Examination of the worrisome issue of gender based violence (GBV), Spousal abuse, rape and why affirmative action doesn't seem to work.

**What is GBV?** GBV includes physical and emotional harm, deprivation, torments, harassments, threats, intimidation, financial deprivation, neglect and abuse. It involves the use and abuse of power and control over another person, and is perpetrated against someone based on their gender identity, gender expression or perceived gender. It includes any act of violence or abuse that can result in physical, sexual or psychological harm or suffering. Young girls and women ages 5yrs -35 are at greater risk of gender-based violence in the form of spousal abuse, rape, financial deprivation, obnoxious customary practices such as widowhood practices, female gender exclusion from inheritance etc. Girls ages 3-13 are at great danger of child molestation and child defilement and neglect, child marriage, female Genital Mutilation, Child trafficking, child labor/ exploitation.

**SHORT STORY ON GBV**

Ada (not real name), was just a thirteen years old skinny girl living with her parents in a lowly suburb in Lagos. She came back home from school one Friday afternoon with her nine years old sister. Mom and dad had gone to work. There was this heavily built man with a pot belly who was a co-tenant in the face-to-face apartment where they lived. He asked Ada to get him a loaf of bread somewhere down the street. Ada complied. She had always run errands for him. He actually preferred to send Ada on errands than he would any other child in the neighbourhood. That day, the little, skinny and cheerful Ada was defiled by this man who was even older than her dad and threatened to kill her if she told anybody what he did. Ada was too afraid to tell what happened, but the mother found out just the next day. The story went viral in the street. The stench from the man, the pain and the fright remained with Ada for almost two decades. One thing Ada could not forget were the words of her mother: **“It was your fault. I told you to always stay indoors after school hours.”** Those words were strong enough to bring down the walls of comfort, confidence and esteem little Ada had built with her parents. It was like a pandora box was opened in her life. Ada battled poor self esteem, lesbianism, and then bi-sexualism, confusion and drug addiction for almost twelve years. She is an example of double victimisation. She was raped, violated and blamed for it even by the very person who should most certainly have stood up for her. To make matters worse, there was no justice for Ada.

**GBV, A HATE CRIME**

Gender-based violence (GBV) is a hate crime or violation committed against women or girls just for the mere fact of their gender. It is founded on the socio-cultural belief that the female gender is weaker and suitable only as sex toys to satisfy the sexual pleasure of the male gender with or without their consent.

**THE MENACE OF GBV**

We are living in extraordinary times and fighting the worst terror ever unleashed on mankind. We are confronted with a monster that has laid siege on the female gender as they are ambushed on all sides with little or no room for escape. This monster defies race, status, religion, class, ethnicity, power, politics and authority. **It’s destructive and scary**. We must fight it with everything humanly possible to prevent and eliminate it before it consumes.

**DECADES OF ADVOCACY RESULTS**

Over the years there has been series of advocacy, sensitization and awareness campaigns to eliminate GBV, which to a large extent has yielded great results in terms of legal structure with several Conventions, Treaties and Protocols to which Nigeria is a signatory, coupled with the Affirmative Action in 2006

Despite the domestication of these Conventions, it took decades as women did not relent in this fight against gender discrimination.

We had the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979, The United Nations Convention on the Rights of the Child (UNCRC) 1989 a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.

**The MAPUTO PROTOCOL** ( PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA)

The Protocol guarantees extensive rights to African women and girls and includes progressive provisions on: Harmful traditional practices, eg child marriage and female genital mutilation (FGM), Reproductive health rights, human dignity of the Woman and Roles in political processes.

The African Charter on the Rights and Welfare of the Child (also called the ACRWC or Children's Charter) 1990 (in 2001, the AU legally became the African Union) and came into force in 1999.

These were also buttressed with policies in recognition of the Rights of Women towards achieving equality by the the Affirmative Action (AA) with National Gender Policy (NGP) which formulated a 35% Affirmative Action in Nigeria since 2006 which demands that 35% of women be involved in all governance processes. The NGP is recognized but not practised as the structures and processes to use are not in place nor are the leaders responsible enough to implement policies made by them in giving women 35% Inclusion in appointments and Political participation. The 1999 Constitution of the Federal Republic Of Nigeria, the Violence Against Persons (Prohibition) Act 2015 and Laws, the Child's Right Act 2003, the Child's Right Law of Lagos State 2007 and other States Child's Right Law and VAPP Laws etc

**LIGHT AT THE END OF THE TUNNEL**

In examining this worrisome trend, It will be interesting to note that in April 2022, a landmark judgement by the Federal High Court reignited the hopes of Nigerian women on the victory affirming 35 percent affirmative action by the Federal High court on the application of the Nigerian Women Trust Fund and eight co-plaintiffs.

The judgement upheld and mandated the implementation of the provisions of the National Gender Policy (2006) on 35 percent affirmative action in appointive positions.

**OPTIMISM**

I am optimistic that this new dispensation will be wise enough to implement the 35% Affirmative Action in obedience to this court judgement.

However we must not gloss over the Appeal by the Federal Ministry of Justice in contradiction to President Buhari acceptance of the judgement as it's likely to be an excuse by an unwilling state actors. To my mind, buttressed with the various pronouncements of the Supreme Court on gender equality, I see this appeal as an exercise in futility.

The trial Court also upheld the equality of the sexes and the constitutional mandate to recognize gender in all appointive positions, thus effectively according Nigerian women 35 percent affirmative action as a matter of right in line with democratic principles.

In AINA V. AINA in 2023, the High Court in Lagos State declared the right of a spouse to equal share of the proceeds of sale of the family property

The inability of the respective Nigerian governments to domesticate the affirmative action for women representation in the 1999 constitution of the Federal Republic of Nigeria, among other things, has been responsible for low women representation in the decision making processes till date. The 10th Assembly with just 17 women, puts women's representation at 3.62% the lowest so far as the 9th Assembly had 19 women, at 11.2 percent women's representation. This is not good at all. It's time for women to be more intentional and deliberate in getting political offices. The time to start planning is now not one year to the next election. If there are no females rooted in political parties, there will be no magic wand to get to power. I urge women to take up the task and give all it takes - my slogan #NoExcusesForFailure.

Does the words of Ada's mum resonate with you?

words of Ada's mother: “It was your fault. I told you to always stay indoors after school".

Political careers are built from childhood. Allow our girls to be street smart, don't cage them and expect magic political muscle. Mothers, the time to act is now. You'll agree with me that a greater percentage of child defilement survivors were defiled by a family member, so caging the girl child actually makes them timid and vulnerable.

I therefore suggest that the National Assembly ensure domestication of the Affirmative Action by amending the Constitution to include the same and make it binding on all authorities and persons. This way, women will begin to take their rightful place in the scheme of things and their marginalization shall become history.

**PERTINENT PROVISIONS ON GENDER EQUALITY**

In view of the aim to sensitize women on their rights to non discrimination and equality I shall seize this opportunity by reproducing some of the mother provisions on elimination of discrimination against women to sensitize women on their rights and why they should not wait forever to be served this power *a la carte, but to attack it from all angles.*

**MAPUTO PROTOCOL**

**Article 2:**

**Elimination of Discrimination Against Women**

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

**a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;**

b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination

harmful practices which endanger the health and general well-being of women;

c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;

d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;

e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

NON IMPLEMENTATION OF THE LAWS

**Sadly,**  despite these beautiful and all encompassing gender Laws, implementation of these laws and policies has been a mirage. It shows little or no sincerity leaving women even more relegated and disillusioned. We have had several political dispensations with high hopes due to the political actors' campaign promises but the minute they're sworn in, it's a different story. The best so far was the Jonathan administration with near 20% affirmative Action, thereafter the percentage has reduced to 11% and now nose dived to less than 5%

**Hopelessly**, the failure of the 8th and 9th Assemblies to pass the 5 Gender Bills proposed for the Constitution amendment has drained women of hope:

Provision of 111 special seats for women at the N A to address the low representation of women

Ensure affirmative action for women in political party administration to enable participation and voice

To grant citizenship to foreign-born husbands of Nigerian women

To allocate at least 10% affirmative action to ministerial appointment positions and ensure indigeneship rights to women to avoid the discrimination and violence women suffer in order to effectively participate

Despite the promises from both Chambers, to pass these laudable bills, they failed and left Women even more disillusioned and in a state of distrust. The chauvinism, the arrogance and the Utter disrespect, insincerity and continued violation of the right to human dignity of women by some of the Law Makers were most humiliating and degrading. The show of shame during the debates in the Chambers was the height of it. The reason for rejecting the bills on the basis of religion and culture in the 21st century is most unfortunate forgetting that any custom and or religion that is repugnant to natural justice, equity and good conscience shall be condemned and abolished

Mr. Yusuf Yusuf and Aliyu Wamakko opposed the Bills thus:

"From an Islamic perspective which is a socio-cultural practice of Muslims…this aspect of it…..by equating opportunities for women and men actually infringes with the provisions of the Quran and also the Bible … I will not support the passage of this unless the word "equal" is removed".

"... if you have it as "Gender Opportunities Bill ", fine. But when you bring equality into it, it infringes into the practice of the Islamic religion.

Some other Lawmakers in rejecting the Bill argued that the Nigerian Constitution was clear on the rights of citizens, including women.

To a large extent, they were correct on this view as the 1999 Constitution in section 42 spelt out the right of non discrimination on the basis of gender, however, the stateactors have over the years failed to implement the provisions of the Constitution they swore to uphold.

**Consequently**, Biodun Olujimi ( PDP Ekiti South) the sponsor of the bill changed the title of the bill to " Gender Opportunities Bill " to accommodate the concerns raised by the duo. This is most unfortunate.

FORTUNATELY, in recent times, the Supreme Court had made powerful pronouncements condemning the act of violating the rights of women to non discrimination. See the case of Ukeje V Ukeje ( 2014) 11 NWLR ( Pt. 1418) 384 a celebrated case where the Supreme Court pronounced the right of females to partake in the sharing of their deceased Father's estate. In Mojekwu. V Mojekwu ( 1997) 7 NWLR 283 1, where Caroline Mojekwu in claiming that she was entitled to partake of her deceased father's property applied for the enforcement of her right to non discrimination and equality. The Supreme Court in Mojekwu V. Iwuchukwu (2004)11 NWLR pt. 883 was an appeal against the judgement of the Court of Appeal in the former case of Mojekwu V Mojekwu The SC upon being called upon to review the judgment of the Court of Appeal and the High Court which gave judgement for the defendant/Respondent on whether the "Oli - ekpe" custom of the Nnewi people is repugnant to natural justice,equity and good conscience as pronounced by the court of appeal. The Court affirmed the CA decision affirming the Applicant's right to non discrimination and equality.

The court in MOJEKWU & OTHERS V. EJIKEME & OTHERS (2000) 5 NWLR 402, pronounced that;

"All men are created equal and should be given equal rights in the society ".

JOINT OWNERSHIP OF PROPERTY

On Joint ownership of property, It is trite that that the presumption of ownership of property exists between husband and wife, while the marriage subsists, and that the party that survives the other, inherits such property, and has power to administer it, the way he or she wants, this principle applies especially in statutory law marriages (or monogamous marriage). See Okete V. Akaluka( 2014) LPELR - 24287 (CA), where Agube JCA quipped:

"However, as far as joint ownership of matrimonial property is concerned, there is a fifth unity which does not share the same characteristics with the other four unities. This is the "Unity of Marriage " which perceives the indestructibility or non-severability of the rights of survivorship.

As said earlier, the unity of marriage particularly in extant case, where the parties were legally and sacramentally married embodies the legal fiction that husband and wife are one and therefore neither the husband nor wife can by his or her sole act defeat the survivorship interest of the other spouse ". Seethe American cases of Jones V. Conwell (1984) , Sitomery V. Orlan (1993) and the English cases of Robert V. Wilson ( 1962)L.L.R. 3,, Petit V. Petit (1970) A.C 777, Gissing V . Gissing (1971) A. C. 886

THE PRINCIPLE OF UBI JUS IBI REMEDIUM

The law came to protect the defenceless and to give voice to the voiceless. The courts are quick to call out Injustice and unfair treatment when ever it is brought before them for adjudication on the principle of ubi jus ibi remedium ( where there is a wrong there is a remedy).

However, how many women suffering injustice have access to justice? Thus the need for the government to be intentional about creating structures to help the vulnerable access justice.

I propose a one stop shop for women to access all the support needed as obtains in civilised climes

**ATTAINING GENDER PARITY IN 2030**

**SDGs GOAL 5**

The debates on the floor of the Chambers revealed the fact that expecting parity in 2030 is a mirage and or a miracle if women expect the men to give them power without going the extra mile through active citizens engagement and action that will lead to garnering support for the passage of the Gender Bill in the 10th Assembly

**STRATEGIC APPROACHES**

A key strategic approach for engagement is **public awareness** via media, followed by **judicial Activism** in testing the laws. More and more advocacy on access to justice, **implementation and enforcement within a reasonable time (12 - 18 months)**

It also revealed that women need to look elsewhere also to achieve parity. Power is not given on a platter of gold, since it is not served a la carte (without struggle), **it requires focus,** **serious hard work, total commitment and dedication**  to get**.**

**ADOPTION OF THE MONIST APPROACH**

HOPEFULLY, adoption of the ***monist approach*** in international law gives much hope, where the international Conventions, Protocols and treaties Nigeria is signatory to can apply automatically into our ***corpus juris***without waiting for donkey years - snail speed domestication *with provision of special courts as was done with labour matters and the creation of the National Industrial Court under the exception to Section 12 (2) of the 1999 Constitution (3rd* ***Alteration) 2010 as amended in section 254 (C ) (2) :***

*Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international Convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.*

*This provision is an adoption of the monist approach on labour and industrial related Conventions ratified by Nigeria. Since this adoption there has been sanity in the justice system for labour and industrial related matters, which are treated with utmost dispatch.*

*There is also a need to* ***review subsection (3) of section 12 to give a time limit from when the Federal Government enacts the same for the States to domesticate within 6- 18 months to guard against the 10 - over 20 years of domestication*** *we are experiencing.*

*There is also* ***need to amend Section 6 (6) ( C) which renders Chapter II of the 1999 Constitution non justiciable. That section contradicts the finest provisions of the 1999 Constitution****, particularly section 13, 14 (2) (a) (b) ( C), (3), particularly section 15 (2)*

*… National integration shall be actively encouraged, whilst discrimination on the grounds of place of origin,* ***sex****, religion, status, ethnic or linguistic association or ties shall be prohibited.*

*How do you prohibit something and it's violation is not justiciable nor sanctionable?*

*(b) secure full residence rights for every citizen in all parts of the federation;*

*How do you secure residence rights in the face of discrimination against non natives who can not be given appointment in their place of residence?*

*Section 16 (1) (a) and (b)*

*both harping on harnessing the resources of the Nation and promote national prosperity and an efficient, dynamic and self reliant economy on every citizen on the basis of social justice and equality of status and opportunity And Control of the National economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity*

*Section 17 (1) (b) ( c ), particularly (3) (a) which provides :*

***The state shall direct its policy towards ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment***

*See also subsections ( b) ( c) (d) (e) ( f) (g) and (h)* ***(e) there is equal pay for equal work without discrimination on account of sex or any other ground whatsoever Section 18 (1) dealing with Education for all with equal and adequate educational opportunities at all levels***

*Section 19 (a) - (e)* **dealing with foreign policy objectives also stressing on the elimination of discrimination in all its manifestations.**

***SMUGGLED GENDER DISCRIMINATION PROVISIONS AND PROPOSED AMENDMENTS***

*See section 26 (2) (a) on automatic spousal citizenship of a woman married to a Nigerian man but not for a man married to a Nigerian Woman. This is one of the smuggled gender discrimination provisions into the Constitution.*

*This is the height of discrimination against women and must be amended to include any woman or man who has been married to a citizen of Nigeria*

*See Section 29 (4) (b)*

*Any woman who is married shall be deemed to be of full age*

***This was surely smuggled in to ratify child marriage. So a 13 years old married girl can be deemed to be of full age to satisfy the paedophiles***

*The above provisions need urgent amendment as* ***a child remain a child and should not be deprived of her childhood. This provision is a slave provision and must be expunged from* the Constitution.**

Above all is the Provision of Section 42 of the 1999 Constitution the grund norm of our Laws in Nigeria on the Fundamental human Rights of Freedom from all forms of discrimination on the basis of gender. Which under section 1 (1) states that: This Constitution is supreme and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria and went further to state the effect of any inconsistency in (3) as null and void

**(3) states that if any Law is inconsistent with the provision of this Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.**

I have told fellow women at different fora that this is a battle that must be fought and given all it takes to win. Unfortunately some of our women are also cut up in the stereotype- "we are not struggling for equality, just be fair a little to women" for this a little drop of water on their tongue is just enough, after all it's a man's world. Hell NO! Equality first then equity for balancing.

**EQUALITY/EQYITY**

Equality means each individual or group of people is given the same resources or opportunities. Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome.

I remember vividly while contesting for Chairmanship of NBA Ikeja, some women asked me if I was a man why I was contesting for the position of a Chairman? "Have you finished taking care of your husband and children?"

It is indeed worrisome to imagine the typical Nigerian man and even woman, would honour even a boy more than a woman and extremely worrisome is the fact that education has not helped most men in this regard. At the Bar, you'll be surprised to know that women are still relegated. It's quite unfortunate when those that should champion parity are violators.

The drafters of the Constitution, the supreme law of the Land could not have envisaged equity to replace equality that is fully enshrined. Even though some contrary provisions to equality were smuggled in by the chauvinist.

**SENSITIZATION**

**I** make bold to say the Lord who created all men equal has intervened, giving women a larger population thus the strength of number to fight in a democracy. Recent statistics reveal a 49% women population. Realising this, the men are quick to use divide and rule to keep women away from using this power. It is my considered view that rather than wait for the men to give us parity, we should take our destinies in our own hands and sensitize our women to the realisation of this fact, once this is achieved, parity will be a done deal. Women have done this in Liberia, in Rwanda and the result is crystal clear.

**PULLING RESOURCES TOGETHER**

The Aso Ebi and gold Expenses, put together can help fund women for political offices. WOMAN, It's time to pull resources together - Fund your Associations, fund your women participants and you'll be amazed at the results. If we do not have at least 35% women representation in both Chambers, who then do we expect to vote in favour of the gender bills?

Wake up woman! Join me to pledge to ensure a minimum of 35 % gender in the 11th Assembly and 50% gender Representation in the 12th Assembly.

#35%Gender Representation

At the last NBA national elections 2022, the women realised this and in every position women vied for, they had a clear win. However it is worrisome to note that the Nigerian Bar Association is yet to produce a Female President since 1992 when a female Dame Priscilla Olabori Kuye emerged through some political reshuffling for a One year tenure from 1st Vice President to President. The game of divide and rule is on again, but our women are wiser and would not fall victims.

**THE BATTLE CONTINUES, NO RETREAT NO SURRENDER**! ***ALUTA CONTINUA***

I reiterate that this is a battle that must be fought and won, the good news is that there are structures to assist the vulnerable and marginalised namely:

1.The NBA Public Interest Litigation Committee 2.The NBA Rule of Law and Human Rights Committee 3.The NBA Human Rights Institute

Other NGOs rendering free legal services are the;

**African Women Lawyers Association (AWLA),** International Federation of Women Lawyers (FIDA), Women Advocate, Research and Documentation Centre ( WARDC)

Women Empowerment and Legal Aid (WELA), WOMEN ARISE and other Civil Society Organisations.

Thank you

**Mandy Asagba Esq**

President, AWLA

and 3rd Vice President, NBA

16/6/2023