

VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015 AND OTHER EXISTING GENDER LEGISLATION: A COMPARATIVE ANALYSIS*

Abstract

The issue of the abuse of human rights of women still occupies a priority space in world agenda. Many international instruments abound in relation to this. Nigeria was signatory to, and ratified all these instruments, and has not been left out in making national laws either, in adherence to, or complementary to these, ranging from the Constitution and other national laws. Notable among these, is the Violence against Persons (Prohibition) Act 2015. This paper looks into the International and National Instruments in relation to their prospects, challenges and viability in comparison to the Violence against Persons (Prohibition) Act 2015. A way forward to any observed anomalies shall also be proffered.

Key words: *Violence Against Persons (Prohibition) Act 2015, Nigeria, Gender, Comparative Analysis*

1. Introduction

That Nigerian statute books are replete with laws (legislations), is no longer a debatable issue. The problem is how far these laws have been tested and enforced. The ratified international instruments also still exist. These are the laws that stand to be compared with the VAPP Act 2015 in this paper. Since the adoption of the Universal Declaration of Human Rights in 1948¹, the United Nations has not relented in its efforts at bettering the lot of women. The Declaration states in Article I that all human beings are born free and are equal in dignity and right. It states further that everyone is entitled to all rights and freedoms set forth in the declaration without distinction of any kind such as race, color, sex, language, religion...². The Universal Declaration was partly in response to the barbarism of World War II. It saw the rights contained therein as inherent in man hence the Preamble states: ‘Recognition of the Inherent Dignity and of equality and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world³.

A number of international instruments seek to protect women’s rights. Instances are galore. The Convention on the Political Rights 1953 was adopted and opened for signature and ratification by General Assembly Resolution 640(III) of 20th December 1952 but it came into force on 7th July 1954. The dictate of this convention is that women shall be entitled to vote in all elections as well as being eligible to be voted into all publicly elected bodies established by national laws; hold public office and exercise public functions established by national laws on equal basis with men and without any discrimination. International Women’s year was declared in 1975 and through it, many conferences were anchored to produce a platform for the advancement of women through promoting equality. The United Nations Decade for Women closely followed the international women’s year. The goals and targets of the decade were screened in the Declaration of Mexico and its plan of action. Since then the United Nations has held several⁴ world conferences on women each providing a platform for action towards promotion equality of women with men. International Covenant on Civil and Political Rights⁵ and International Covenant on Economic, social and Cultural Rights⁶ protect basic civil and political rights and the general wellbeing of the individual. They not only recognize the principle of non-discrimination, but also guaranteed women a lineup of rights⁷. There is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁸ together with its optional

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¹ G. A Res. 217a (iii) adopted on 10th December, 1948 by the United Nations General Assembly (UNGA).

² Article 2.

³ G. A Res. 217 (III) *op. cit.*

⁴ e.g. Mexico City (1975) Copenhagen (1980) Beijing g (1995)

⁵ Adopted in 1966 but came into force on 23rd March 1976.

⁶ Came into force on 23/1/76.

⁷ Article 2 of the documents.

⁸ Adopted on 18/12/79 but came into force on 3/9/81.

protocol⁹. Among all the international treaties, CEDAW is undoubtedly the best convention which addresses specifically the cause of women; it can be likened to a handbook on women addressing most issues pertaining to women and their empowerment. CEDAW has influenced constitutional amendments and legislations, policies and judicial decisions in many countries, including Nigeria. It has also informed some activist decisions and pronouncement in Court. In Nigeria, cases like *Mojekwu vs. Mojekwu*¹⁰ and *Mojekwu vs. Ejikeme*¹¹ would not have been decided the way, they were decided but for the activist inclination of Miki Tobi JCA (as he then was) relying on, and citing CEDAW extensively. The African Charter on Human and People's Rights¹² regionally is like a message of the Universal Declaration brought home to Africa and for Africans by the then organization of African Unity, now African Union. The Preamble states inter alia: Freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples. The African Charter on Human and Peoples Rights and recently its protocol also make specific provision for the elimination of discrimination against women, and re-affirm its allegiance to the principles of human and people's rights, and freedoms contained in the Declarations, Conventions and other instruments adopted by it.

There are also relevant domestic laws. The Constitution of the Federal Republic of Nigeria in adherence to the Universal Declaration of Human Rights contains Chapters on Human Rights from 1960 to date. The human rights provisions are contained in Chapter IV of the present 1999 Constitution (as amended). All the sections in this Chapter are relevant to this paper. These range from S. 33 to S. 44¹³. Even though the constitution does not provide specifically for women, it excludes any thought of women not expected to enjoy those rights. Consequently, S. 42 of the constitution prohibits discrimination based on sex among other variables. This section is particularly dealing with administrative action by the governing authorities and therefore seems to concentrate more on the public sector and does not follow the individual to their private enclaves in order to protect their interests. This informs the reason why the Police do not go into family issues while victims suffer un-redressed. There are some State Legislations prohibiting Genital Mutilation, the withdrawal of girls from school for the purposes of marriage¹⁴, and laws for the prohibition of harmful widowhood practices¹⁵. There is also the Child's Right Act 2003 which is enacted specifically to protect the rights of the child in Nigeria.

2. Challenges on the Application of these laws:

Nigeria placed a stricture on itself in its constitution¹⁶ in the application of International instruments. The relevant section¹⁷ is of the import that before an international instrument can possess the force of law in Nigeria, it has to be re-enacted and legislated into law in Nigeria. This requires the vote of 2/3 of all the Houses of Assembly in Nigeria for its legislation into Nigerian statute books. With the multi ethnic, cultural and religious nature of Nigeria, this is a tall order especially in issues concerning women and sometimes children. It is on account of this that such an import instrument like CEDAW has not been domesticated in Nigeria. The women-friendly national laws protect singular issues for example, female genital mutilation, widowhood practices and others. The constitution of Nigeria protects everybody equally and therefore has no room for specific protection of women and the acts (especially customs and traditions) that undermine the dignity of women. The Child Rights Act¹⁸ protects every aspect of the life of the Nigerian Child, yet this Act does not protect every Nigerian child because it

⁹ Adopted by the General Assembly on 6/10/99 and opened for signature on 10/12/99.

¹⁰ (1997) NWLR 283.

¹¹ (2000) 5 NWLR (Pt 657) P. 402.

¹² Prepared in Nairobi on June 27th 1981. It came into force on 21/10/86.

¹³ Right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life. They also include right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination

¹⁴ These laws exist in Ebonyi State.

¹⁵ Enugu, and Anambra States.

¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁷ S. 12

¹⁸ Child Rights Act 2003.

does not apply to every state in Nigeria. Nigeria granted partial domestication of the Convention on the Rights of a Child *via* the Child Rights Act 2003. The issue of children falls within the residual list in the constitution so, only states that require the Child Rights Act shall adopt it and so far, not many states have adopted it especially the Northern states, and this makes its application un-uniform. Many of these laws have not been tested in Court since victims are reluctant to report the abrasions especially in the issue of rape. Some Courts use the same venue for both normal Court sessions and issues pertaining to children, due to the absence of family Courts in those areas.

3. The Violence against Persons (Prohibition) Act 2015 and its innovations

This Act was promulgated (signed into law) on May 25th 2015. This was as a result of social and legislative advocacy by women's groups and gender activists for 14 years. The Act is also for the protection of men and women equally, and against all forms of violence which come as acts, shoves etc that cause physical, psychological and emotional harm. Whether stemming from culture or not, it takes account of violence perpetrated both in public and private domain¹⁹. It extends its coverage to acts normally regarded as cultural, and created offences such as physical violence, harmful traditional practices, psychological violence, sexual violence (even if not so extensive) and socio-economic violence²⁰. The VAPP Act also clearly addressed and gives a more balanced definition of rape than it exists in the Criminal Code Act²¹. The VAPP Act states that 'A Person commits rape, if he or she penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else, and without the consent of the other person'²². This definition gives a wider and more practicable view of what constitutes the offence of rape. The ingredient expanded beyond vaginal penetration to penetration of the mouth and anus. It has also gone beyond offence against the female, to offence against any person; male and female inclusive. The punishment ranges from a minimum of twelve years imprisonment without option of fine to life imprisonment. It also provides protection for the victim by way of compensation and from victimization. Other offences succinctly dealt with by the VAPP Act, include inflicting physical injury on a person, forced financial dependence, female genital mutilation, and harmful traditional practices e.g. widowhood practices, deprivation of liberty, emotional, verbal and psychological abuse, forced isolation or separation from family and friends. It also includes political violence and violence by state actors. This Act also provides for the prohibition of stalking, substance attack, protection order under threats of violence and compensation for victims. The provisions of forced ejection²³ from home are particularly relevant. This is an everyday occurrence and nobody bats an eyelid. The police are usually not very effective in issues between husband and wife unless where grievous bodily harm occurs. The picture in the simplified version which shows where a man was evicted by his wife is also very apt (even if it is not very usual in our communities). The illustration shows that it can happen to any of the parties. Desertion which is a ground for divorce in the Matrimonial Causes Act²⁴ is also criminalized here²⁵ and mischievous relatives who may want to prod their relation to abandon his family are also roped in here and made parties to the offence. Relevant section provides: 'Any person that abandons a wife/husband, children or other dependent without any means of upkeep commits an offence and will be sent to prison for up to 3 years or pay a fine of up to N500, 000.00 or both fine and imprisonment'. 'Any person that attempts, incites or supports someone to commit the offence will be sent to prison for up to 2 years or pay a fine of up to N200, 000 or both fine and imprisonment'. 'Any person that receives or assist someone that has committed the offence will be sent to prison for up to...'. By the tone of the last leg of this provision, lovers outside the marriage to whom the offender may have gone to live with are also indicted, even before any divorce proceeding where they may be corresponds²⁶.

¹⁹ S. 20.

²⁰ SS 2, 14, 20.

²¹ S. 357.

²² Part one S. 1.

²³ S. 9.

²⁴ S. 15

²⁵ S. 16

²⁶ S. 38

This Act also ensures assistance and effective remedies for victims. The relevant section states that:

In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 or any other international human rights instruments to which Nigeria is a party, every victim of violence as defined in this Act, is entitled to the following rights;

- (a) Every victim is entitled to receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance.
- (b) Victims are entitled to be informed of the availability of legal, health and social services and other relevant assistance and be readily given access to them.²⁷

By these provisions the Act grants complete rehabilitation to victims and even makes it the responsibility of state and non-state agencies. This undoubtedly alleviates the pains, and confusions of the victims. Using this singular Act one can also seek justice for many issues instead of scratching on various other laws to solve issues.

4. Possible Challenges

Most of the provisions are also represented in the Criminal Code and can be taken care of by the regular criminal justice processes, but for the fact that they do not offer remedy and rehabilitation like the Act does. There seems to be no room for reporting to anybody. The Act just mandates National Agencies for the Prohibition of Trafficking in Persons and other related matters (NAPTIP) to administer the provisions of the Act and collaboration with relevant stakeholders, including faith based organizations. NAPTIP is already saddled with too much responsibility and may not be able to cope with an added responsibility. There is no provision on sexual harassment and indecent assault in this Act. The major problem with Nigeria as far as legislation is concerned, is that there seem to be many laws existing in isolation and harmonization is what is required. Perhaps, since this Act provided for its amendment, it could be padded up to contain other issues to form a composite Act that could form a baseline for the protection of the individual, next to the constitution. The Act is only applicable to the capital territory of Abuja and is therefore left for states that desire it to adopt it. The same fate that befell the Child Rights Act and other such partially domesticated instruments might befall the VAPP Act. The import is that, it will apply only to an infinitesimal percentage of the Nigerian population. By the laws of Nigeria²⁸ the Houses of Assembly of the 36 states in Nigeria must seek to domesticate it by $\frac{2}{3}$ majority before it would be applicable in any state. The multiethnic, religious and cultural nature of the Nigerian society is the worst culprit in this regard. The Child Rights Act is a bitter reminder of the forces that may hinder the domestication of the VAPP Act especially in the states where the criminalized harmful traditional practices are not considered to be necessarily harmful. Some states exist in Nigeria where the constituent communities hold steadfast to these traditions, hold them to be sacrosanct and never to be meddled with. For such states it would be difficult to pass into law, an act that purports to liberate the female gender from things like mourning rites, male preference and female genital mutilations.

The endemic problems bedeviling the Nigerian society such as non-reporting by victims arising from family pressures, fear of repercussion by family members, and stigmatization may also befall this Act. The result is that the Act may remain a substantive law and never form part of Nigerian Case Law. Corruption in Nigeria is fueled by protection of ethnic affiliations. Nigerians may not be quick at reporting anybody if they are related to that person in any way. In other words, protection of family image, and fear of scandalizing one's family is also a problem. There seems to be some conflict with some provisions in the act with the regular Criminal Code Act. A wife or husband is not criminally liable for the destruction of each other's property unless they do so while leaving²⁹, but the Act makes damage to property of a person by any person a criminal offence³⁰. The Act does not exclude spouses

²⁷ Part 4 of the VAPP Act.

²⁸ S. 4 1999 Constitution of Nigeria on Legislative powers.

²⁹ S. 36 C₃₈ LFN 2004.

³⁰ S. 11 VAPP Act.

from this and if spouses are not excluded as it seems, then intent to cause distress which is the *mens rea* for the offence in the Act, should be shown to make the difference in both Acts.³¹

5. Way Forward

If states can adopt the VAPP act without truncating and watering down the sterling and innovative provisions; it will mean such a huge step in the development of law in Nigeria. In this regard (1) a lot of work is required alongside the presentation of this Act anytime and anywhere. (2) Massive advocacy and sensitization on the existence of this act is also a very necessary tool. (3) Mass education on the need to report crimes to the appropriate and authorize quarters is also very vital. (4) There must be a high powered networking to eradicate patriarchy. (5) While eradicating patriarchy, empowerment of women and men should take a pivotal position in development agenda. All stake holders such as the NGOs, law enforcement agents, religious bodies, school authorities, and parents must be involved in this arduous task.

³¹ Criminal Code Act, and the VAPP Act 2015.