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Judicial approach to gender-based violence in Nigeria: An evaluation

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Abstract

The geo-political entity known as Nigeria, has a high level of cultural diversity, religious divergence and ethno-linguistic heterogeneity with over four hundred ethnic groups. The fact remains that in spite of efforts aimed at national integration and unity as well as the democratization processes, there is a staggering diversity in cultural practices across the country. The influence of Religion have not deterred communities from adhering to practices which help to maintain patriarchal control and abuse of women. A historical account of the evolution of the Nigerian legal system indicates that the courts assisted in giving legal backing to customs and traditional practices that were oppressive, exploitative and violate females thereby exposing them to gender-based violence. This paper examined judicial approach to gender-based violence in Nigeria within the context of application and relevance of customary practices in the country. It highlights the extent of intervention from the judiciary in curbing the menace. An attempt was made to analyse how the judiciary responded to customary practices and actions that accentuate gender-based violence using the instrumentation of human rights law and the Nigerian justice system. The focus included an assessment of judicial attitude and factors militating against access to justice in enforcement of laws prohibiting gender-based violence. The paper concluded by recommending amongst others, a proactive judiciary that is not tainted by cultural sentiment nor religious beliefs for Nigeria to adopt international best practices.

Keywords: judicial approach, gender-based violence

1. Introduction

The judiciary has been inundated persistently with events ranging from local to national and other interests of global relevance. As a member of the international community, Nigeria has signed and ratified a couple of international and regional human rights instruments that promote the protection of women against gender-based violence. However, the Nigerian constitution requires that an international treaty be domesticated in order for it to apply ^[1]. Most of these international treaties are yet to be domesticated in Nigeria. The Nigerian judiciary as is characteristic of any judiciary in a well-established democratic system apart from being independent and being the custodian of constitutional governance must be bold and impartial.

In discussing the impediments most women face in the course of seeking protection from gender-based violence in a male dominated society like Nigeria, it is important to examine the role of customary practices which have been cited as justification for gender-based violence and denying women a wide range of basic rights ^[2].

The duty of the court as an unbiased umpire is to ensure that all customary law practices promote equality without any element of discrimination against the female gender. The court, being the last hope of the common man, must live up to its expectation for the confidence reposed in her by the society to remain unshaken. This can be achieved by declaring women's rights as human rights which are inalienable rights given to them by God and inherent in both male and female. The courts must also do the needful in the protection of women against gender-based violence by ensuring that violators are sanctioned accordingly. It is on this score that the courts usually rule against all forms of slavery, inequality, subjection to oppressive and repressive laws, customs, taboos or myths that place the female gender in the lower strata of the society.

2. Some Forms of Gender-Based Violence in Nigeria

In this segment of the paper, the response of the courts to gender-based violence shall be examined.

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a) Work place violence

The workplace has continued to provide a fertile ground for perpetuating acts of gender based violence and many women in Nigeria have been exposed to various degrees of violations. Although, it is riot contained in any regulation or document, most banks prefer to employ young women primarily for the purpose of corporate prostitution. Adenuga and Ilupeju have observed, that the preference for engaging single educated ladies is a strategy to use these ladies to attract customers to their various banks ^[3]. This was the plight that befell Akagbogu Ekwunife who was asked to solicit for the account of high profile politician and when she failed to attract the politician (customer) to her bank she was demoted and had to institute an action against her employer for sexual exploitation ^[4]. This practice which is meted out to only female employees within the banking sector constitutes gender-based violence considering the fact that the lady is forced against her will to solicit for funds for her employer (the bank) in a manner that most likely could expose her to sexual violence. The practice has continued unabated due to the primary aim of the banks to meet their financial targets and also because no legislation has been enacted to deal decisively with erring banks by imposing stiff sanctions on them.

Apart from the banks, most work places in Nigeria have a high magnitude of sexual violence and harassment. The problem of sexual harassment at work seems to attract less attention probably because of socio-cultural constraints which limit discussing sex publicly and the refusal of victims to speak up for fear of stigmatization. According to Stanko, sexual harassment may result in threats of job related consequences for non-co-operation as well as sexual assault ^[5]. Sexual harassment is a difficult crime to prove particularly when the Labour Act fails to expressly prohibit sexual or any other kind of harassment during employment. Making women vulnerable to sexual advances in the work place has been identified as one of the forms of gender-based violence,

b) Gender-Based Violence in Widowhood Practices

Widowhood practices are socio-cultural practices encompassing burial rites, mourning rites, inheritance rights of the widow and the general code of conduct imposed on the widow by the community. According to United Nations estimates, there are about 258 million widows around the world with more than 2 million of them in Nigeria where 25% face a great deal of disadvantage and another 33% have experienced disadvantage ^[6]. Some of the widowhood practices which vary from community to community include acts that constitute abuse and by extension gender-based violence. Amongst the Igbos of South-Eastern Nigeria the widow is required to tie one wrapper and have her hair shaved off by the "Umuada" - (these are the daughters within her deceased husband's family). In some cases, she is made to sleep on the bare floor and remain in isolation for a period of time as stipulated by her husband's kindred.

These acts constitutes acts of gender-based violence which the court in *Theresa Onwo v Nwafor & 12 Others* ^[7] declared as repugnant to natural justice, equity and good conscience. In this case, a widowhood practice where the widow who was of Christian faith had her hairs forcefully shaved, locked up and deprived of her properties. Theresa Onwo refused to shave her hair on religious ground but her husband's kinsmen did so against her will which constituted

physical abuse a clear case of gender-based violence. She approached the court for the enforcement of her fundamental right. The courts held that she had a right to do so. The trial court dismissed the action on the grounds that fundamental right is not enforceable against a private individual. However, the Court of Appeal unanimously allowed the appeal stating that where fundamental rights are invaded not by government agencies but by ordinary individuals such victims have the right against the perpetrators. The case brings to bear the positive response of the court to the increasing wave of gender-based violence in Nigeria.

c) Sexual Violence

Sexual violence is one of the commonest forms of gender-based violence which appears to be on the increase. It occurs when a woman is pressured physically, coerced or forced to have sexual intercourse against her will and it includes rape, sexual assault and sexual harassment. This violation occurs in private and public spheres and is not limited to any age as an infant or an older woman can be violated sexually.

However, rape within a marriage is yet to be classified a crime in Nigeria it is treated as a domestic issue, not punishable under the law. The court In *Musa v Slate* ^[8] reaffirmed this position when it described rape as an unlawful sexual intercourse committed by a man with a woman not his wife through force and against her will. This means that a husband is incapable of spousal rape whilst the marriage subsists even if the wife did not consent. It is argued that the act of forcefully having carnal knowledge of any female constitutes gender-based violence, regardless of the marital status of the victim. The courts can no longer shy away from the issue of spousal rape. The Nigerian Penal Code provides that a man cannot be charged for rape or for an indecent assault of his wife. This was the common law stance as stated in the case of *R v. Steel* ^[9] where the court held that, "the husband cannot be guilty of rape committed by him upon a lawful wife, for by their mutual matrimonial consent and contract, the wife had given up herself in this kind... to her husband from whom she cannot retreat." Section 357 of the Criminal Code defines rape as "...unlawful carnal knowledge of a woman or girl, without her consent...or, in the case of a married woman, by personating her husband..." However, section 6 of the Criminal Code specifically provides that sexual intercourse between a husband and a wife cannot amount to rape unless there is a decree absolute or possibly a decree nisi. This provision therefore encourages marital rape and domestic violence in families.

Women who have been raped particularly by state agents find it very difficult to prosecute them, in *Mrs. Izonebi Cook v The President Federal Republic of Nigeria, the Chief of Army Staff Nigerian Army and the Attorney General of the Federation* ^[10] the plaintiff who fled with her family during the conflict in Odi, Bayelsa State alleged that when she went back to her home to pick up some items, she was confronted by two soldiers who beat her with their guns, tortured and raped her in the presence of her children. She suffered severe emotional trauma, shock and injuries from the incident. The defendants entered appearance but thereafter failed to show up relying on the provisions of the Public Officers (Protection) Act ^[11]. The court in condemning the rape and torture of the plaintiff as barbaric

noted that it was a violation to her person and held that the defendant cannot be held liable for the excesses of soldiers rightly deployed to Odi community. That the plaintiff failed to prove that the defendants ordered the acts complained of and that they were fully protected by the Public Officers (Protection) Act Cap 379 LFN 1990 as the matter was instituted outside the three months period, it was therefore statute-barred. The plaintiff was not given any relief except that the courts said she had their sympathy. This case sends a negative signal of discouragement to women who suffered similar fate in the hands of state agents.

On the international plane, the International Court of Justice, in the case of *Prosecutor v. Akayesu* [12] the offence of rape was re-conceptualized and given a broad definition. The International Criminal Tribunal for Rwanda made a significant contribution also to the evolving jurisprudence on rape as a war crime by articulating a broad definition that squarely places rape on an equal footing with other crimes against humanity [13]. The ICT's definition re-conceptualizes rape as an attack on an individual woman's security of person, not on the abstract notion of virtue and not as a taint on the entire family's or village's honour. According to the Tribunal, "*rape is a form of aggression and... the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts*". The Tribunal defined rape as a "*physical invasion of a sexual nature, committed on a person under circumstances which are coercive*". In addition, it defined sexual violence to include forced nudity, firmly establishing that acts of sexual violence are not limited to those involving penetration or even sexual contact.

The Akayesu decision also, recognized for the first time that acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign. Jean-Paul Akayesu, the former Mayor of Taba, was convicted of genocide for knowingly, instigating, aiding and abetting the rape and sexual violence in the community, specifically targeting Tutsi Women, as part of a genocidal campaign intended to destroy the Tutsi group as a whole.

(d) Physical assault

Another area of concern is the provision of the law that allows a husband to batter his wife. In the case of *Akinbuwa v. Akinbuwa* [14], the court held that a minor assault of the wife by the husband for corrective purposes is tolerable. This is in line with the Penal Code [15] which allows for wife chastisement. Also, in *Alausa v. Lydia Ade Odusote* [16], the court held that if a husband uses force or violence to obtain, intercourse, it may be that the justifiability of woman's rights has been put in question especially under Sharia law. The appellant had shaved the pubic hairs of his wife under Native Laws and Custom. The learned counsel for the appellant argued that a man cannot be convicted of indecent assault upon his wife since he cannot be convicted of rape against his wife. The court was however of the view that the assault upon one's wife is not rendered "indecent" by circumstances which would render it "indecent" in the case of another woman. Here, the court then substituted the verdict of the Magistrate court from "indecent assault" to a verdict of "assault" contrary to section 351 of the Criminal Code with a sentence of six weeks imprisonment.

This decision raises a lot of dust, a man should not be immuned from a criminal action for indecently assaulting his wife because in the customary system, a woman is the

property of the husband who can be corrected by whipping or abuse in the manner deemed fit by the husband. This system is made worse by the application of Sharia laws within the country. Most of the Northern States that have adapted Sharia have technically legitimated the abuse of women domestically with the resultant effect of the subjugation of the rights of women within these territories [17]. A primary concern is the fact that most of the judges in the court are not lawyers or persons knowledgeable in the law. The fact that women are in jeopardy under this system cannot be over stated. In the case of *Safiyatu Hussain Titudu v. Attorney General, Sokoto State* [18] the plight of women under the Sharia system of justice was brought to question in the determination of guilt of the male and female participants in adultery. The appellant in this case was charged with the offence of "Zina" (adultery) committed with one Yakubu Abubakar contrary to sections 128 and 129 of the Sokoto State Sharia Penal Code Law 2000. The Sharia court was of the view that since the 2nd Accused, who was once married and divorced, had confessed to the offence of Zina with the first accused having legitimately exercised his right under the Sharia to retract his admission of the offence and change his plea; the 1st accused was discharged and acquitted. The court then went further to state that the offence of Zina was proved against the 2nd accused since she got pregnant and delivered a baby. She was then sentenced to death by stoning in the presence of other Muslims as witnesses. The death sentence was delayed to allow her time to breastfeed her baby before her execution.

(e) Health Issues

It has been affirmed that gender-based violence is a means of placing women in a subordinate position in relation to men and also constitutes violation to the rights and freedom of women. Article 12 of the International Covenant on Economic, Social and Cultural Rights states that everybody has the right to attain the highest possible standard of health given the cultural domination of men in decision making and their ability to impose sexual relations on their partners. The women are dependent on the men who provide funds for access to healthcare. In a situation where the woman is sexually violated and not allowed to determine what she does with her body in terms of whether to have an abortion or not, consequent upon which she might have to drop out of school or lose her job directly or indirectly constitutes gender-based violence. This is irrespective of the form violence against women takes whether physical, sexual or psychological. Violence against women is a foundational violation of human rights, freedom and welfare and has been recognized as a risk factor for women's ill-health with far reaching consequences on their mental and physical health.

Female Genital Mutilation (FGM) is another issue of concern within many of the local cultures of Nigeria. FGM is still practised in some parts of the country and among all religious groups. The age of mutilation varies from 3 months to 17 years or just about the first pregnancy. Many young girls face several health risks including HIV infection due to the unhygienic methods used for the mutilation such as the repeated use of the same blade/knife on different girls, using unclean rags as swabs whilst cross-infecting patients etc. However, some States have passed laws prohibiting female circumcision and genital mutilation.

FGM as a harmful traditional practice is recognized and efforts to combat it have not yielded much fruits. Female genital mutilation in most cases is done against the victim's wish and under very dehumanizing health conditions exposing the girl child to grave health conditions that could be life threatening. It constitutes gender-based violence. The culture of silence on the part of the victim has also not helped in bringing violators to face the law.

3. Assessment of Judicial Attitude to Gender-Based Violence

The attitude of the Nigerian courts to issues of gender-based violence has not been encouraging. In a matter as grave as gender-based violence, the victim is expected to prove the elements necessary for the act to constitute assault. In *Akinbuwa v Akinbuwa*^[19], the court held that minor assaults committed by one spouse upon another for corrective purpose and which does not cause or produce reasonable apprehension of danger to life, limb, bodily or mental health of the assaulted spouse is not an issue in a divorce proceedings. This decision taken by the court was most likely affected by religious beliefs and socio cultural sentiments which do not see anything wrong in wife battering. With the high wave of domestic violence and the resultant spousal death, there is the dire need for the courts to be proactive by imposing sanctions for any form of violence against women so as to act as a deterrent to others hiding under the cloak of culture and religion. This will save the lives of women that are battered, maimed and in extreme cases killed.

Trafficking in women is a grave violation of the victim it involves physical, emotional, domestic violence as well as forced labour which are in contravention of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It constitutes gender-based violence. In the area of human trafficking which is another form of gender-based violence, the judiciary has been able to make judicial pronouncement that have ensured the prosecution of traffickers. A number of cases against traffickers have been successfully prosecuted by NAPTIP. The courts have not hesitated to convict such persons involved in this form of criminal activity that subjects females to various degrees of gender-based violence ranging from forced prostitution to exploitative labour or domestic servitude. In *Attorney General of the Federation v Christy Egbule*^[20], the accused was convicted of organising foreign travel to promote prostitution, an offence contrary to and punishable under section 16 of the Trafficking in Persons (Prohibition) Act 2003 as amended.

Similarly, in *Attorney General of the Federation v Samuel Emwinobanhoe*^[21], the accused informed the four girls that he will take them to Italy via Libya to prostitute. In return they were to pay him 30,000 Euros when they arrived Italy. The accused asked the girls to cut their nails, hair, armpit hairs, pubic hair and toe nails. These items were wrapped, labeled, named and handed over to a native doctor who administered an oath on them to instill fear into them. They were forced to take an oath, on act of bondage which makes the sex slaves feel duty bound to remit money to their sponsor and continue to remain in sex slavery until they complete payment. Fortunately, the young girls were intercepted in Kano by immigration officers and handed over to NAPTIP. The accused was charged to court and

found guilty of human trafficking and was convicted accordingly.

Given the notoriety of human trafficking in our society, the syndicate of human traffickers must be made to face very strict sanctions, because the offence debases not just the victims but the entire human society. In line with meting adequate punishments to traffickers, the court in *Attorney General of the Federation v Franca Edith Asihaja*^[22] sentenced the accused person upon conviction to live years imprisonment with hard labour. The courts must not be seen to lean in favour of persons who engage in modern day slavery and put the lives of young women in danger, taking them through untold hardship and gender-based violence. Seeking justice for victims of gender-based violence should be the paramount concern of all well-meaning Nigerians including the judges.

In Nigeria, victims of gender-based violence hardly get justice because most times, when such matters are reported to the police, after been ridiculed they are sent back to their violators under the guise that it is a family matter. They only act when partner has severely injured the other or killed her. This has led to spousal death because the violence continues. Where the woman is the perpetrator, the defence of provocation does not protect her unlike in some other jurisdictions like the United Kingdom and Canada, where the law recognizes the fact that continuous abuse and violence in a marriage could lead an abused woman in self defence to hit her husband fatally not necessarily with the intention of killing the violator but in an attempt to keep him at bay and prevent further attack on her. Women who live in such violent homes or relationship are classified as "battered women" and they are assumed to be suffering from battered women's syndrome.

In some jurisdictions, the law admits into evidence battered women syndrome as a plea in their defence of provocation. In England, the court in *R. v Thorton*^[23], identified the ineffectiveness of the defence of provocation with regard to women who constantly suffer violent abuse from their partners. The court invoked the evidence of battered women syndrome for the plea of diminished responsibility instead of the defence of provocation to apply.

In Canada, the court in *R v Lavellee*^[24] deciding whether a woman who killed her husband after several attacks and threat to kill her could rely on the defence of self defence. The court noted that it is unreasonable to expect women who live in fear from those who have battered them to wait until they are directly attacked before defending themselves. In the trial, the history of abusive relationship was considered and expert evidence on battered women's syndrome was adduced to enable the court understand where the abused women were coming from. The traditional concept of apprehension of fear or danger at the time of the crime was modified to accommodate the position of battered women who due to frequent violent attacks in the past often knew when another attack/abuse was likely to occur, completely different from that of the "reasonable man". The courts by looking at the issue from the perspective of battered women changed the dynamics of criminal law in Canada by making it more responsive to the lives of women who are victims of violence. The judiciary in Nigeria should adopt a similar principle to reduce the suffering victims of gender-based violence have to put up with due to the rigid laws.

4. The Challenges of Access to Justice for victims of Gender-based Violence in Nigeria

A good number of factors as earlier stated in this paper stand as a fundamental hedge or clog to access to justice in enforcement of gender-based laws in Nigeria. Some of the factors applicable to Nigeria would be treated herein seriatim.

(i) Complex Legal Rules and Procedures

Some existing Legal Rules and Procedures including the Court Rules have become so complex that they tend to obstruct access to justice rather than grant access to Justice. An example of the setback caused by court complex rules is the provision of Order 4(4) of the Rivers State High Court (Civil Procedure) Rules 2010, which is also contained in other Court Rules. It provides that the Judge can at anytime allow to be regularised any process which it deems fit to allow, although such leave of court might be granted with cost. Now, parties have utilised this order to perpetuate delays and harshness to the system. They make applications every now and then to gag the other party and then pay penalties (costs) that are usually nominal in nature. Most women when faced with unnecessary protracted trials, they abandon their rights just to stay out of Court.

Another procedure and complex rule that can be seen as most cumbersome and ends up either to allow the accused to go free or restrain the victim from access to justice is the procedure involved in proving the crime of rape. The need for corroborative evidence has made it extremely difficult for a victim of rape to access Justice. In *Jegade v. State* ^[25] the Supreme Court held inter alia that;

A corroborative evidence capable of grounding conviction on a charge of rape must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged.

However, the Supreme Court, in *Iko v. State* ^[26] held that the court can convict an accused in the absence of corroborative evidence in a case of rape. Stating that it is not a rule of law that an accused person cannot be convicted for rape on uncorroborated evidence but the court must warn that it is unsafe to convict an accused person based on uncorroborated evidence.

It is important to note that there is no statutory requirement for corroborative evidence to secure conviction for rape it was merely a matter of practice. The repealed Evidence Act ^[27] did not list rape as one of the offences for which corroboration was needed Section 179(5) required corroboration. For defilement of girls under thirteen years, defilement of girls under sixteen years of age and above thirteen and of idiots, procurement of a girl or woman who is under the age of eighteen years and procuring defilement of women respectively rape is not listed as one of the offences requiring corroboration. The Evidence Act 2011, did not retain section 179(5) of the repealed Evidence Act, the issue of corroboration in rape cases is not supported by any statutory authority.

(ii) Delay

One of the factors obstructing access to justice especially for victims in Nigeria is the inordinate delay in the justice system. When matters are commenced in our various courts, they suffer incessant adjournments upon adjournments, thereby protracting the entire proceedings and the resultant effect is justice delayed. It has been said that Justice delayed

is Justice denied. Some actions in court span a period of four (4) to ten (10) years before judgments are delivered and then upon dissatisfaction by a party, he or she exercises his or her constitutional right of appeal. The appeals up to the apex court may last another six (6) to eight (8) years before the final Judgment. A woman who has been hurt and intends to achieve redress in court, but has limited resources to scale through the cumbersome hurdle of appeals would definitely end up opting out of the pursuit for Justice or in the event that Justice is served, the value is highly vitiated due to a very long passage of time. This is the case in both the Criminal and Civil Justice System.

(iii) Cost of Litigation in Nigeria

It is indisputable fact that the cost of securing the services of a legal Practitioner to stand in for one in a court proceeding has increased tremendously that an impecunious woman or a woman with average earning would find it extremely difficult to afford this bill. The result in this kind of situation is that the woman after considering her financial handicap would rather opt to waive her Rights on access to Justice than start up a struggle or pursuit she sees herself not being able to complete. Legal Aid, for example the Human Rights Commission, the International Federation of Women Lawyers (FIDA), just to mention a few are all bodies that can intervene to aid the course of an aggrieved woman generally in court or better the lot of an indigent woman. However, they would require the woman at one point or the other to pay some fees for filings and other financial requirements most especially when the proceedings begin to journey through the appeal stages. Again, financial responsibility indirectly sets in.

(iv) Lack of Awareness and Legal Knowledge

It is self-evident that lack of awareness and legal knowledge are factors that have created barriers to access to justice. For instance, some of the judicial arbiters do not know the extent of marginalization and discrimination women in their immediate societies are facing. In areas of early and forced child marriages, a judge in the south cannot imagine how horrible it appears to be while a judge in the North sees it as a normal trend. So also are judges in the northern part of Nigeria ignorant of the obnoxious practices carried out in some of the customs in the Southern part of Nigeria. The Courts however have frowned at customs and traditions that are repugnant to natural justice, equity and good conscience.

In *Timothy v. Oforka* ^[28] the Court of Appeal stated; No law or custom that stands in the way of the Nigeria Constitution should be allowed to stand tall no matter the circumstance. In the instant case, where by virtue of the Orafite custom women and children are not allowed to own land and this would have deprived the applicants of the gift of land given to them by their father and alienated their rights under the Constitution, the trial Court rightly declared the custom as being unconstitutional.

The Court in the same case went further to state as follows; ... will want to emphasize here that the learned trial judge was not only right in his ruling/judgment, but he adequately took the bull by the horn and upheld the Constitution and was able to declare that a native law and custom that was repugnant to natural justice wherein some citizens of this country, Nigeria are discriminated against on account of their place of origin, sex, religion and or political opinion to hold property when such property was indeed also given by

a grandfather to his daughter and son... if not upheld is repugnant.

The above case was all delivered in a bid to safeguard the woman from discrimination and gender-based violence as provided by the 1999 Constitution ^[29]. However, some of the repugnant customary laws and practices violating women still exist in the various communities in Nigeria.

(v) Corruption

Just like all other walks of life and other sectors, the justice system at times finds itself being manned by corrupt Judicial Officers and Judicial Arbiters. When this rears its ugly face, all forms of impunity begin to find their ways into the system. There is also a situation whereby members of the judicial panel instead of allowing parties argue their matters begin to descend to the arena to take sides adversely affect victims of gender-based violence. Corruption could be born out of a number of factors which include; favoritism, tribalism, nepotism, bribery, bias and sentiments, just to mention a few. It is worthy to note that when corruption sips through any system, the populace especially the womenfolk loose trust in that system and in the present case they develop resentment towards access to justice and consequently abandon their rights.

Apart from the aforementioned, women are also faced with such problems as poverty and illiteracy, which deter them from enforcing their rights when subjected to gender-based violence. The various International and Regional mechanisms set up for access to justice have shown themselves to be far reaching to the Nigerian woman who cries out on a daily basis for justice based on gross violations of her because she is a woman, she is faced with obnoxious customary practices, female genital mutilation, early forced marriage, trafficking in women, girl child labour and domestic violence just to mention a few. Although some of the mechanisms set up domestically are putting in their best to ensure access to justice by the Nigerian woman is achieved, much is still left to be done, in the area of enacting further laws to protecting women against gender-based violence.

5. Recommendations

The Judiciary should make frantic efforts to fast track access to justice by women especially when it touches on protection against gender-based violence. The judiciary should revisit the issue of "corroboration" in proof of rape matters and water it down to allow a rape victim the ability to prove her case. The courts should make Rules and Practice Directions to allow for hearing of certain matters touching on the dignity of the woman to be in camera. Rape matters should be heard in camera, not in an open court and speedily. Prosecutors should be encouraged to prosecute matters touching on the violation of women's rights without harassing the women under the guise of investigation. This is because some of the Law enforcement officers further harass the women that approach them for the purpose of laying a criminal complaint against their abusers. Consequently when these women experience harassments, they decide to abandon their rights to seek justice and would rather wallow in self-anguish. Amending existing laws like the Criminal and Penal Codes to properly accommodate protection against gender-based violence is highly recommended. Until these and many more are done, access to justice for victims of gender-based violence, would

remain a major hurdle to the protection of women against gender-based violence in Nigeria.

6. Conclusion

In this paper, the problem of gender-based violence is examined within the Nigerian society and how the courts have tried to regulate practices that accentuate gender-based violence. Remarkably, the courts have taken positive steps to protect women against violence but the courts need to do more in curbing this menace in the society. It has been correctly asserted that the status of women in any country depends on the socio-cultural role assigned to them by tradition, no matter what legislation says. In most African societies, women are treated as inferior to the men as evidence in most customary practices. All these customs persist in the face of the validity test and constitutional provisions. Elias writing on the status of women in African societies stated:

It is a notorious fact that women in Africa, as in even many modern societies play little if any part in public life. Their place is in the home, looking after the husbands and children. This somewhat restricted sphere of a woman's social function is not, as is often supposed, due to the fact that so called "bride price" is paid on them by their prospective husbands before marriage... The position of women can, therefore, only be the result of the particular mode of ordering social, economic and even military affairs in a given Africa in society ^[30].

It is argued that judges are also products of the society and are influenced by cultural and social sentiments when handling matters which are reflected in the reluctance of some judges to declare some customary practices that violate women as repugnant. In the light of this reality, it is argued that the judicial process is far from being an objective exercise, as judges in arriving at judicial decisions, are sometimes influenced by certain extra-legal factors.

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13. Rome Statute of the International Criminal Court, Article 7(1) (g), lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity of a crime against humanity.
 14. CA/B/6/94, 13 (Court of Appeal Benin) 1998.
 15. 1959 Cap 89, Laws of Northern Nigeria, 1963 section 5 l(!)(d)
 16. 8 WACA 1941, 140
 17. Sharia law is enforced in twelve states of Nigeria namely, Zamfara, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kebbi, Niger, Sokoto and Yobe.
 18. WHRC309 2008, 1.
 19. 7NWLR (pt 556) 1998, 661.
 20. Suit No PHC/S/29C/2008 (Unreported).
 21. Suit No B/20c/2005 (Unreported)
 22. Charge No B/31 C/2005 Unreported.
 23. 1 All ER 1992, 306.
 24. Supreme Court of Canada (SCR) 1990, 852.
 25. FWLR 640-846 (Pt 66) 722@728, 2001.
 26. FWLR (Pt 68) 2001, 1161.
 27. Cap E14, Laws of the Federation of Nigeria 2004.
 28. All FWLR 1218-1419 (Pt. 413) 1370@ 2008, 1373-1346.
 29. See Section 42 of the Constitution of the Federal Republic of Nigeria 1999, Cap C23 Law of the Federation of Nigeria 2004.
 30. Elias TO. The Nature of African Customary Law (Manchester: Manchester University Press) 1956, 100.