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**The Role of the Justice Sector Stakeholders in Curbing the
Menace of Sexual and Gender Based Crisis in Nigeria**

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Abstract

Purpose: This paper examines the role of justice sector stakeholders in Nigeria in curbing the menace of sexual and gender based crisis in Nigeria. Gender-based violence (GBV), is one of the oppressive forms of gender inequality posing a fundamental barrier to the equal participation of women and men in social, economic, and political spheres. Acts of gender-based violence affect the lives, health and wellbeing of millions of women, girls, boys and men worldwide. Gender-based violence takes place in all societies and all cultures. It includes female genital mutilation, female infanticide, child marriage, physical abuse, sexual harassment, mental or economic harm inflicted on a person because of socially ascribed power imbalances between males and females. Lack of access to justice institutions and mechanisms contribute to culture of impunity for violence and abuse. Girls and women may also experience gender-based violence when they are deprived of nutrition and education. Gender based crimes are grossly under-reported, especially when it is against the male folks and within a family setting or close affinity environment. While it is widely believed that women are much more likely than men to be killed by their intimate partners or family members, as a result of GBV, the nature of deaths when it involves men (excessive brutality, mutilation of diseased body, poisoning) is beginning to cast aspersion on that assumption.

Methodology: The doctrinal research was used in carrying out this research. Both secondary and primary sourced materials such as textbooks, journals, internets, case laws etc. were used.

Findings: Finding revealed that the gaps in criminal law and procedure, gender stereotypes, victim blaming, non-conviction of the aggressor and inadequate/inappropriate responses of the criminal justice institutions and professionals to GBV lead to secondary victimization as well as the likelihood of use of self-help.

Recommendation: To address these, advocacy message should be directed to the perpetrators. Religious leaders, traditional rules, lawyers, media houses, Civil Society Organisation among others are enjoined to take proactive measures in addressing this menace.

Keywords: *Justice sector stakeholders, sexual and gender crisis.*

INTRODUCTION

Gender-based violence is defined as violence directed against a person on the basis of their gender or sex, including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It includes physical, sexual and psychological violence perpetrated or condoned within the family, the general community or by the State and its institutions. The principal characteristic of gender-based violence is that it occurs more against women, precisely because they are regarded as the weaker sex. GBV involves power imbalances where most often, men are the perpetrators and women the victims.¹ Over the years, women have always occupied the lower part of the ladder in human existence and have played the second fiddle because of visible discriminations they have suffered in politics, religion, culture and businesses.

Gender-based violence is deeply rooted in discriminatory cultural beliefs and attitudes that perpetuate inequality and powerlessness, in particular of women and girls. Various other factors, such as poverty, lack of education and livelihood opportunities, and impunity for crime and abuse, also tend to contribute to and reinforce a culture of violence and discrimination based on gender. Such factors are frequently aggravated in times of conflict and displacement as the rule of law is eroded and families and societies are torn apart. The result is often an increase in both the frequency and brutality of gender-based violence. In its worst form, gender-based violence has become a weapon of war, intentionally directed against and aimed at terrorizing, displacing and destroying certain communities or ethnic groups. Combating gender-based violence requires an understanding of its causes and contributing factors, which often also serve as barriers to effective prevention and response. Inadequate legal framework, including national, traditional, customary and religious law, that discriminate against women and girls, fails to guarantee their rights, or exposes them to further harm and abuse.

The Nigeria state has primary responsibility for preventing and responding to gender-based violence. This includes taking all necessary legislative, administrative, judicial and other measures to prevent, investigate and punish acts of gender-based violence, whether in the home, the workplace, the community, while in custody, or in situations of armed conflict, and provide adequate care, treatment and support to victims/survivors. The Universal Declaration of Human Rights (UDHR) recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as a foundation for freedom, justice and peace in the world. It therefore adds that all are entitled to equal protection against discrimination in violation of this declaration and against any incitement to such discrimination.

Although emphasis has been on women and girls, especially under the Convention on Elimination of all forms of Discrimination against Women (CEDAW or Convention) this work takes a broader look at the problem in line with Article 7 of the Universal Declaration of Human Rights 1948 which guarantees equality of all men.² This article (UDHR) provides that; all are equal before the law and are entitled without any discrimination to equal protection of the law. The stakeholders in the justice sector include; the traditional rulers, lawyers, law enforcement officers, civil society organizations, religious leaders, media houses etc. There is no doubt that this category of stakeholders play vital roles in curbing the menace of sexual and gender based crisis in Nigeria.

¹ Causes and Effects of Gender-based Violence-... Available at <http://hrlibrary.umn/advocacy> accessed on 5/5/2022

² Universal Declaration of Human Rights The United Nations <https://www.un.org/aboutus/university>

CONCEPTUAL CLARIFICATIONS

Sex refers to a person's biological status as a male or female and is typically assigned at birth on the basis of external anatomy. It is typically categorized as male, female or intersex. Gender refers to the personal sense of an individual's own gender. This is a social construct of norms, behaviours and roles that vary between societies and over time. Gender identity is one's own internal sense of self and their gender whether as man, woman, neither or both. This is more in the mind and cannot be seen physically. It relates to how a person identifies internally and externally through appearance or behavior. Although people tend to associate this into muscularity for men and femininity for women, the construction may not be neatly divided along binary lines of man and woman. A person's physical or biological reproductive organ, genes or hormones may not necessarily construct the person's gender. The term gender is susceptible to many interpretations depending on the perspective or conviction of the author. A recent consideration of gender as a type of technology is instructive. This consideration is based on the perception that gender fits into Jacob Ciocci's definition of technology as "anything that organizes or takes apart reality."³

After technology, digital art provokes the object from its real state to the state of tricks of stop-motion animation to the transparent 3-D environments of the 90^s gaming culture. This reveals the contradictions posed by digital arts. There are different variations of gender identities. Accordingly, Benestad⁴ isolated gender into seven categories namely female, male, intersex, trans, non-conformist, personal, and eunuch which he explained as follows; female is an individual who describes herself as Female. Femaleness derives most of its conventions from the characteristics attached to individuals that are chromosomally XX (production of ova, milk-producing mammary glands, higher ratio of fat to body weight than males, fairer voice, motherhood and caregiving). Male is an individual who describes himself as male. Maleness derives most of its conventions from characteristics attached to individuals that are chromosomally XY (sperm production, male sex organs, deepened voice after puberty, and higher ratio of muscle mass to body fat than females). Intersex is an individual born with a variation between male and female anatomy and/or genetics. A person may have the genes that people may associate with being male or female but their reproductive organs or genitals or both may look different. Such difference in sex development is known as intersex. Intersex individuals are often surgically and/or hormonally "corrected" at birth or near puberty to fit within the dominant societal sex/gender categories of male or female.

Transgender is an individual whose gender identity does not align with the sex they were assigned at birth. They do not succumb to the societal pressure to be passable as either female or male. Such people prefer to move towards a gender identity that is different from the one assigned to them at birth. The word trans refer to those who are genderless. Non-conformists are individuals who describe themselves as not gendered - maintaining the potential to subscribe but actively refusing to do so. Often these individuals hold strong political beliefs that gender does not exist or that it is a social construct that can be ignored. Such people do not identify with any gender while others identify with multiple genders. Many individuals in this category seek to adjust their appearance

³ Jacob Ciocci. Predrive: After Technology at the mattress Factory <https://jacobciocci.org/show/predriv...> accessed on 7//5/2022

⁴ E..E.P. Benestad. Genders, 7 Typographies: Hacking the Binary. <https://walkerart.org/magazine/7-genders-7-typographies-hacking-the-binary> accessed on 7//5/2022

to reflect their non-gendered status by, for instance, removing their breasts or wearing gender-neutral clothing. An eunuch is an male individual who consciously decides to be castrated. This was a tradition for males charged with protecting royal females. This condition makes him feel patient, clear-headed, and not getting angry. Perhaps it would also give security of mind to the royal males that the eunuch would not make any sexual attempt on their females while attending to them in the palace or elsewhere. They also tend to develop more fatty tissues. Some eunuchs say it is an act of liberation from the societal pressures that masculinity has placed on to them.

Other Categories

Gender expressions and presentations involve aspects such as mannerisms, clothing styles, names, pronoun choices among others. Other categories of gender identities include;⁵ agender, andogyne, bigender, butch, cisgender, gender expansive, gender fluid, gender outlaw, gender queer, masculine of centre, non-binary, omnigender, and two spirit. Agender means a person who does not identify with any particular gender. Such a person may also be an asexual who experiences little or no sexual attraction to other people even though he or she has a gender. An agender is a genderless person. Andogyne is a person who is both masculine and feminine or between the two. Such a person ignores gender binaries and embraces both qualities in fashion, hair style, or behavior. Such a person can conveniently switch from one gender to the other at will. Bigender is a person who has two genders. May have the two physical organs or may have the identities of both male and female as distinct from the organ assigned to the person at birth. Such identity could create a mood swing from male to female and does not restrict a person to one gender.

Butch are women, especially lesbians who tend to display masculinity. A male gay who presents the female illusion is known as the butch queen. Cisgender is a person who identifies with the sex of his birth. Such a person stays physically and emotionally within the gender binary assigned at birth. Gender expansive is an umbrella term used to broaden a person's gender on the basis of cultural definitions relating to expression, roles or perceived gender norms. Such a person has a more flexible gender identity that might be associated with a typical gender binary. These include transgender and those whose gender broaden the surrounding society's notion of what gender is.⁶ Gender fluid is a person whose gender identity and presentation shifts between or outside society's expectation of gender.

Gender outlaw is a persons who refuses to allow society's definition of male and female to define them. Gender queer is a person whose identity or expression is not the same as society's expectation for their assigned sex or gender. Also refers to a person who has a combination of genders. Masculine of centre is usually used by a lesbian or a trans who leans towards masculine performances and gender experiences. Non-binary is a person who does not experience gender within the gender binary or experience overlap with different gender expressions. They are like nonconforming genders. Omnigender is a person who expresses, experiences or possesses all genders. Polygender is a polygender or pangender experiences and displays parts of multiple genders. Such a persons of all genders. Two spirit are people who experience different sexualities and genders in indigenous native American Communities. Such a person identifies as having both

⁵ Kesiene Boom, and Rachael Wright LMFT. What it means to be bigender: signs, relation to other identities and more <https://...www.mindbodygreen.com/what-it-mean-to-bebi...> accessed on 7//5/2022

⁶ Laurel Wamsley. A Guide to Understanding Gender Identity and Pronouns-NPR. Available at <http://www.npr.org/a-guide-to-understan...>

a masculine and feminine spirit and is used by some indigenous people to describe their sexual, gender and/or spiritual identity. As an umbrella term, it may encompass same sex attraction and a wide variety of gender variance such as gay, lesbian, bisexual, transsexual, and gender queer. It also fits the description of poly gender. This could be used to describe their experiences and feelings of masculinity and femininity.

Gender dysphoria is the psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity is medically diagnosed as gender dysphoria. Gender transition is a process a person may take to bring themselves or bodies into alignment with their gender identity. It could include any, none or all the following; discussing with a friend, family or coworkers, changing one's name, updating legal documents or seeking medical interventions such as, hormone therapy, or seeking surgical intervention known as gender affirmation or confirmation surgery.⁷ Gender re-assignment or gender affirmation surgery refers to procedures that help people get a transition to their self-identified gender. Gender-affirming options may include facial surgery, top surgery or bottom surgery. Most people who choose gender affirmation surgeries report improved mental health and quality of life.⁸

GENDER BASED VIOLENCE

This is violence motivated by an assumed gender superiority and is presented by aggression, revenge, competition, or unhealthy sense of entitlement that results in the abuse of a person's human rights in a physical, sexual, verbal, mental or economic manner because of the perpetrator's superior position in relation to the victim in line with socially constructed characteristics of women and men by stereotypes. It may also manifest by way of *threat* of violence, coercion, bullying and deprivation of liberty against men, women, children, adolescents, gay, transgender, eunuchs and gender non-conformist whether in public or private.⁹

GBV is a form of discrimination against a person by virtue of his/her identification with any of the classes of gender above identified that result in, or likely to result in physical harm, sexual harm, psychological harm, economic harm, or any other form of intentional suffering. It does not necessarily translate to violence against a female by a male, it could be vice versa or even between a male and a male or female and a female in homosexual or gay relationships.

What constitutes Gender Based Violence

GBV manifests in many forms that include but not limited to rape, sexual assault, intimate partner violence, sexual harassment, stalking, prostitution and sex trafficking that result in the following:¹⁰

- i. Physical harm: bodily injuries, distress and health problems e.g. beating, strangling, pushing, and the use of weapons.

⁷ Veronica Zambon. What are some different types of gender identity? <https://www.medicalnewstoday.com/types-of-gender...> accessed on 9/5/2022

⁸ American Psychiatric Association, "What is Gender Dysphoria?" Available at <https://psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria/> accessed on 12/5/2022

⁹ Ujwala sunil sindhe. Gender Justice and Status of Eunuch. International Journal of Humanities and Social Science Invention ISSN (Online): 2319-7722, ISSN (Print): 2319-7714 Vol. 1, Issue 1 December, 2012. www.ijhssi.org

¹⁰ J.A.A. Agbonika. Human Right Implications of Violence Against Girls in Nigeria. St Paul's Publishing House, Ibadan, 20216

- ii. Sexual harm: sexual acts, attempts to obtain a sexual act, sex trafficking, or acts otherwise directed against a person's sexuality without the person's consent. All acts of inappropriate touching or exposures may amount to sexual abuse.¹¹
- iii. Psychological harm: psychologically abusive behaviours such as controlling, coercion, economic violence and blackmail.
- iv. Domestic violence: acts of physical, sexual, psychological and economic violence that occur within the family, domestic unit, close proximity, or between intimate partners or spouses - former or current.
- v. Sexual harassment: unwelcome verbal, physical or other non-verbal conducts of a sexual nature with the purpose or effect of violating the dignity of a targeted person.
- vi. Female Genital Mutilation: the violation of a women's body by ritual cutting or removal of some or all of the external female genitalia which damages her sexuality, mental health, well-being and ability to participate in their community life, or death of the woman.¹²
- vii. Obnoxious widowhood practices: In some cultures, women are required to cut their hair, sleep on the floor or wear white or black clothing throughout the period of mourning. They may also be required to drink the water used to bath the deceased husband to purge themselves of accusation that they had a hand in the death of their husband. These practices are meant to demean the widow or dispossess her of her deceased husband's assets.
- viii. Forced marriage: marriage concluded under force or coercion - either by physical, emotional and or psychological pressure to marry. This is closely linked to child or early marriage, when children are wed before reaching the minimum age for marriage.
- ix. Online violence: all sorts of illegal or harmful behaviours against men and women in the online space. They can be linked to experiences of violence in real life, or be limited to the online environment only. They can include threats to the person, stalking or incitement to violence, unwanted, offensive or sexually explicit emails or messages, sharing of private images or videos without consent of the intended recipient, or inappropriate advances on social networking sites.

FACTORS THAT INFLUENCE GENDER IDENTITY

There are a number of factors that influence the behavior of a person in relation to a particular thing or phenomenon. The factors that influence the gender identity which a person aligns himself or herself with are considered under the following headings:

i) Hormonal Factors

Biological factors play a huge role in shaping children's physical development. The biological aspect of humans' sexuality deal with the reproductive system, the sexual response cycle, and the factors that affect these aspects. They also deal with the influence of biological factors on other aspects of sexuality, such as organic and neurological responses, hormonal issues, gender issues and sexual dysfunction.¹³ Males and females are anatomically similar, this extends in some degree to the development of the reproductive system. Men and women react to sexual stimuli in a similar

¹¹ Definition of Sex Abuse. What is Sexual Abuse? Pandora's Project. Available at <https://www.pandy.or/what-is-sex-abuse.html>

¹² J.A.A. Agbonika. An Appraisal of Legal and Human Rights Implication of Female Circumcision in Nigeria. *Ebonyi State University Law Journal*, Vol3 No. 1, 2009 pp252 - 263

¹³ Rathusm A Spencer, S N Jeffery, *Human Sexuality in a World of Diversity* (7th ed. Boston: Pearson A & B, 2008, ISBN 978-0-205-53291-9);

fashion with minor differences. For instance, boys and girls are born with distinctive sexual organs, and become further differentiated when secondary sexual characteristics emerge upon puberty.¹⁴

ii) **Social and Environmental Factors**

Studies have shown that children's upbringing and social environments also impacts their developing gender identities. Children's interests, preferences, behaviors and overall self-concept are strongly influenced by parental and authority figure teachings regarding sexual stereotypes occurring in or before the early portion of middle childhood. Children who are taught that certain traits or activities are appropriate or inappropriate for them to engage because they are girls or boys tend to internalize and be influenced by these teachings in later life.¹⁵ Children learn vicariously, in part, through their observation and imitation of what they see their primary caregivers doing. They tend to imitate and internalize what they see and then repeat those patterns in their own lives as though they had come up with them independently.¹⁶

iii) **Transgenderism and Transsexuality**

The term transgender can mean different things to different people. There are a number of other labels individuals who are transgender use to describe their gender. Those who are transgender have a gender identity or gender expression different from that they were assigned at birth. Transgender is an umbrella term for people whose gender identities, gender expressions and behaviors are different from those culturally associated with the sex to which they were assigned at birth.¹⁷ Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual.¹⁸ The term transgender, often shortened as "trans" may be defined very broadly to include cross-dressers. When a female (physically) identifies herself to a degree as a man, he is referred to as a transgender man. Also, when a male (physically) identifies himself as a woman, she is referred to as a transgender woman. The general rule is that both should take the pronoun appropriate to their inner gender (their gender)

iv) **Variants of Transgenderism**

The gender variant groups include male to female (MtF) transsexuals and female to male (FtM) transsexuals, female and, male and female crossdressers, drag queen and kings, and all people with an unconventional gender expression including non-transgender and non-homosexual people.¹⁹ Cross dressing is the act of wearing items of clothing not commonly associated with one's sex. Cross dressing has been used for the purpose of disguise, comfort, comedy and self-expression.²⁰ Cross dressing is not synonymous with transgender. Crossdressing is synonymous with 'transvestism' which is the practice of dressing in a manner traditionally associated with the opposite sex. In some cultures, transvestism is practiced for religious, traditional, or ceremonial reasons.²¹ In Nigeria today, cross-dressing is majorly done for entertainment purposes. On social media, skit makers have adopted it as a humor mechanism. However, cross dressing is also, to a

¹⁴ Puberty refers to a set of changes that children go through as they develop a sexually mature adult body

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ Forsyth, J Craig, Heith, *Encyclopedia of Social Deviance* (Sage Publications, 2014, ISBN 978-1483364698) 740

¹⁸ Bilodeau, Brent, "Beyond the Gender Binary: A Case Study of Two Transgender Students at a Midwestern Research University" (2005) 3 (1) *Journal of Lesbian Issues in Education*. 29-44

¹⁹ *ibid*

²⁰ Wikipedia, "Cross-Dressing" (2022) <<https://en.m.wikipedia.org/wiki/cross-dressing>> accessed on 14 March 2022

²¹ Wikipedia, "Transvestism" (2022) <<https://en.m.wikipedia.org/wiki/transvestism>> accessed on 14 March 2022

considerable extent, biased. While female cross-dressers are allowed to blend in the society as normal and ‘trendy’, their male counterpart face a lot of backlashes.²² But the crossdressing trend is beginning to gain acceptance in the Nigerian society as the likes of Bobrisky, James Brown, Jay Boogie,

v) **Transsexuality**

Transsexuals are people who experience a gender identity that is inconsistent with their assigned sex at birth and desire a permanent transition into the sex or gender with which they identify usually seeking medical assistance (including sex reassignment therapy such as sex reassignment surgery or hormonal replacement therapy) to help them align their body with their identified sex or gender.²³ Transsexualism is used for denoting or relating to a transgender person, especially one whose body characteristics have been altered through surgery or hormone treatment to bring them into alignment with their gender identity.²⁴ Transgender ordinarily differs from transsexual in that the former is a broader term, then the latter which is a subset of the former which relates to the collection of transgenders who are desirous of sex change and those that have undergone sex change procedures. However, today, the word ‘transsexual’ is now used synonymous with ‘transgender’ and since the term transgender is more common, many transgender people prefer the designation transgender and reject transsexual.²⁵

Transsexualism is no longer classified as a mental disorder in the International Statistical Classification of Disease and Related Health Problems (ICD).²⁶ The World Professional Association for Transgender Health and many transgender people have recommended this removal. Now it is classified as a serious health condition. By including a diagnosis for gender dysphoria, transsexual people are still able to access medical care through the process of transition.²⁷

In Nigeria, the topic of gender dysphoria and transsexualism is approached with a level of hostile rebuke and rejection making it inhabitable socially for people who suffer from gender dysphoria. This is due to factors which range from religious to cultural subscriptions. This accounts for the case of Jessica Albert (new name) who recounted her very aggressive childhood, violence from the society, rejection from family and friends and occasional physical assault for identifying with a gender different from that she was assigned at birth. After a couple of arrests and assaults, she decided to relocate to South Africa where she now lives “peacefully” and is free to be “who she is” and live and love as she chooses.²⁸ However, she has not undergone the medical procedure of aligning with her inner sex.

²² O Eludoyin “Cross Dressing in Nigeria: Yay or Nay?” (2021) <<https://glaziang.com/cross-dressing-in-nigeria-yay-or-nay>> accessed on 14 March 2022

²³ Wikipedia, “Transsexual” (2022) <<https://en.m.wikipedia.org/wiki/transsexual>> accessed on 14 March 2022

²⁴ J Murray (ed), *Oxford Learner’s Dictionary* (10th ed, Oxford University Press, 2022) <<https://www.oxfordslearnersdictionaries.com/definition/english/transsexual>> accessed on 14 March 2022

²⁵ A C Alegria, “Transgender Identity and Health Care: Implications for Psychological and Physical Evaluation” (2011) 23 (4) *Journal of American Academy of Nurse Practitioners* 175-182

²⁶ ICD is a globally used diagnostic tool for epidemiology, health management and clinical purposes. The ICD is maintained by the World Health Organization.

²⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed American Psychiatric Publishing, 2013 ISBN 978-0-89042-554-1)

²⁸ Frontline Aids, “How I Survived as a Transgender Woman from Nigeria” (2020) <<https://frontlineaids.org/how-i-survived-as-a-transgender-woman-from-Nigeria/>> accessed on 15 March 2022

Usually, the issue of gender dysphoria is, in Nigeria, always associated with being possessed with demons and addressed spiritually. Thus most of the times people exhibit traits of transsexuality, their parents, rather than seeking medical help, take them for exorcism. An example is the popular Miss Sahara who was the first to publicly identify as a trans woman in Nigeria who had to flee Nigeria to London to pursue a successful career as a model, pageant queen and performer. Giving an account of her story she said, the religious community she grew up in, refused to accept her as a woman and she was taken to church on different occasions for deliverance and exorcism.²⁹

Scientific approach has been evolved to allow for a permanent alignment with a gender peculiar to a person's inner gender. Gender transitioning is the medical process of changing one's gender presentation or sex characteristics to accord with one's internal sense of gender identity.³⁰ The following are the stages of gender transitioning or gender change:

Mental Health Evaluation

It is a medical requirement that the patient consults a therapist who then confirms whether or not the patient suffers from gender dysphoria or "gender identity disorder" and then recommend for hormonal therapy or in rare cases, surgery.³¹

Hormone Therapy

Hormone control what doctors call secondary sexual characteristics, such as body hair, muscle mass, and breast size.³² This is divided into masculinizing and feminizing hormone therapy. Feminizing hormone therapy helps male-to-female (MtF) transgender individuals (trans women) to achieve a more feminine appearance. It uses anti-androgens to block male hormones. Female hormone therapy may be used as a stand-alone treatment or may be combined with gender reaffirmation surgery.³³ Female hormones can make men appear more feminine. This treatment include:

- a) Decreasing muscle mass and strength
- b) Redistributing body fat
- c) Increase breast tissue
- d) Thinning and allowing the growth of body and facial hair
- e) Lowers the leveling of testosterone.³⁴

Masculinizing hormonal therapy is used to include the physical changes in the body caused by male hormones during puberty (secondary sex characteristics) to promote the matching of gender identity and body.³⁵ Women transitioning to men take male hormones, or androgens. These hormones make them appear more masculine. The treatment does the following:

- a) Deepens the voice

²⁹ S Norris, "Young Trans Nigerians: People Need to See we Exist" (2018) <<https://www.opendemocracy.net/en/5050/young-transgender-rights/>> accessed on 15 March 2022

³⁰ Wikipedia, "Gender Transitioning" (2022) <<https://en.m.wikipedia.org/wiki/gender-transitioning>> accessed on 14 March 2022

³¹ M McMillen, B Nazario (ed), "Changing Genders: How It's Done" (2015) <<https://www.webmd.com/sex/news/20150422/transgender-hormones-surgery>> accessed on 16 March 2022

³² *ibid*

³³ Cleveland Clinic, "Feminizing Hormone Therapy" (2021) <<https://my.clevelandclinic.org/health/treatments/21653-feminizing-hormone-therapy>> accessed on 15 March 2022; Mayo Clinic, "Feminizing Hormone Therapy" (2021)

<<https://www.mayoclinic.org/tests-procedures/feminizing-hormone-therapy/about/pac-20385096>> accessed on 17 March 2022

³⁴ *ibid*

³⁵ C A Unger, "Hormone Therapy for Transgender Patients" (2016) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5182227/>> accessed on 18 March 2022

- b) Enhances muscles and strength
- c) Boosts the growth of facial and body hair
- d) Enlarges the clitoris

Some of the physical changes begin in as little as a month, though it may take as long as five years to see the maximum effect. But hormone therapy does more than alter appearance. It can also dramatically and quickly ease feelings of gender dysphoria.³⁶

Sex Reassignment Surgery (SRS)

Sex reassignment surgery is also known as gender reassignment surgery or gender affirmation surgery. This is a surgical procedure by which a transgender person's physical appearance and functions of their existing sexual characteristics are altered to resemble those associated with their identified gender. It is a part of treatment for gender dysphoria in transgender people.³⁷ As many as 75% of people who transit to a different gender never pursue surgery. For some it's a matter of cost, for others hormone therapy is enough to relieve their feeling of gender dysphoria.³⁸ Guidelines recommend that people spend 12 months on hormone therapy before they get Genital Reassignment Surgery (GRS). This option involves recreating a person's genitals to that of opposite sex.³⁹

Female to Male (FtM) surgery is a type of sex reassignment surgery which involves the removal of the breast; removal of the uterus known as hysterectomy; removal of the vagina known as vaginectomy; and the construction of a penis through metoidioplasty known as phalloplasty.⁴⁰ Male to Female (MtF) sex reassignment surgery involves the reshaping the male genitals into a form with the appearance of, and as far as possible, the function of female genitalia. Before this, patients usually go through feminizing hormone therapy (though this is not a requirement). There are associated surgeries patients may elect to undergo which includes: vaginoplasty; facial hair removal; facial feminization surgery; breast augmentation; and various other procedures.⁴¹

MORALITY AND GENDER RE-ASSIGNMENT

Social standards and accepted norms which sum up as the accepted "good" or prohibited "wrongs" of a people is considered as their moral ethos. This shapes the acceptance or otherwise of a social or religious phenomenon. Morality refers to the set of standards that enable people live cooperatively in groups. It is what societies determine to be "right" and acceptable".⁴² Morality is a persuasive system which is normative in nature and prescribe for a pattern of behavior.⁴³ While morality differs from place to people, it enjoys some form of general common acceptance of what

³⁶ *ibid*

³⁷ Wikipedia, "Sex Reassignment Surgery" (2022) <<https://en.m.wikipedia.org/wiki/sex-reassignment-surgery>> accessed on 15 March 2022

³⁸ *ibid*

³⁹ *ibid*

⁴⁰ J Leonard, "What to Know About Female to Male Surgery (2019) <<https://www.meicalnewstoday.com/articles/236590>> accessed on 118 March 2022

⁴¹ Wikipedia, "Sex Reassignment Surgery (Male to Female)" (2022) <<https://en.m.wikipedia.org/wiki/sex-reassignment-surgery-male-to-female>> accessed on 15 March 2022; Cleveland Clinic, "Gender Affirmation (Confirmation) or Sex Reassignment Surgery (2021) <<https://my.clevelandclinic.org/health/treatments/2156-gender-affirmation-confirmation-or-sex-reassignment-surgery>> accessed on 119 March 2022

⁴² A Morin, "What is Morality" (2020) <<https://www.verywellmind.com/what-is-morality-5076160#toc-morals-that-transcend-time-and-culture>> accessed on 19 March 2022

⁴³ F Adaramola, *Jurisprudence* (4th ed. Durban: LexisNexis Butterworths, 2008, ISBN 978-0-409-03519-3) 73

is deemed to be right. Moral views and ethics change over time thus making the case for the social dynamism of a people. The acceptance or otherwise of the concept of transgender is dependent greatly on the extent to which the moral views of the people have gauged it and the extent to which those views are willing to be shifted by the people on the subject.

Morality is influenced a great deal by cultural and religious affiliations of a people which is why in Nigeria, a country with a good number of ethnic groups and two major religions which are: Islam and Christianity, the issue of sex change and transgenderism is considered as repugnant to the moral ethos of the Nigerian society. However, there is a point of departure in the moral views of Christians and Muslims, there is also a meeting point where both religions agree on the subject of transgender.

In Nigeria, the issue of transgender, depending on the facet, is considered as a grossly immoral behavior and negates the will of God for man. This accounts for the violence which the transgenders and the LGBTQ community at large have always been faced in Nigeria. Most Nigerians do not consider gender dysphoria a medical condition which require some people to change their gender identity. It is mostly and majorly considered as the manifestation of evil spirits and demonic supernatural beings thus requiring exorcism.⁴⁴

The issue of transgenderism and gender identity and gender transitioning are considered matters of private morality as it does not affect the well-being of the public. However, the Nigerian legal order does not distinguish between public and private morality. It makes it a concern to legislate and place a measure on private morality which ordinarily does not affect the state on the ground of public opinion, morality and policy. This is evident in section 45 (1) (a) of the CFRN which operates as a general exception and derogation from the fundamental rights guaranteed under chapter four (4) of the Constitution. The section provides thus: “Nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society: (a) in the interest of defence, public safety, public order, public morality or public health”. The joint effect of section 45 (1) (a) and other provisions in chapter 4 of the Constitution which provides for exceptions to guaranteed rights is that public morality, so long as it is evident in any written law, takes precedence over any right guaranteed under the sections mentioned in section 45 (1). This is evident in the Same Sex Marriage (Prohibition) Act and the law on attempted suicide which shows the moral and ethical position of the public on the subjects respectively. This rule of law is based on the principle of public morality which agrees with the postulates of Lord Devlin⁴⁵ who agrees with the liberal view that there is need to respect individual freedom and privacy but subject to certain conditions which are;

- 1) That such individual freedom and privacy must be consistent with the corporate integrity of the society. He pontificated that “there must be a toleration of the maximum individual freedom and privacy” but this must be consistent with the “integrity of the society”
- 2) There can be no sacred area of private morality which the law cannot order, therefore the law can superintend all morality if it so wishes.⁴⁶

⁴⁴ S Norris, “Young Trans Nigerians: “People Need to See that we Exist” (2018) <<https://www.opendemocracy.net/en.5050/young-nigerian-trans-rights/>> accessed on 19 March 2022; Wikipedia, “LGBT Rights in Nigeria” (2022) <<https://en.m.wikipedia.org/wiki/LGBT-rights-in-nigeria>> accessed on 20 March 2022

⁴⁵ A British Judge and legal philosopher

⁴⁶ J C Dybikowski, “Lord Devlin’s Morality and Its Enforcement” (1974) 75 Proceedings of the Aristotelian Society <<https://www.jstor.org/stable/4544868>> accessed on 22 March 2022

Aligning with the position of Lord Devlin, it falls within the legislative power of a state or society to order or create a standard of private morality, otherwise the disintegration of the society becomes inevitable. More so in a country where culture and religion thrive in the workings and serve as the fulcrum of the society. The religious position on the subject is further discussed in the following heading from the perspective of Islamic Jurisprudence and Christian Biblical doctrines.

ISLAMIC LAW AND GENDER RE-ASSIGNMENT

In the Islamic jurisprudence (*Fiqh*), transgender sex reassignment surgery (SRS) is regarded as sinful (*haram*) in Islam by traditional Muslim scholars.⁴⁷ But in the late 1980s, sex reassignment surgery was legalized in Shari'a and in state law by the *fatwas*⁴⁸ of Ayatollah Khomeini⁴⁹ and Sheikh Ali al-Tantwani⁵⁰ in Iran and Egypt respectively.⁵¹ In the pre-modern period, Muslim societies were aware of five manifestations of gender identity. This can be seen through five figures such as *Khasi* (eunuchs), the *Hijira*, the *Mukhanat*, the *Mamsuh*, and *Khuntha* (intersex / hermaphrodites).⁵² *Khasi* are boys who were trained as boys until castrated mainly by cutting off the testicles. By the operation, *khasis* do not change to female, but are left in an in-between position legally and socially belonging to neither gender.⁵³

Hijaras are people born with male sex organ and raised as boys, but after becoming adults, they assume female identity. In South Asian countries such as Pakistan and Bangladesh, may voluntarily undergo ritual castration to remove the testicles and penis. *Hijaras* wear female clothing, grow their hair long, use make up and wear jewelry. They try to exaggerate their role by copying the female voice. They are considered the third gender in their societies.⁵⁴ The *Mukhannath*, according to later Muslim lexicographers, mostly identifies as a man who resembles and imitates a woman in the languidness of his limbs or the softness of his voice.⁵⁵ They are people who suffer from gender dysphoria. *Mamsuh* are people who lack either male or female genitals.⁵⁶ *Khunthas* (hermaphrodites / intersex) are people who possess both male and female sex organ and genitals.⁵⁷ The modern definition of transgender does not sit easily with the categories established by Islamic societies in pre-modern Islam.

Islamic Law Fatwa (Ruling) on Gender Re-assignment

The major *fatwa* (ruling) on sex change operation is the Islamic *Fiqh* (jurisprudence) on the *fatwa* of Sheikh Ali al-Tantwani issued June, 1988. As for the condemnation of those who by word and deed resemble women, it must be confined to one who does it deliberately..., while one who is like this out of a natural disposition must be ordered to abandon it, even if this cannot be achieved

⁴⁷ Al-Jizani, M B Hossain, 'Fiqh al-Nawazil', [2006] 4 *Dar ibn al-Jazi*

⁴⁸ A ruling on a point of Islamic law given by recognized authority

⁴⁹ Former Supreme Leader of Iran and also a religious leader

⁵⁰ Was a Syrian Salafi Jurist, writer, editor, broadcaster, teacher and judge considered one of the leading figures in Islamic preaching and Arab literature in the 20th century

⁵¹ M. Alipur, 'Islamic Shari'a Law, Neo-traditionist Muslim Scholars and Transgender Sex Reassignment Surgery (2016) 18 (1) <<https://www.tandfonline.com/doi/full/10.1080/1552739.2016.1250239>> accessed on 22 March 2022

⁵² *ibid*

⁵³ Kugle, S S al-Haqq, 'Homosexuality in Islam: Critical Reflection of Gay, Lesbian, and Transgender Muslims', [2010] *Oneworld* <<https://www.tandfonline.com/doi/full/10.1080/1552739.2016.1250239>> accessed on 23 March 2022

⁵⁴ *ibid* n.120

⁵⁵ E K Rawson, 'The Effeminate of early Medina [1991] 111 (4) *Journal of the American Oriental Society* 673

⁵⁶ *ibid* n.120

⁵⁷ *ibid*

step by step. Should he then not comply, but persist in his manners, then blame shall include him, as well – especially if he displays any pleasure in doing so. The person who is by nature a hermaphrodite (mukhannath khalaqi) is not to be blamed. This is based on (the consideration that) if he is not capable of abandoning the female... after being subjected to treatment against it. But if he gives up the cure with no good excuse, then he deserves blame

At-Tabari took it as an example that the Prophet (Peace be Upon Him) did not forbid the hermaphrodites from entering the women's quarters until he heard him giving a description of the women in great details. Then he prohibited it. This proves that no blame is on the hermaphrodites for simply being created that way. That being so, the ruling derived from this and other noble hadiths on treatment grant permission to performance of operation changing a man into a woman and vice versa, as long as a reliable doctor concludes that there are innate causes in the body itself... The operation is such a treatment, perhaps even the best treatment. This operation cannot be granted at the mere wish to change sex with no clear convincing motives.

To sum up, it is permissible to perform the operation in order to reveal what was hidden of male or female organs. Indeed, it is obligatory to do so on the grounds that it must be considered a treatment, when a trustworthy doctor advises it. It is, however, not permissible to do it at the mere wish to change sex.⁵⁸ It can be gleaned from the ruling above that the Islamic *Fiqh* now permits gender affirming surgery. However, it is only applicable to those who are born as hermaphrodites and have been confirmed by “trustworthy” doctors as such and recommended for surgery. The problem then arises where a person suffers from gender dysphoria and confirmed and certified by “trustworthy” doctors to be eligible for gender affirming surgery. From the ruling above, such person should be subjected to therapeutic process that helps them align with their sex at birth and not a new sex. The classification of gender into male and female and also hermaphrodite which influences this position is Qur'anically pontificated in *Surat-ul Ash-Shura* where Allah said... “to God belongs the dominion of the heavens and the earth. He creates whatever He wills. He grants daughters to whomever He wills, and He grants sons to whomever He wills. Or He combines them together, males and females; and He renders whomever He wills sterile. He is knowledgeable and capable.”⁵⁹ This classification of gender identity ousts the other classification from the consideration of the permissibility of sex reassignment surgery.

More so when cross-dressing is expressly abhorred by the Holy Prophet in a Hadith narrated by Ibn Abbas which reads; The Messenger of Allah (Peace be upon Him) cursed from the men who imitate women, and from women who imitate men.⁶⁰ According to another scholar (Sheikh Khomeni) who issued *fatwa* on the subject, in the name of God, sex reassignment surgery is not prohibited in Shari'a if reliable medical doctors recommend it.⁶¹ The Islamic law position on the issue of transgender is that sex reassignment surgery is only permissible if recommended by a reliable doctor and can only be performed where the patient is a hermaphrodite and does not extend further. This position has influenced Northern Nigerian legislation most especially the Penal Code Act which applies to the North. The Penal Code prohibits cross-dressing and like behaviors.

⁵⁸ A Aymanee, M Zaharain M Pallotta-Chiarolli, 'Countering Islamic Conservatism on Being Transgender: Clarifying Tantwani's and Khomeini's Fatwas from the Progressive Muslim Standpoint' (2020) 21 (3) *International Journal of Transgender Health* 235

⁵⁹ Quran 42:49-50 Translated by Talal Itani

⁶⁰ Sunan Abu Dawud 4098; Sahih al-Bukhari 5885

⁶¹ *ibid* n.120

BIBLICAL POSITION ON GENDER RE-ASSIGNMENT AND TRANSGENDERISM

The primary source of Christian doctrines and belief is the Holy Bible which is considered as the divine inspirational “word” of God. Recent decades have witnessed the steady erosion of biblical moral norms and values governing sexual behaviors and the very idea of gender. Beyond certain behaviors that can be interpreted as reflections of transgenderism, Scripture does not specifically address a contemporary understanding of gender as a socially construed concepts different from biological sense.⁶² Gender, like various other issues, finds footing in the bible and when Christians talk about gender, they tend to cast the mind back to the beginning when God first made Adam and the earth then Eve who was a woman. The creation story alone creates a two system-recognition of sex that is, male and female. The Bible reads: “So God created humankind in His image, in the image of God He created them: Male and female He created them.”⁶³ Relying on this early creation, man was originally created into male and female and made after God’s likeness thus conceiving a gender identity outside the biblical classification above is considered offensive on the sovereignty of God and the perfect creation of God. Genesis 2 gives a different perspective of the creation story and here a non-gendered human is created first and then later a piece of the first person, Adam, is into the second person, Eve. Based on the order of creation in this story, some theologians argue that this position upholds a structure called gender complementary.⁶⁴ Historically and biblically, the state of nature of man was perfect and smooth until the “fall” of man which caused a shift in the favor of God and thus sin became innate in man. This sins of man and gross wickedness were evident in the cities of Sodom and Gomorrah which led to the inevitable destruction from God. The Bible considers two major dimensions of transgenderism and gender identity which include cross-dressing and intersex.

Biblical Injunctions on Cross-Dressing and Intersex

On cross-dressing, the Bible abhors any form of cross-dressing and provides in the book of Deuteronomy 25:5 that: “*a woman shall not wear a man’s apparel, nor shall a man put on a woman’s garment, for who so ever does such thing is abhorred by the Lord your God*”.⁶⁵ This verse agrees with the Islamic law standpoint on the subject. The above verse is the only verse in the Holy Bible that directly references gender-based notion of clothing.⁶⁶ The intersex or eunuchs are people who were assigned male at birth but had their reproductive organs removed prior to puberty. In Deuteronomy 28:1, the Bible forbids eunuchs from being part of the Israel community. Jesus mentions eunuchs in Matthew 19:12 where He notes that there are many kinds of eunuchs, including eunuchs who have been so from birth; eunuchs who have been made so by others; and eunuchs who have made themselves so for the sake of the Kingdom of Heaven. This seeming acceptance and un-denigrating approach is further fortified by the book of Acts where Philip baptized a eunuch from Ethiopia.⁶⁷

⁶² A T Walker, ‘5 Things Every Christian Must Know About the Transgender Debate’ (2017) *The Good Book* <<https://www.thegoodbook.com/big/news/2017/07/28/transgender-debate/>> accessed on 24 March 2022

⁶³ The Holy Bible, Genesis 1:27

⁶⁴ M Vazquez, M Mylis, H Autin, ‘What Does the Bible Say About Transgender People?’ (2022) *HRC Foundation* <<https://www.hrc.org/resources/what-does-the-bible-say-about-transgender-people/>> accessed on 24 March 2022

⁶⁵ The Holy Bible, Deuteronomy 25:5

⁶⁶ Religious Institute, ‘Transgenderism, Transsexuality, and Gender Identity’ (2017) <<https://religiousinstitution.org/denomination/transgenderism-transsexuality-gender-identity/>> accessed on 26 March 2022

⁶⁷ *ibid* n.131

These are the two categories of transgender that the bible makes specific reference. Thus the biblical position on the other categories can be gleaned by inference from relevant verses of the Bible. The Bible is of the position that human beings are “wonderfully made” in the “womb” thus agreeing with the fact that God does not make mistake and His creation is perfect. Therefore, it may be wrong to suggest that a person is born with a mistake relating to his gender thus calling for human modification and cure to alter the creation of God.⁶⁸ This position has overtime influenced the position of Christians on transgenderism and same sex relations. This is why most often than not, one may find that, in Nigeria, people tend to approach gender identity and sexual orientation issues from a more spiritual and religious point of view. Nigeria, being and incurably religious country, has been influenced by the Biblical standpoints on a number of issues. Examples are: the law on bigamy; the law of same sex relations and a few others.

THE POSITION OF THE JUSTICE SYSTEM TO GBV

A cursory look at literature on GBV in the criminal justice system suggests an unequal treatment of people according to the socially constructed gender stratification of male and female by criminal justice officials. The unequal treatment of people based on gender is seen mainly in issues such as:

Legislation

Provides for non-discrimination on basis of sex, s. 29(4) seems to create disparity on the meaning of full age for women. In one breath it is 18 years and in another breath, it is any woman that is married. This means that even if the person is below 18 years, she would be deemed to be of age. The rule of citizenship under s. 26 CFRN allows a woman to adopt the citizenship of her husband. There is no corresponding rule for husband to adopt the wife’s citizenship. Section 357 of Criminal Code and 282 of the Penal Code encourage the beating of a woman so long as no injury is inflicted.

(i) The Constitution of the Federal Republic of Nigeria, 1999⁶⁹ (as amended)

This is the organic law of Nigeria which serve as the validating law for all other laws. Although s. 42 provides for non-discrimination on basis of sex. S. 29(4) seems to create disparity on the meaning of full age for women. In one breath, it is 18 years and in another breath, it is any woman that is married. This means that even if the person is below 18 years, she would be deemed to be of age. The rule of citizenship under s. 26 CFRN allows a woman to adopt the citizenship of her husband. There is no corresponding rule for a husband to adopt the wife’s citizenship.

(ii) The Penal Code, 1960⁷⁰ and Criminal Code, 2004⁷¹

The Penal Code Act applies to the North while the Criminal Code Act applies to the southern Nigeria. While both Codes contain sections which seem to criminalize immoral acts relating to sexuality, they both contain gender sensitive offences which this work also seeks to expound in the examination of the status of a transgender in Nigeria. S. 357 of Criminal Code and s. 282 of the Penal Code encourage the beating of a woman so long as no injury is inflicted.

⁶⁸ *ibid* n.133

⁶⁹ Cap C3 LFN, 2004

⁷⁰ Cap P3 LFN, 2004

⁷¹ Cap C38 LFN, 2004

(iii) **Marriage Act, 2004⁷² and Matrimonial Causes Act, 1970⁷³**

The Marriage Act and Matrimonial Causes Act are legislation which border on marital relations and other related matters were enacted with the idea of gender roles and envisages a limited role arising therefrom. It envisages marriage of one man and one woman. By implication, all other gender unions are excluded. It also excludes polygamy and polyandry. Polygamy is practiced legally under cultural and Islamic relationships in Nigeria.

(iv) **The Same Sex Marriage (Prohibition) Act, 2014⁷⁴**

The Same Sex Marriage (Prohibition) Act expressly outlaws same sex marriage and other related relations. This is the primary law providing for the position of Nigeria on LGBTQ (Lesbians, Gay, Bisexual, Transgenders and Queer) related matters.

(v) **Births, Death, etc. (Compulsory Registration) Act, 1969⁷⁵**

The Act provides for the registration of births and deaths of Nigerian citizens and also provides for the registration of the gender at birth of a person.

Gender bias: Evidence suggest that the Police, Prosecutors, Judges, and Probation officers have gender biases in the discharge of their responsibilities. The gender of a suspect influences decisions with respect to arrest and admission to bail. The Police is more likely to exercise its discretion of leniency in favour of female suspects in crimes that are masculine in nature or a bit remote from the known criminal behavior of women. Similarly, older white female suspects are less likely to be arrested than younger African American female suspects; Women defendants who conform to traditional gender role stereotypes are likely to be treated more leniently than men who are suspected of the same offenses.⁷⁶ Similarly, pregnant women or breastfeeding mothers are often let off the hook of felonies and other compoundable offences. The Police now have special units to deal with issues relating to women.

Preferential treatment: women who commit traditionally “masculine” crimes are given preferential treatment by the criminal justice system particularly from Judges at sentencing; by the Police Officer in making an arrest or the Prosecutor in filing charges or seeking an indictment.⁷⁷ Similarly, preferential treatment is also given to women in charge reduction and probation⁷⁸ twice as likely as males as well as in the decision to imprison. In criminal defence, female defendants are treated more leniently than men.⁷⁹ Adult males are more likely to be sentenced to prison for longer term, than adult females.⁸⁰ Only 2% of adult female prisoners are on death row, the rest of 98% are adult male⁸¹ for same offences.

⁷² Cap M6 LFN, 2004

⁷³ Cap M7 LFN, 2004

⁷⁴ Cap S LFN, 2004

⁷⁵ Cap B9 LFN, 2004

⁷⁶ Visher, C. (1983). Gender, police arrest decisions, and notions of chivalry. *Criminology*, 21, 5- 28.

⁷⁷ Spohn, C (1999). Gender and sentencing of drug offenders: Is chivalry dead? *Criminal Justice Policy Review*, 9, 365-399.

⁷⁸ Farnworth, M., Teske, Jr., R.H.C. & Thurman, G. (1991). “Ethnic, racial and minority disparity in felony court processing.” In M.J. Lynch and E.B. Patterson (eds.), *Race and criminal justice* (pp. 123-134). New York: Harrow and Heston.

⁷⁹ Gruhl, J., Welch, S. & Spohn, C. (1984). Women as criminal defendants: A test for paternalism. *Western Political Science Quarterly*, 37, 456-467.

⁸⁰ ⁹Spohn, C. (1990). The sentence decisions of black and white judges: Expected and unexpected similarities. *Law and Society Review*, 24, 1197-1216.

⁸¹ Rapaport, E. (1991). The death penalty and gender discrimination. *Law and Society Review*, 25, 368-383.

Sexual Harassment Policy

This Policy applies to all employees of First Hydrocarbon Nigeria Company Limited (“FHN Personnel”) including Directors, Management, Officers, Employees (whether permanent, fixed term or temporary), consultants, contractors, agents, distributors, business partners, joint venture partners, trainees, seconded staff, volunteers and interns

The Policy Statement

FHN is committed to providing a safe environment for all its employees free from discrimination on any ground and from harassment at work including sexual harassment. The company operates a zero-tolerance policy for any form of sexual harassment in the workplace, treat all incidents seriously and promptly investigate all allegations of sexual harassment. Any person found to have sexually harassed another will face disciplinary action, up to and including dismissal from employment. It is part of the policy statement to take all complaints of sexual harassment will be taken seriously and treated with respect and in confidence. No one is expected to be victimised for making such a complaint. Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated. It includes situations where a person is asked to engage in sexual activity as a condition of that person’s employment, as well as situations which create an environment which is hostile, intimidating or humiliating for the recipient. By way of filling the lacunain Nigerian labour statutes, with respect to workplace sexual harassment, the National Industrial Court of Nigeria (“NICN”) included in its Civil Procedure Rules 2017 the four categories of acts that constitute workplace sexual harassment within the Nigerian Labour environment. Order 14 Rule 1 (a), (b), (c), and (d) of the NICN Civil Procedure Rules 2017 provides four categories of acts that may constitute a workplace sexual harassment, namely:

Physical conduct

- i. Unwelcome physical contact including patting, pinching, stroking, kissing, hugging, fondling, or inappropriate touching
- ii. Physical violence, including sexual assault, molestation, rape or attempts to commit these assaults
- iii. Physical contact, e.g. touching, pinching
- iv. The use of job related threats or rewards to solicit sexual favours

Verbal conduct

- i. Comments on a worker’s appearance, age, private life, etc.
- ii. Sexual comments, stories and jokes propositions, or other sexual comments, such as sexually oriented gestures, noises, remarks, or comments about a person’s sexuality or sexual experience
- iii. Unwelcome sexual advances
- iv. Repeated and unwanted social invitations for dates or physical intimacy
- v. Insults based on the sex of the worker

- vi. Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward
- vii. Condescending or paternalistic remarks
- viii. Sending sexually explicit messages (by phone or by email)

Other Stakeholders:

The forgoing is a bird's-eye-view of the criminal justice system interpretation of gender and the role sex difference considerations play in the discharge of criminal justice. Other stakeholders include the following;

a) Traditional Rulers

Since gender based violence happen within a society, the first port of call outside the family is likely to be the traditional head. The civil society organization dealing with issues of women should take their awareness campaigns to such institutions so that they can appreciate the danger of such practices.

b) Hospitals

Very often, victims of gender based violence suffer injuries that require hospital treatment. There is need for are givers to be sensitized on the issues of forensic evidence so that beyond the treatment, they will preserve the evidence that may be required in court such as matching of semen, blood or hair samples.

c) The Media

The media has the key role of exposing violators to the public. Most violators feel a lot of shame if everyone is aware that they have raped or inflicted any form of GBV on anyone. The media are a formidable means of expression. They can be instruments of accountability, channels of civic involvement and tools to denounce corruption, gender based violence, sexual harassment, just as they can be used as veritable war machines to protect vested interests or to destroy an adversary. This is why the law and justice are more than necessary, not to restrict freedom of expression but to regulate it or urge professionals to regulate themselves in exercising their profession in information without, for all that, succumbing to the growing recourse to legal intervention that governs the activity of journalists.

The Media also has a social dimension in its efforts to ensure peaceful cohabitation in every democratic society. Journalists are expected to abide by the law. Indeed, the judicial system is to provide adjustments or reparations to any transgression of the law. The judicial institution has as well been forced to adapt its sanctions to the specific practices of the media, integrating adequate methods of treatment to resolve the conflicts or deficiencies that the media may produce. Societies are built around "conflictual nodes" as differences in the interpretation of history, the question of language, religion or the status of women may illustrate it. These are actual nodes in societies undergoing transition. The audiovisual media and the judiciary can help to "manage" or obviate these "conflictual nodes".

Any form of gender-based violence constitutes a serious violation of human rights. Depending on the act in question, it may violate a number of rights, such as the right to dignity and physical, mental and moral integrity; to freedom from torture and cruel, inhuman or degrading treatment or

punishment; to liberty and security of person, and to freedom from slavery; the right to life; and the right to non-discrimination, equality and to equal protection of the law. Rape and sexual violence suffered at the hands of agents of the State, such as the police or military officers, are generally considered constituting an act of torture under human rights law.

d) Governmental/non-government Agencies

Nigeria has created agencies such as the National Human Rights Commission (NHRC) and National Agency for the prohibition of Trafficking in Persons (NAPTIP) to deal with issues of violation of human rights and to intercept all forms of trafficking especially of persons who are not willing but are coerced into such circumstances. Rehabilitation is also key for such persons. The National Drug Law Enforcement Agency (NDLEA) have also been found to intercept drugs on children and other persons buried in pampas or shoes. There is need for collaboration of all Governmental agencies to nip this menace.

Role of International Prevention or End of GBV

In view of the prevalence of GBV, many organizations such as UN Women, United States Agency for International Development (USAID), and Women for Women International are working assiduously to address and prevent GBV. Their interventions have brought about the promotion of healthy relationships between boys and girls based on respect and equality through education (UN Women).⁸² Prevention through awareness, campaigns but with emphasizes on the need for improved health and human right services for survivors of GBV has been encouraged by (USAID).⁸³ Advocates for ending GBV in the garment industry in South Asia are the Global Fund for Women.⁸⁴ Women's rights to education teaching women about their rights so that they can speak for themselves and other women in the community; teaching men about women's rights and their responsibility in defending those rights including preventing GBV are advocated by Women for Women International.⁸⁵

The foregoing is however a corruption of GBV and suggestive of gender bias in GBV typology, interventions and discussions. It is a deviation from acceptable description or definition of GBV in today's world. Therefore, ending GBV may well start from a reversal of this perspective on GBV or a disassociation of GBV from violence against women.

The Convention for Elimination of All Forms of Discrimination Against Women (CEDAW)⁸⁶ advocates for the protection of the rights of women. CEDAW consists of two broad and elaborate parts: whilst the first part set out non-discriminatory norms, substantive rights and values of equality between men and women within cultural, economic, political social milieu with marching orders to state parties to ensure their attainment, the second part centres around the mechanisms for the implementation of the Convention. CEDAW is an international instrument with mandate to change age-long standards and practices with bold provisions that are challenging to traditional

⁸² UN Women-In Focus: 16 Days of Activism Against Gender Violence. Available at <https://www.unwomen.org/news>

⁸³ Richard Z. Taylor. USAID Launches New Activity to Counter Growing Gender Based Violence in Nigeria. Available at <https://www.usaid.gov/press-release> accessed on 30/5/2022

⁸⁴ Sangeeta Chowdry & Brandee Butler/Global Fund for Women. Ending Gender-based Violence Against Women.....workers. Available at <https://www.news.trust.org/ending-gender-based-violence...> accessed on 30/5/2022

⁸⁵ Women for Women International. Available at <https://www.womenforwomen.org>

⁸⁶ Convention on the Elimination of all forms of Discrimination Against Women-United Nations. Available at <https://www.un.org/cedaw> accessed on 1/6/2022

institutions of culture, religion, family and above all male chauvinism. CEDAW emphasizes the roles of state parties in eliminating discrimination against women by identifying special rights such as;

- a. Reproductive health
- b. Balanced power relations between women and men at all levels
- c. Eliminating artificial distinctions between rights of women in public and private spheres
- d. Eliminating social and cultural practices based on stereotypes leading to unjustifiable distinctions between the roles of women and men.

It is imperative to add that Article 4 of CEDAW provides the steps expected of state parties to the Convention to wit:

- (a) Embody the principle of the equality of men and women in their national constitutions or other appropriate legislation;
- (b) Adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) Establish legal protection of the rights of women on an equal basis with men;
- (d) Refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) Take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) Repeal all national penal provisions which constitute discrimination against women.

Article 16 imposes obligation on state parties to put in place measures that will address all discriminations, cultural or religious being suffered by women in relation to marriage and family relation with the sole purpose of ensuring equality of men and women within the institutions of marriage and family as relates to same right to enter into marriage,⁸⁷ same right to choose spouse with their free and full consent,⁸⁸ same rights and responsibilities during marriage and its dissolution,⁸⁹ same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children;⁹⁰ same rights to decide freely and responsibly on the number and spacing of their children⁹¹ and to have access to the information, education and means to enable them to exercise these rights; same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation;⁹² same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;⁹³ same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property,

⁸⁷ Article 16 (1) (a)

⁸⁸ Article 16 (1) (b)

⁸⁹ Article 16 (1) (c)

⁹⁰ Article 16 (1) (d)

⁹¹ Article 16 (1) (e)

⁹² Article 16 (1) (f)

⁹³ Article 16 (1) (g)

whether free of charge or for a valuable consideration.⁹⁴ The Convention categorically prohibits betrothal and the marriage of a child and where it happens, it states that such shall have no legal effect,⁹⁵ and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁹⁶

The Role of Human Rights

Human rights actors play an important role in preventing and responding to gender-based violence. According to National Agency for the Prohibition of Trafficking in Persons (NAPTIP), over 2,100 sexual and gender-based violence cases were prosecuted in 2020. She explained that the data was gotten from the Nigeria Police Force, adding that there were 155 convictions on sexual and gender-based violence cases in the country. Dame Pauline Tallen, Minister of Women Affairs, disclosed this during the presentation of the Violence Against Persons (Prohibition) VAPP Act 2015 implementation report. At present, there is a low conviction rate for GBV in Nigeria and this sadly contributes to emboldening perpetrators to continue to perpetuate these heinous crimes against women and girls. She noted that between 2019 and 2020, there was an increase in sexual and gender-based violence all over the country, between 2019 and 2020, saying that over 14,970 survivors received help from sexual assault referral centres. She decried the rate of physical, psychological and emotional violence against women and children in recent times, saying it is very disheartening and alarming. The fight of sexual and gender-based violence is no small feat. Therefore, all agencies must collaborate and coordinate on strategies that will bring an end to it.

Civil Society Organizations

Civil Society Organization CSOs shared stories about their experiences during the COVID-19 lockdown, and how they successfully carried out their activities. Due to movement restrictions, CSOs had to 'think out of the box' with their advocacy efforts and to strengthen the response for survivors of sexual assault. For example, mobile phone hotlines and website chat functions were set-up quickly to help victims remotely. CSOs also worked together in coalitions to amplify awareness about SGBV. CSOs have been advocating for increase in awareness of issues surrounding SGBV, especially in hard to reach communities.⁹⁷ Over 60 stakeholders participated in the virtual event, including CSO partners, the Mirabel Centre (Sexual Assault Referral Centre in Lagos), media organisations, and the Nigerian Bar Association. The event was streamed live on the Federal Radio Corporation of Nigeria and reported on by several radio stations, newspapers, and online platforms. It showcased the important role of CSOs as agents of change.⁹⁸

Civil Society groups and other stakeholders need to carry out extensive advocacy to the hierarchy and management of the NPF towards understanding the scope, dynamics and magnitude of GBV in Nigeria for comprehensive support. The advocacy should emphasize the fact that GBV exists especially at the grass root level. This will enhance/facilitate the creation of GU offices across the country and equipping them with personnel at especially divisional levels

⁹⁴ Ibid Article 16 (1) (h)

⁹⁵ Ibid Article 16 (2)

⁹⁶ Ibid

⁹⁷ Make determined effort to end gender-based violence, CSOs tell FG

⁹⁸ CSOs champion advocacy against sexual and gender-based violence

<https://www.justice-security.ng/csos-and-media-dialogue-sexual-and-gender-based-violence>

Nigeria and SGBV

Nigeria's human rights commission, (NHRC) received about 1.2 million cases of rights violations in 2020. About 35.5 per cent of this number (445,080) were SGBV cases. According to the NHRC 2020 report, cases accounted for 35.5 per cent (445,080) of the 1,287,760 complaints filed across the 36 states of the federation and the FCT. Apart from cases reported to the NHRC, many others are reported to the police and other law enforcement agencies. However, SGBV cases, like many others, suffer from Nigeria's slow and inefficient judicial process. The National Association of Seadogs (NAS), Pirate Confraternity, International Federation of Women Lawyers (FIDA) and International Elite Women Initiative (IEWI) have canvassed the creation of a special court to handle gender-based violence (GVB) and sexual abuse cases, saying: delay in justice delivery in Nigeria is tantamount to justice denied. There should be special criminal courts, where every matter that has to do with rape, gender-based violence and defilement can be assigned to.

To stem the tide of Gender-Based Violence, GBV in Nigeria and ensure survivors of the act get appropriate services and legal representation, the Centre for Women's Health and Information, CEWHIN in partnership with the National Human Rights Commission, NHRC, has trained Legal Aid Counsels, Pro bono Lawyers and officers of the Lagos State Ministry of Justice on integrated approaches to justice.⁹⁹

The training was implemented with the support of the United Nations Development programme under the Spotlight Initiative. The Spotlight Initiative is a global, multi-year partnership between European Union and United Nations to eliminate violence against women and girls, sexual and gender-based violence, harmful practices as well as sexual and reproductive health and rights. "The Initiative is so named as it brings focused attention to this issue, moving it into the spotlight and placing it at the centre of efforts to achieve gender equality and women's empowerment, in line with the 2030 Agenda for Sustainable Development. There is no doubt the case of violence against women and girls are on the rise and in most cases when survivors approach the legal system for justice they are confronted with many challenges, hence the need for a coordinated response and referral pathway for handling cases of GBV. Findings of the Nigeria Demographic and Health Survey (2018) revealed that 31 percent of women age 15-49 have experienced physical violence and 9 percent have experienced sexual violence, while 6 percent of women have experienced physical violence during pregnancy. The experience of spousal physical, sexual, or emotional violence among ever-married women is as high as 36 percent. This figure is a huge increase compared to 2013 (25 percent) and 2008 (31 percent) figures. Furthermore, 29 percent of ever-married women who have experienced spousal physical or sexual violence have sustained injuries such as cuts, bruises, aches or deep wounds.

There is need for legal practitioners to work towards GBV prevention, protection and prosecution, as ending violence against women and girls requires the involvement of everyone at all levels in society. The sad situation of survivors of Gender-Based Violence (GBV) in Nigeria, particularly women and girls leaves much to be desired. Most of the survivors often resign to their fate, with only a few pursuing justice, if lucky to be alive as many victims are not alive to tell the story or seek justice. According to the United Nations, Violence Against Women and Girls (VAWG) is all

⁹⁹ **Gabriel Olawale.** CEWHIN, NHRC trains legal practitioners on Gender-Based Violence prevention and response <https://www.vanguardngr.com/2022/02/cewhin-nhrc-trains-legal-practitioners-on-gender-based-violence-prevention-and-response/>

forms of discrimination that seriously inhibits women's ability to enjoy rights and freedom on the basis of equality with men such as Rape, Sexual Abuse, Female Genital Mutilation (FGM) among others.

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Over the years, perpetrators of GBV/VAWG, are increasingly not being held to account owing to the system failures especially lack of diligent prosecution, owing to poor investigation. This is especially so as 85% of GBV and VAWG incidents are criminal in nature. Data on violations as reported by a nongovernmental organization, Lawyers Alert (LA), across various locations in Nigeria, exhibiting types and trends is instructive in this regard. Lawyers Alert's work in this realm has revolved around awareness creation, legal assistance, advocacy and documentation of violations on Gender Based Violence, with emphasis on VAWG in the course of which much of this data is obtained.

In achieving result in terms of sanctions for perpetrators and getting justice for survivors of GBV in Nigeria, the NPF must be a decimal in any such conversation. It is interesting to note that the Nigeria Police itself has also set up a Gender Unit, in response to the rising incidents and surge in violence against women and girls. The Gender Unit (GU) at the Force Criminal Intelligence and Investigation Department (Force CIID) across the six geo-political zones of the country in 2014 was created with the mandate of prosecuting perpetrators and anyone culpable of such offences. The triangular relationship of Lawyers Alert, the Nigeria Police Force and the Legal Aid Council of Nigeria, working together as a team, towards enhancing justice for women and girls suffering as a result of violence, has yielded positive results in changing the face of GBV in Nigeria.

As with all partnerships, the partnership (LA, NPF, PDSS) there exist a shared mission, vision, values and goals and the results are manifesting through the extensive meetings, analysis of their various mandates, and the shared vision to ending GBV, especially VAWG. Impressively, there exists shared responsibility within the partnership. Lawyers Alert carried out an institutional capacity assessment of these partners and developed a Joint Capacity Building Plan and Advocacy Plan in meeting the challenges impeding the delivery of the mandate of the bodies. The partnership is initially restricted to three locations, including Niger and Plateau states as well as the Federal Capital Territory (FCT). The key activities implemented by the partners include Capacity Building for Police Officers which was aimed at enhanced capacity of police officers in Niger and Plateau State and the FCT on Sexual and Gender-Based Violence (SGBV) and its dynamics towards providing better services to women and survivors of violence at grassroots level. Additionally, through this partnership, grassroots women have been linked with the GU and PDSS and thereby

¹⁰⁰ Hameed Oyegbade. Enhancing Justice for Survivors of Gender-Based Violence in Nigeria

changed the narratives from the previous experience when women and women groups across the country were largely unaware of the existence of the GU.

In the past, the consequence of the lack of awareness was a relatively low level of reportage of GBV by women and other survivors. Lawyers Alert President said the organisation linked women groups in Niger and Plateau states and FCT with the GU and PDSS, thereby providing a platform for partnership towards reporting violations, lodging complaints and meeting with women and girls who suffer SGBV, especially in rural areas. There is now synergy between the GU and PDSS which has led to swifter response to SGBV complaints and consequently, survivors of violence can now access and get justice faster. Meanwhile, it is noteworthy that critical mass of lawyers are now providing free legal assistance to the victims. The lawyers from the Coalition of Lawyers for Human Rights (COLaHR) and the International Federation of Women Lawyers (FIDA) are now engaged and linked with women towards providing free legal services for survivors of violence. Importantly, the partners keep gathering data on SGBV in Nigeria towards gender mainstreaming and advocacy for Laws and Policy Reforms.

Flowing from the partnership and the interaction amongst LA, the GU and PDSS; the team recommends a comprehensive study of the Police Gender Unit in Nigeria and wants a further assessment that is more scientific, aimed at creating a deeper understanding of the unit's operations vis-à-vis challenges. This is vital since these challenges vary from one part of the country to the other. A country-wide study of the GU would therefore help with identifying peculiarities with a view to enhanced service delivery.

Lawyers Alert recommended providing survivors of violence with free legal support, development of gender policies or strengthening the implementation of gender policies where such exist, equipping other security agencies with knowledge of GBV and its dynamics and development of Standard Operating Procedures for GBV interventions. Given the immense potential of the GU to be the data hub of GBV in Nigeria, data capturing should be uniform and scientific. This will facilitate automatic analysis for tracking trends, types, demography etc. This data can be used for strengthening laws and policy reforms, including other interventions. The Violence Against Persons (Prohibition) Act and Administration of Criminal Justice Act should be fully explored to unravel how these laws can be used to empower the GU in the efficient and effective management of GBV in Nigeria.

In conclusion, just as much has been done to empower the NPF in the discharge of its duties with regard to prosecuting criminal aspects of GBV in Nigeria, there is also a need to ensure that those who should be benefitting from such services are aware, willing and able to access same. This speaks to the need for adequate advocacy and sensitisation of Women Rights Organizations (WROs) in addition to equipping the unit especially with manpower and relevant technology to carry out its mandate effectively. Both efforts complement each other. It would be counter-productive to encourage more victims to make reports if the GU is not sufficiently capacitated to handle such issues effectively. Strengthening and empowering the GU of the NPF will therefore further sustain the gains made by women groups, activists, donor bodies, government and implementing partners in the fight on ending GBV and VAWG in Nigeria.

Demand for Creation of Special Courts for GBV

In order to ensure speedy dispensation of justice and deter perpetrators of Gender-Based Violence (GBV), in Nigeria, an NGO, Rising Child Foundation have called for judiciary arm of government to prioritise the prosecution of perpetrators by creating a Special Court. The Executive Director, of the foundation, Mrs. Taibat Hussein made the call in Ilorin, Kwara state capital on Wednesday during a press conference to herald the launching of the Kwara Gender-Based Violence (GBV) project in the State. Over the years, victims of GBV get little or no justice as several of the perpetrators escapes the long arm of law.

There is a need for our judiciary to prioritize the prosecution of perpetrators of GBV. In this regard, Special Courts can be created to entertain GBV cases to ensure swift dispensation of justice. Despite several interventions and advocacy of government institutions and civil society groups to draw attention to the cases of GBV in Nigeria and Kwara in particular,” the cases keep growing, and what is more worrisome and saddening is the fact that many of the perpetrators go unpunished. Similarly, parents should desist from preventing their abused children from speaking up under the guise of shame.¹⁰¹ Cases of gender-based violence abound in every part of the country. Almost every day, we read or hear stories of victims and survivors of GBV in the media. From the case of Barakat Bello, a 19-year-old girl who was gang-raped and murdered in Ibadan, Oyo State, Uwa Omozuwa who was raped inside a church in Benin, Edo State and subsequently died as a result of the brutal attack, to Hiny Umoren, a 26-year-old job-seeking lady who was murdered by a man who had invited her for a job interview in Uyo, Akwa-Ibom. Recently, the Nigerian media space was awash with news of the death of a popular gospel singer, Osinachi, who reportedly died after enduring a series of physical assaults from her husband.

There is need to organize regular radio shows, to reach out to the community and religious leaders and other relevant stakeholders to create awareness on GBV and seek their support and cooperation towards the prevention and elimination of violence against women and girls. Ending Gender-based violence in Nigeria requires collective efforts. We should also stop stigmatizing victims of GBV and rather encourage them to speak up and not suffer or die in silence. The launch of the online Sexual Offenders Register is a laudable achievement by NAPTIP as it would help curb the menace of sexual offences in our society.¹⁰²

The creation of special courts to handle cases of sexual and gender-based violence will improve the effectiveness of court service, ensure support for the victims, improve victim participation in the prosecution of their cases, and promote efficiency and better information sharing.¹⁰³ The specialised SGBV court is a best practice, and state governments should consider having as many courts in their states as possible. SGBV cases are still underreported in Nigeria and as such, there has to be a synergy between stakeholders. There is need for training of judges, lawyers, and other stakeholders who will be working in these special courts. The trials will also show international best practices which include medical aid, legal support, counseling amongst others.

¹⁰¹ Demola Akinyemi. Judiciary told to create Special Court for speedy prosecution of GBV cases

<https://www.vanguardngr.com/2022/05/judiciary-told-to-create-special-court-for-speedy-prosecution-of-gbv-cases/>

¹⁰² FCT opens special courts for gender-based violence Stephen Angbulu <https://punchng.com/fct-opens-special-courts-for-gender-based-violence/>

¹⁰³ Chiamaka Okafor. Nigeria govt commits to establishing special SGBV courts

THE ROLE OF THE JUSTICE SYSTEM

The justice system is critical to the developmental trajectory of GBV. This is essentially because matters of GBV are criminal in nature and eventually (although not always) find their way into the criminal justice system. In that case it is instructively imperative for the justice system to do away with biases and stereotypes in handling matters of GBV; adopt evidence based approach rather than gender approach in handling of matters of GBV, as well as respond promptly and decisively to gender related cases. This is particularly the case because the eventual outcomes of GBV matters found the precedents upon which subsequent matters may be decided. To that extent it is recommended that all through the justice system, starting from the Police through the Correctional Services, effort must be made and sustained towards:

- i. Listening to and believing survivors of GBV as such will encourage victims and the society in breaking the cycle of GBV. This would be providing a victim the safe space to speak up and be heard. In discussing cases of GBV, a victim's sobriety, clothes, and sexuality should not be the basis for assessment of the offence.
- ii. Avoid victim-blaming and counter the idea that it's on the victim to avoid situations that might be seen as "dangerous" by traditional standards. Rather the perpetrator should be made solely responsible for the consequences of his / her action. Deal with responses to survivors of GBV as essential services and provide services fit for purpose. As part of dealing with GBV matters, shelters, hotlines, counseling and sundry support should be made available for survivors of GBV.¹⁰⁴ Encourage concerned persons and witnesses to speak up and perhaps extend the concept of whistle blowing to GBV matters. The Court should consider awarding of damages / cost against aggressors in favour of victims. Interpreters should be trained on GBV issues and effective and gender-sensitive interpretation in criminal justice proceedings involving GBV as inaccurate interpretation can lead to losing the case. Accurate interpretation and friendly disposition to victims particularly those that do not speak much of the language of the court may (illiterates) would encourage them to continuing to cooperate with the criminal justice system.¹⁰⁵
- iii. Judges who hear GBV matters should receive training on issues of child custody, security, and economic support for survivors. A specialized GBV courts may be useful in dealing a death blow on GBV because of the Judges and court officials enhanced knowledge of issues of GBV - particularly the vulnerability of victims.
- iv. Necessary amendment should be made to the Convention to address religious and socio cultural concerns. These two are the strongest constraint to the passage of CEDAW as a law in Nigeria. All Nigerian lawmakers are of one or other religious or cultural persuasion. An engagement with religious leaders and institutions will go a long way in addressing these challenges.
- v. Change of approach from pro-west demand to local demand is an important factor here. The general belief is that CEDAW is an imposition of western civilization on the rest of the world.

¹⁰⁴ CIRODOC Nigeria (2016) "Identifying Nigeria's Commitment to the Convention on the Elimination of all forms of Discrimination Against women (CEDAW)" FOURTH DIMENSION Publishing Co., Ltd. Enugu Nigeria.

¹⁰⁵ Cheryl Thomas "Working with the Justice Sector to End Violence against Women and Girls" Director, Women's Program Laura Young, Staff Attorney, International Justice Program Mary Ellingen, Staff Attorney, Women's Program, dec 2011

The belief is also prevalent in Nigeria. There is need to embark on change of strategies by the promoters of CEDAW in Nigeria so as to correct the wrong perception of millions of Nigerians especially men about the motive behind CEDAW.

- vi. There is need to correct the impression that CEDAW is a feminist agenda. Feminism is not yet an acceptable norm in Nigeria. The unintended reality Provisions in CEDAW meet the agitation of feminists has the consequence of total rejection of CEDAW by those against feminism. Efforts must be geared toward correcting the impression amongst the male dominated stakeholders that CEDAW is an instrument of rights and an effort to ward of discrimination against women rather than an imposition of feminist philosophy in our society.
- vii. Women must be empowered politically and economically to compete with men in different aspects of our national life. This will give them the leverage to assert some of their rights as enshrined in CEDAW.
- viii. The place of advocacy and public enlightenment cannot be emphasized in the bid to realize the acceptance of CEDAW as part of our national law. Therefore, interested stakeholders like FIDA, NBA Women Forum and other women pressure groups must ensure thorough and penetrating advocacy and enlightenment programmes for Nigerians at different levels towards ensuring the acceptance of CEDAW in Nigeria.

CONCLUSION

Many theories help explain the disparity in treatment of males and females by the criminal justice - the “chivalry” and the “paternalism” theories. The chivalry theory¹⁰⁶ and “paternalism” advances the thesis that predominantly male-dominated actors in key positions of the criminal justice system have a traditional, chivalrous attitude toward women defendants, and therefore treat them with more leniency than male defendants. For the same reason, women are placed in a position of high esteem because they are considered incapable of serious criminal behavior and that part of the male role is to serve as the protector of women;¹⁰⁷ except in cases susceptible to the application of “evil woman” theory.

The paternalism theory¹⁰⁸ refers to the attitude held by men that women are childlike and are not fully responsible for their behavior, criminal or otherwise, and therefore need protection.¹⁰⁹ These theories concede that judges and other court officials try to protect women as the “weaker sex” from the stigma of a criminal record or the harshness of incarceration.¹¹⁰ When “sex differences are found in criminal justice decision making, the system is almost always harsher on men than women.”¹¹¹ Consequently, the Justice system should avoid sex but gender consideration in decision making.

Having identified the level of commitment of Nigeria towards the realization of the provisions of CEDAW within the country and her commitment at the international level; it was realized that certain factors are militating against the domestication of CEDAW as legislation within the constitutional requirement of the country. These challenges ranging from constitutional,

¹⁰⁶ K.B. Turner and Ames B. Johnson “The Effect of Gender on the Judicial Pretrial Decision of Bail Amount Set” Federal Probation. A Journal of Philosophy and Practice. Vol. 70 No. 1

¹⁰⁷ Moulds, E. F. (1978). Chivalry and paternalism: Disparities of treatment in the criminal justice system. *Western Political Science Quarterly*, 31, 416-40.

¹⁰⁸ Ibid

¹⁰⁹ Crew, B. K. (1991). Sex differences in criminal sentencing: Chivalry or patriarchy? *Justice Quarterly*, 8, 59-83.

¹¹⁰ Daly, K. (1987). Structure and practice of familiar-based justice in a criminal court. *Law and Society Review*, 21, 267-290.

¹¹¹ Ibid

institutional, cultural, religious and socioeconomic are potently interwoven and unless deconstructed, getting CEDAW passed as a municipal law in Nigeria may be a dream incapable of realization. An evolutionary approach to the entire idea may be the best. Rather than seeking to see CEDAW as a single enactment, some provisions of CEDAW be made into separate and distinct legislation as it is the case with VAPP Act and Trafficking in Persons Act.

RECOMMENDATION

1. The National and local authorities, traditional, cultural or religious bodies, armed forces and security forces, law enforcement officials, civil society groups, and others are enjoined to carry out advocacy campaign to ensure effective prevention of gender based violence, and sexual harassment. This may also include advocacy with non-state actors.
2. There is need to support or undertake information activities that aim to raise awareness of GBV and that combat discrimination and other underlying causes of gender-based violence. Ensure that information about GBV prevention and response, including how and where to access relevant assistance and services, is readily available for all survivors of GBV.
3. Government must take action to improve safety and security in and around camps, settlements, villages and other areas, paying particular attention to locations where acts of GBV occurs or are likely to occur. This includes food distribution sites, water points, areas for schools, public spaces, etc.
4. There is need to ensure that mechanisms are in place to guarantee the security of victims/survivors and witnesses in order to protect them against any further harm. These can include traditional protective mechanisms, establishments of shelters for victims/survivors, foster care arrangements for children, or, exceptionally, assistance to relocate to another place. In some cases, measures may need to be taken to protect the perpetrators from violence.
5. To ensure that victims/survivors have access to free and confidential counseling for legal and/or other avenues for redress.
6. To provide modest material and other support to victims/survivors and their families where needed to facilitate their access to justice whether formal or informal. This can, for instance, include assistance with legal fees, translation, travel to and from court, and/or measures to ensure the safety and security of the victim/survivor. Help build the capacity of the justice sector, including police, prosecutors, lawyers and judges, to deal with issues related to GBV.
7. Monitor and follow up on cases of GBV to ensure that these are investigated, prosecuted and resolved in accordance with established laws and procedures.
8. Review national laws, regulations, policies, procedures and practices, including traditional and cultural practices, and, based on the result, advocate with relevant stakeholders to ensure they provide adequate protection against gender-based violence.
9. Where key human rights instruments, including the Convention on Elimination of All Forms of Discrimination Against Women, have not been ratified by the State or where their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.
10. Ensure that child victims/survivors are provided with special care and assistance as appropriate. Such interventions should be guided by the key principles of the Convention on the Rights of the Child, namely the best interests of the child and the child's right to life, survival and development, non-discrimination, and participation.

11. Criminalize all acts of gender-based violence and ensure that national law, policies and practices adequately respect and protect human rights without discrimination of any kind.
12. Take measures to eliminate all beliefs and practices that discriminate against women or sanction violence and abuse, including any cultural, social, religious, economic and legal practices.
13. Investigate allegations of GBV thoroughly and effectively, prosecute and punish those responsible, and provide adequate protection, care, treatment and support to victims/survivors, including access to legal counseling, health care, psycho-social support, rehabilitation and compensation for the harm suffered. We hope this will increase awareness and galvanise advocacy effort to end GBV in Nigeria and globally.

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