by the National Human Rights Commission as provided by clause 15. The GOE is a laudable bill which if passed, will actively promote equality and empower women.

### Conclusion

Many women in Nigeria are deprived of justice, mainly in the procedural aspects of getting remedies to their grievances as well as the denial of imminent needs and rights which should be enjoyed by all citizens. These women are victims of domestic violence, rape, gender stereotypes, land deprivation and harmful cultures. Accessing justice in Nigeria is quite cumbersome and thorny. Many women experience challenges in obtaining remedies which in turn leads to depression, deaths, violence, failed relationships and less confidence in the justice system. Access to justice will strengthen the rule of law and promote peace. The Gender and Equal Opportunities Bill 2019 and the Sexual Offences Bill 2013 if passed into law will go a long way to curb discriminating practices and curb sexual offences in the workplace.

### Recommendations

1. The National Assembly should pass into law the Sexual Offences Bill 2013 and The Gender and Equal Opportunities Bill 2019.
2. The Child's Rights Act 2003 should be domesticated in all the states of the Federation.
3. The application of the Violence Against Persons (Prohibition) Act, 2015 should not only be limited to the Federal Capital Territory. Not all the states have domesticated the VAPP Act. All states as a matter of urgency should immediately domesticate it.