

VIOLENCE AGAINST WOMEN AND GIRLS, SEXUAL AND GENDER BASED VIOLENCE AND THE BUDGET IN A TIME OF CORONA VIRUS PANDEMIC

(Mainstreaming the Freedom from Violence in the Budget: A Framework for Action)

1. INTRODUCTION

Since the Coronavirus (COVID-19) was declared a global pandemic and the Nigerian index case on February 27, 2020, the growing number of COVID-19 cases in Nigeria necessitated the declaration of a lockdown by President Muhammadu Buhari on March 29 in two States - Lagos, Ogun and the Federal Capital Territory (FCT). The President also inaugurated a national response to COVID 19, with several interventions beginning with the constitution of the coordinating authority - the Presidential Task Force (PTF) for COVID-19, development of a plan and its monitoring, resource mobilisation for the implementation of the plan, etc. State Governors have equally declared lockdown in their States. The restriction of movement has brought to the fore a number of social ills, especially violence against women and girls (VAWG) and sexual and gender-based violence (SGBV). The United Nations Secretary General had earlier made a call to countries on the risk of increased SGBV during the COVID-19 pandemic. The UN had provided guidance and made recommendations to countries to ensure the integration of interventions to address SGBV and risk mitigation in the national responses to the COVID-19 pandemic.

The essential feature of the lockdown is the restriction on the rights to freedom of movement and peaceful assembly. Nigerians are required to stay in their homes, to practice social distancing and observe hygienic protocols. Different states have certain exemptions to the “stay at home order”, like the exemption on provision of and access to essential services including food. In the Federal Capital Territory (FCT), residents can only go to neighbourhood shops and markets to buy food items in two approved days within a week. The restriction on these fundamental rights should be understood within the context of S.45 of the Constitution of the Federal Republic of Nigeria 1999 (“Constitution”) which states that *nothing in sections - 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons*. Thus, the lockdown could be stated to be for public safety, public health and to protect the rights and freedoms of other persons through preventing community transmission of coronavirus. Available evidence indicates that there has been a spike in violence against women. However, these conditions for derogation do not in any way relate to or justify the perpetration of violence against women and girls (“VAWG”) or sexual and gender-

based violence (“SGBV”) and they do not preclude the State from making specific exceptions or taking appropriate measures to guarantee the right of women and girls to freedom from violence.

The rights of women, girls and indeed all members of the human family, to freedom from any form of violence imposes peremptory and continuing state obligations under the 1999 Constitution¹ and international standards ratified by and applicable in Nigeria². Some aspects of the proscription of VAWG, especially SGBV, could be stated to have attained the status of *jus cogens*, being peremptory norms of customary international law recognized and binding on all civilised nations and from which no derogations are permissible. In articulating violence against women, the definition in article 2 of the United Nations Declaration on the Elimination of Violence against Women³ (“DEVAW”) is adopted vis;

Article 1

“For the purpose of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in physical, sexual and psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life”

Article 2

“Violence against women shall be understood to encompass, but not limited to the following:

(a) Physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

(b) Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

¹ Section 34 on the right to dignity of the human person.

² See article 5 of the standard setting Universal Declaration of Human Rights - *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment* and article 7 of the International Covenant on Civil and Political Rights.

³ General Assembly Resolution 48/104 of 20 December 1993.

These manifestations of VAWG/SGBV do not stand on their own but are products of discrimination outlawed in national and international standards, including the Constitution and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - being products of patriarchy and unequal power relations.⁴ In article 1, CEDAW defines discrimination:

“For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

In S.42 of the Constitution, it is provided:

“(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.”

The prevalent patriarchal practices in different Nigerian cultures continue to predispose women and girls to violence, resulting in poor reproductive and sexual health outcomes, poor access to and control over resources, higher vulnerability to poverty at certain ages in life, poor access to education, lack of inheritance rights, lack of voice and minimal participation in decision making processes at different levels etc. It has been stated that the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately⁵. SGBV/VAWG has serious negative effects on the right to health and the right to life because the easiest way of depriving a woman or girl of her right to life is to accentuate violence to her person to the point of abrogation.

⁴ *law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.”*

⁵ General Recommendation No.19 (11th Session, 1992), Paragraph 6- Committee on the Elimination of Discrimination against Women

Some aspects of VAWG have been prohibited in the Criminal and Penal Codes, the Violence against Persons Prohibition Act applicable in the FCT and Violence against Persons Laws of States and other relevant laws⁶. A proper understanding of VAWG/SGBV will include an analysis of its causes, consequences; how intersectionality impacts vulnerability to violence and an elaboration of the role of the state in combatting violence in the public and private domains⁷. This is however beyond the remit of this rights, duties, and resources conceptual framework.

2. STATE OBLIGATIONS

There is a multi-layered duty of State in human rights and in SGBV/VAWG, they are the obligations to respect protect and fulfil. There are also obligations of conduct and obligations of result. Running in the middle of all these obligations is the duty to ensure that freedoms are enjoyed on a non-discriminatory basis.

The *obligation to respect* demands that federal, state and local governments refrain from directly taking action that promotes violation of freedom from VAWG/SGBV or obstructing action taken by women in pursuit of their freedom. However, the deliberate withholding of information by the state - information necessary to protect women and girls from violence is a violation of the obligation to respect.

The *obligation to protect* demands that agents and officials of government take action to prevent violations of freedom from VAWG by third parties - whether private individuals or organisations and to impose adequate sanctions for violations. This is aptly captured in article 4 (a) of DEVAW. The State should:

“Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”⁸

⁶ Oyo, Osun, Ekiti and Ebonyi States, etc. have Violence against Persons Prohibition Laws.

⁷ See page 7 of “15 Years of the UN Special Rapporteur on Violence against Women its Causes and Consequences”- initiated and guided by Yakin Erturk.

⁸ This is also the position of prevalent international jurisprudence in the decision of the Inter-American Court of Human Rights in the *Velasquez Rodriguez e v Honduras* of July 29 1988, Series C, Decisions and Judgement, No.04.

The exercise of due diligence will include special rules and orders during the lockdown that mainstream and characterize issues of VAWG/SGBV as exemptions that could permit survivors or persons assisting them to go outside of their homes despite the lockdown order/rules. It will also include special resource measures to protect the dispensation and advance an effective response system. It may also include educational measures on radio, television and social media to remind citizens that VAWG/SGBV is an offence and cannot be tolerated during the period of lockdown, advertising special hotlines, emails, WhatsApp contacts to help survivors, etc. Dedicated resources may also be provided to agencies such as NAPTIP, Ministry of Women Affairs at the federal and state levels as well as public and private shelters to ensure that no one is left behind.

The *obligation to fulfill* requires governments to take appropriate legislative, judicial, administrative, budgetary, economic and other measures, to the maximum of available resources, to ensure freedom from violence to women and girls. This is a positive obligation that involves the appropriation of government's expenditure towards its priorities and these priorities should and must include freedom from VAWG/SGBV. The act of appropriation must also be seen to be done in way and manner devoid of discrimination on any of the prohibited grounds. The provision of state resources must be seen to be concrete and targeted as a step towards the realization of freedom from violence - not just tokenistic. Even in periods of resource constraints, like our current fiscal crisis, vulnerable members of society⁹ must be protected by the adoption of relatively low-cost but targeted measures and programmes which satisfies the minimum core obligation to freedom from violence.

Essentially, such provision must satisfy the minimum core obligation of the state to ensure that women and girls are free from violence through the implementation of the minimum core content of the bundle of rights encapsulated in freedom from SGBV/VAWG. In any state where women and girls are constantly battered, trafficked, deprived of access to sexual and reproductive health and rights ("SRHR"), etc., and the state fails to respond, such a state will *prima facie* be failing to discharge its obligations under national and international standards¹⁰. Thus, the minimum core obligation of the state is to ensure that the intersections between freedom from violence and the rights to life, health, human dignity, freedom from torture, inhuman and degrading treatment, etc. are not breached and the personhood and dignity of women and girls is held sacrosanct. Further, no deliberately retrogressive measures that reduces the extent of enjoyment of this right is permitted unless it can be justified by reference to more pressing and relevant higher norms provided by law¹¹.

⁹ Women and girls are not born with vulnerability or inherently vulnerable by their nature but have been made vulnerable by patriarchy and unequal power relations.

¹⁰ See General Comment No. 3 of the UN Committee on Economic, Social and Cultural rights on the nature of States Parties obligations under the ICESCR.

¹¹ This would be almost impossible to justify considering that freedom from violence is emerging as a non derogable right.

The obligation to respect, protect and fulfill contains elements of the obligation of conduct and obligation of result. The obligation of conduct may require action reasonably calculated for the realisation of the enjoyment of freedom from violence. This would include the adoption of legal and policy standards. Obligation of result requires government to achieve specific targets to satisfy detailed substantive standards for instance, the complete elimination of female genital mutilation or a drastic reduction in the incidence of domestic violence.¹²

3. THE RESOURCE AND BUDGET FRAMEWORK

Achieving freedom from VAWG, SGBV or improving the realization of the sexual and reproductive health and rights (SRHR) of women and girls requires appropriate resource outlays through the budget and other fiscal policies. The budget is both a political, economic and human rights process and programme at the same time. It involves contestation of power and prioritization of the use of state resources. Article 4 (h) of DEVAW mandates states to *include in government budgets, adequate resources for their activities related to the elimination of violence against Women*. The matrix below proposes budget action points in accordance with the obligations of government reviewed above.

Obligations	Budget Action Points
To Respect	This requires no outlay of resources. It is for the state and its agencies to take no action to violate already entrenched rights. See article 4 (1) (b) of DEVAW - <i>refrain from engaging in violence against women</i> .
To Protect	<p>a) Prevention</p> <p>Fund sensitisation jingles, skits, programmes and related activities on radio, television, print and social media on the illegal and unacceptable nature of domestic violence and other forms of VAWG/SGBV. The funding should go to the Ministry of Women Affairs and Social Development and the National Human Rights Commission at the federal and state levels and the equivalent department in the FCT.¹³ They should develop content and collaborate with the National Orientation Agency, Ministry of Education or equivalent institutions at the state level for its dissemination.</p> <p>b) Remedies</p>

¹² Adapted from paragraph 7 of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights adopted on the occasion of the 10th anniversary of the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

¹³ Article 5 of CEDAW.

	<p>(i) Establish shelters for survivors of domestic violence where none exists and adequately fund (during this lockdown) existing ones - whether established by the state or non-state actors. This would include isolation rooms for new entrants as well as coronavirus tests for new and existing survivors.¹⁴</p> <p>(ii) Provide special grant to National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to ensure the enforcement of the VAPP Act in the FCT and in other states that have adopted VAPP¹⁵.</p> <p>(iii) Adequately fund existing Sexual Assault Referral Centres (SARCs) to enable them provide effective counselling, rehabilitation and support services for survivors of SGBV during and after the lockdown. Also, provide funding for the integration of the services offered by SARCs into existing health service centres across the country.¹⁶</p> <p>(iv) Provide funding for the activation and activation of the Gender Desks of the Police and the Nigerian Security and Civil Defence Corps.¹⁷</p> <p>(v) Special funds for legal aid to the Legal Aid Council and relevant CSOs to help survivors of VAWG/SGBV to claim their rights and enforce the law.¹⁸</p> <p>(vi) Exempt and allow Family Courts or Courts of equivalent jurisdiction to sit during the lockdown¹⁹. However, they should observe the social distancing protocol.</p> <p>c) Intersectionality</p> <p>(i) Support the National Human Rights Commission and NAPTIP to compile statistics on VAWG/SGBV in the lockdown period with particular attention to issues of age, disability, location, etc. and subsequently</p>
--	--

¹⁴ Article 4 (g) of the DEVAW.

¹⁵ Article 4 (c) of DEVAW.

¹⁶ Article 4 (d) of DEVAW.

¹⁷ Article 4 (d) of DEVAW.

¹⁸ Article 4 (d) of DEVAW.

¹⁹ Article 4 (d) of DEVAW. Magistrates courts are still sitting to try violators of the lock down.

	<p>fund the National Bureau of Statistics to compile gender disaggregated data on various aspects of national life including SGBV/VAWG.²⁰</p> <p>(ii) Set up an Inter-Agency Task Team to ensure proper coordination of interventions on VAWG/SGBV/SRHR.</p>
To Fulfil	<p>(i) Considering Nigeria's high and embarrassing maternal and child mortality and morbidity figures, there is the need to increase the appropriation for maternal and child health services including immunization, pre and post-natal care. This is premised on the likelihood of more pregnancies and births as a consequence of the lockdown period.²¹</p> <p>(ii) Increase the appropriation for family planning. This will target sensitization, commodities and services so that women will be able to effectively plan and space their children.²² This will increase the economic accessibility of the services for poor women and support women to make informed choices about their reproductive health.</p> <p>(iii) Make testing for coronavirus free and compulsory for all women undergoing pre and post-natal care.²³</p> <p>(iv) Funding for HIV/AIDS interventions should be increased because of the serious life, health and other social challenges associated with HIV/AIDS. Also, the COVID-19 interventions should ensure the inclusion of people living with and affected by HIV/AIDS and others living with chronic health conditions because of their vulnerable conditions which is seriously impacted by the COVI-19.</p> <p>(v) Increase investments in access to water, sanitation and hygiene as this is necessary for the curtailment of the spread of the pandemic. It also frees up the time spent of fetching water for women and girls.</p>

²⁰ Article 4 (k) of DEVAW.

²¹ Articles 12 of CEDAW and the ICESCR respectively.

²² Articles 12 and 16 (e) of CEDAW and article 12 of the ICESCR.

²³ Articles 12 of CEDAW and the ICESCR respectively.

	<p>(vi) Increase the number of women, female headed households and people living with disabilities benefitting from the National Cash Transfer Programme. At least, not less than 60 per cent of the new enrollees proposed by President Muhammadu Buhari in his April 13, 2020 address to the Nation should be women or female headed households.²⁴</p> <p>(vii) Increase the number of women, female headed households and people living with disabilities receiving palliatives under the COVID-19 Response Programme - poverty predisposes women to become victims of violence.²⁵</p>

4. CONCLUSION

It is important to ensure that governmental action responding to the COVID-19 pandemic is inclusive and gender sensitive to prevent graver consequences in the aftermath of the pandemic. It should also protect the rights of people living with disabilities and other vulnerable persons. The COVID-19 pandemic has led to a world-wide economic downturn with closure of public and private establishments and may likely lead to recession and or depression in Nigeria. The price of crude oil has collapsed and sells below the cost of production. This will reduce more than 50% of federal, state and local government’s projected revenues and over 60% of the foreign exchange earnings. Beyond the pandemic, there will be economic hardship and increasing poverty as the Nigerian economy is projected to shrink by not less than 3%. Therefore, there is a continuing state obligation to mainstream gender and vulnerability in the allocation and management of public resources to ensure freedom from violence and attainment of basic livelihood rights. The President and the National Assembly should ensure that gender and vulnerability are mainstreamed into the amendment of the 2020 Federal Budget and the Stimulus Package on COVID-19.

²⁴ Article 11 (e) of CEDAW.

²⁵ Article 11 (e) of CEDAW.