

# Women in Anti-corruption

## The Impact of Corruption in the Judiciary on Nigerian Women

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**CORRUPTION DEFINED:** For the purposes of this paper, I will expand the definition of corruption to read thus **“Exercising the powers of public office in a self indulgent manner occasioned by either a desire for private material gain or the expression of or fostering of bias or opinions influenced or distorted by sectional, sexist, religious or cultural considerations the output of which oppresses, intimidates or harasses individuals or a section of the society.”** The decisive question here is **‘has unfairness or injustice resulted as a result of this faulty use of public office?’**

My legal practice and my activity as the co-ordinator of the Volunteer Advocacy Group of the International Federation of Women Lawyers FIDA VAG is based in Lagos, the largest commercial city in Nigeria and West Africa. It has a population of about 12,000,000 [twelve million]. It is cosmopolitan in nature with adequate representation of all the tribes, social and religious groups in Nigeria. There is also a representation of people from other African countries who have settled in Nigeria. Our clientele at FIDA VAG consist of mostly under privileged women and occasionally middle class women from a mixture of these tribal and religious groups. The International federation of women lawyers –FIDA-NIGERIA has branches in the twenty states of the federation indicated on the map.

The lowest Court in the hierarchy – The customary court- has unlimited Original Jurisdiction for issues like matrimonial causes, child custody, maintenance and inheritance Rights for the following class of people.

1. Those whose marriages are celebrated under customary/Islamic Law and have by implication elected to have their Rights in relation to these issues governed by Customary Law/Islamic Law.

The customary courts also have jurisdiction in respect of contraventions and petty crimes for which they can impose fines or sometimes jail sentences.

The majority of our clients at FIDA VAG come with issues that fall within the jurisdiction of customary courts e.g.

- i. Family related issues like divorce, child maintenance and custody, domestic violence, inheritance issues.
- ii. Contraventions like infringement of Local Government Edicts like advertising regulations, licensing fees, payment for stalls etc.

Due to poverty and illiteracy lots of women fall prey to non-observance of these regulations either because they cannot afford to pay the prescribed fees or they are not aware of such charges in the first instance.

It has been observed that in any situation where there is institutional negligence or failure of any sort, women are the main victims because of their location at the lowest rung of the social and political ladder.

In the area of family related issues like Divorce and custody of children; about 90% of Nigerian women fall under the jurisdiction of the customary/Religious courts for the following reasons;

1. Deliberately contracting their marriages under customary/Islamic Law due to socialization or pressure.
2. Inadvertently falling into this category by not complying with statutory requirements in an attempt to celebrate marriages under The Marriage Act.

## **TYPES OF CORRUPTION**

### **1. Corruption for Reasons of Private Material Gain**

In our experience, this type of corruption is endemic especially at the lower courts. In the cases discussed below elements of these are clearly identified. This is compounded by the fact that Lawyers shy away from these lower courts because proceedings there are not intellectually challenging as the presiding officers are not Lawyers.

While there are Legislations geared at prosecuting offenders, such prosecution is rare in practice. The attitude of the Monitoring Governmental agencies are also not encouraging as Reports of Panels of enquiry which indict judicial officers are seldom released or acted upon.

## **2. Corruption for Reasons of Ignorance**

It is our view that any distortion which effaces the natural and just order and at the same time occasions injustice is corruption. In a situation where policy makers or implementers foster situations which distort this natural order, the corruption becomes institutionalized. For orderliness and good governance to prevail, people appointed to public offices should be qualified for the responsibilities entailed by the office. In an office that involves the interpretation and adjudication of Individual or Group Rights, the duty of care becomes even more imperative.

The Entity called Nigeria is a heterogeneous collection of about 317 tribal groups speaking different ethnic languages with distinct ethnic customs and practices. It is an onerous task identifying collating and codifying these customs and practices and determining their relevance in modern statehood. The Islamic Laws and codes are no less problematic as there are several Religious schools of thought with divergent views on the interpretation and application of the Sharia doctrines. There is also the task of marrying these cultural and religious tenets with the basic rules of natural justice.

It is submitted that for a judge to be qualified to adjudicate on Customary / Religious dictates and Laws he not only needs to be a Lawyer but a Lawyer with specialization in Customary / Religious Laws, to come even close to maintain the delicate balance of observing the tenet of civilized justice and preserving the culture. The question that needs to be addressed is “Does the need to preserve the culture outweigh the need to protect Individual Rights?”. “It will be seen from the cases analyzed that the attempt to preserve the culture, whether customary or religious is always biased against women.

## **CORRUPTION BY REASONS OF DISTORTION INFLUENCED BY SECTIONAL, SEXIST RELIGIOUS & CULTURAL CONSIDERATIONS**

The normal petition for divorce in a customary court usually has one or more of the following grounds where the petitioner is a man – Disobedience, Disrespect for husbands family, Neglect of the children and the home etc. The particulars of disobedience may range from attending a different church from the husband's to insisting on taking up formal employment or engaging in trade without the consent of the man. All the petitioner needs to prove are the following:-

- 1) The respondent has done or is doing the act.
- 2) The Petitioner does not approve. Issues of the rights of the women to Religious Association which is enshrined in the constitution is never addressed.

Our experience has also shown that the alleged disobedience may include resistance to inhuman and degrading treatment like **Fidelity rituals** and **Wife Hospitality**. Where counsel does not represent the woman, enquiries are seldom made into the details of this “disobedience” as the custom clearly dictates “Obey your husband”. Of course this requirement of absolute obedience is even more emphasized in the Islamic courts with the tacit permission to physically chastise the woman in cases of disobedience.

Another area where this case of cultural and religious determinism is prevalent is on the issue of custody of children.

In most cultures in Nigeria, the child belongs to the father, ab-initio. Custody is only awarded temporarily to the mother in cases of very young children. These cultural dictates are regularly enforced by customary courts without due regard to the best interest of the child. The justification is “The child belongs to the Father”. Analysis of the cases presented reveal these elements of bias clearly.

## **INSTITUTIONAL COMPLICITY**

- 1) Decreasing Relevance of Customary/Islamic Courts
- 2) Qualification of Appointees
- 3) Absence of Gender Equity

e.g **LAGOS STATE**

NO OF CUSTOMARY COURTS	46
NO OF JUDGES	147
NO OF FEMALE JUDGES	43
NO OF FEMALE PRESIDENTS	6

4. Lack of publicity in regulations and edicts which attract fines and other sanctions.

Due to the location of women at the lowest level in the areas of illiteracy and access to public information they usually run foul of governmental regulations in their activities like petty trading etc. Not much effort is made to disseminate information to the level where these women can access them.

1. Absence of separation of powers is most glaring in the customary courts. They are appointed on the advice of The Judicial Service Committee but are maintained by the Local Governments. The Local Governments accommodate the courts in their premises and permit them use of their facilities. The same Local Government promulgates regulations and impose fines and levies and use these courts for debt collection. Most times they are seen just as an extension of the Local Governments.

## **IMPACT ON NIGERIAN WOMEN**

1. Timidity – Reluctance to come forward to actualize their Rights.

FIDA maintains walk-in Legal clinics in all the branches offering counseling services and free representation in court. Despite all these encouragement, not enough women come forward and when they do, they abandon cases midway.

This constitutes a set back in our activities. The Nigerian Legal system applies the doctrine of **Locus standi** i.e you must show that you have a special and direct interest in order to institute an action. Where the client withdraws, the case can no longer be sustained. This leads to the vicious cycle of

- Uncertainty because there is no precedent to stand on

- Lack of precedent because there are no clients to challenge situations.

Human Right groups have speculated that perhaps Bariya might have fared better if she had initially accused the four men of rape. One wonders now with her experiences when she only used her defilement as a defense, will other Bariya's have the courage to come forward.

## **2. Resignation and Fatalism**

Nigerian Women are resigned to their fate and believe that nothing good can come out of challenging the system. They give up without a fight. This promotes the feeling of psychic inferiority.

## **3. Unfavorable Choices & Compromises**

Because of this inability to actualize rights, women negotiate away their Rights and succumb to unfavorable compromises even in cases where the Legal situation is clear and unambiguous. In other cases, because of their inability to access maintenance and custody of their children, they stay in unhealthy relationships and have sometimes suffered grievous bodily harm or even death in such relationships.

## **FIDA VAG STRATEGIES**

1. Be more pro-active-challenge every suspicion by petitioning relevant authorities.
2. Be thorough in presenting cases and harness all the aids available.
3. Networking/co-operation among women groups and be alert to male conspiracy.
4. Advocacy/Campaign to highlight women's rights, Education and Sensitise Women and Advocate for Gender equity.