



LAWYERS ALERT



ADVOCACY FOR JUSTICE AND  
EQUALITY NIGERIA

**LEGAL LITERACY TRAINING MANUAL  
FOR  
KEY POPULATIONS IN NIGERIA (2017)**

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## **PREFACE**

“Ignorance”, they say, “is the greatest weapon of tyranny”. This saying underscores the importance of knowledge in any society. Particularly in a democracy, every citizen needs to understand basic legal issues to help him/her participate meaningfully in the affairs of the state. Thus, the need for legal literacy cannot in any way be over emphasized.

In view of the near neglect of special and vulnerable groups by societies, the rights and privileges of members of these Key Populations are oftentimes trampled upon by the elite and even the government. The situation is made worse in poor societies where middle and lower classes can barely afford the services of lawyers.

It is for the reasons outlined above that having material of this kind published for the benefit of Key Populations becomes a huge contribution towards educating people generally about the law and related instruments of the Justice System.

Even though the work is not meant to make lawyers or professional activists of Key Populations, it is expected that it will go a long way to sensitizing the people on their basic rights and duties toward others.

Though the publication is not exhaustive, it provides everything that one needs to know to guarantee his/her freedom in any society. Our efforts at contributing to public enlightenment for the justice system gladdens our hearts especially at this time in our political history. We hope the manual will not end up just on the bookshelves but will actually be read and put to good use.

Lawyers Alert/AJEN are particularly grateful to everyone that has in one way or the other contributed to the success of the project.

## ACRONYMS

### A

*AIDS* – Acquired Immune Deficiency Syndrome

*AJEN* – Advocacy for Justice & Equality Nigeria

### C

*CEDAW* – Convention on the Elimination of all forms of Discrimination Against Women

*CFRN* – Constitution of the Federal Republic of Nigeria

*COLaHR* – Coalition of Lawyers for Human Rights

*CPC* – Consumer Protection Council

*CSO* – Civil Society Organization

### G

*GBV* – Gender Based Violence

### H

*HIV* – Human Immuno-deficiency Virus

### I

*ICCPR* – International Covenant on Civil and Political Rights

*ICESR* – International Covenant on Economic and Social Rights

### L

*LA* - Lawyers Alert

*LAC* – Legal Aid Council

### N

*NACA* – National Agency for the Control of AIDS

*NGO* – Non-Governmental Organization

*NHRC* – National Human Rights Commission

### P

***PABA***- People Affected By AIDS  
***PCC*** - Public Complaints Commission  
***PLWHA*** – People Living with HIV and AIDS  
***PWD*** – People with Disabilities  
***PLWH*** – People Living with HIV

## **S**

***STD*** – Sexually Transmitted Diseases

## **U**

***UDHR*** – Universal Declaration of Human Rights  
***UN*** – United Nations

## **V**

***VAPP*** – Violence Against Persons Prohibition (Act)  
***VAW*** – Violence Against Women

## INTRODUCTION

The *Legal Literacy Training Manual for Key Population in Nigeria* is written to fill the gap created by the serious dearth of materials that should ordinarily be available for the not-so learned on the subject of law and basic rights. The manual approaches the topics treated with a simplicity aimed at ensuring that anyone who can read and write should understand it.

While Module 1 of the Manual deals with the meaning of legal literacy, the same chapter also attempts to educate the public on the value of having such education, especially Key Populations. The module closes with an appraisal of the level of legal literacy among Nigerians and the key populations.

Module 2 of the training manual would definitely be of special interest to readers. It takes a panoramic view of the Nigerian Legal System by looking at the different features of the system with respect to an outline of the system; types, forms and branches of the law; types of Nigerian courts and the personnel of such courts; the structure of the Nigerian Constitution; and the various tiers of the government. The module also contains topics of particular interest, all treated under the heading, "Administration of Justice." Here, the reader is exposed to the basics of arrest, detention, search and seizure and the vexatious issue of bail. Surely, a lot of readers will consider any amount of space and energy devoted to these topics well-spent considering the volume of debate that has gone into them in recent times.

The Nigerian Police and the Judiciary are discussed in module 3. Even though the discussion on them has been rather brief and short, a project of this nature would not be expected to do more than that. Fundamental Human rights issues occupy Module 4. A relatively extensive treatment of the subject is taken of the other components such as the Characteristics and the Legal Framework of Human Rights, Categories of and Instruments on Human Rights and the different constitutional rights available to people. To cap it all, the manual educates readers on steps to take when their rights have or are being violated. Indeed, the manual cannot be said to offer any round knowledge without this part of module 4. Those whose rights have been or who face the possibility of such, should know what to do and where to go to have such violations redressed.

*Legal Literacy Training Manual for Key Populations in Nigeria* also ventured into the rights of special groups in the society. Women and children in particular receive special attention. A searchlight has been beamed on these rights with a view to get members of the public and Key Populations particularly, to appreciate the peculiarities of these groups and why they are accorded special attention.

Modules 5 and 6 attempt a discussion of HIV and AIDS in addition to Sex and Gender issues. This approach is important because there are still a lot of misconceptions and high levels of ignorance about the psycho-social perception of the HIV and AIDS pandemic. Besides, most of the people living with the disease are themselves not aware of the rights they have under the law. If this situation is allowed to continue then the future of PLWH will be insecure. This manual therefore, goes the extra mile to offer some education on claims that such special groups can make against individuals, authorities and even government.

The manual ends with gender and sexual based violence with the Violence Against Persons Act and other national and international instruments forming its fulcrum. This topic completes what one should expect in a training manual of this nature.

## **TRAINING OUTLINE**

### **Goal**

- Improving knowledge of Human Rights in Key Populations with a view to promoting activism

### **Objective**

- To provide key populations with basic legal literacy to enable them know their rights.
- To empower key populations with sufficient legal literacy to pass on to others.
- To enhance the confidence of key populations in Nigeria's criminal justice system.

### **Trainees**

- Key Populations

### **Methodology**

Facilitators will employ:

- Face-to-face method.
- Interactive discussions.
- Power-point presentations.
- Practical exercises to assess knowledge gained
- Question and Answer Session.

### **Duration**

- Four (4) Days

## **MODULE 1 – LEGAL LITERACY**

**1.0** This is the introductory module and explains the basic terms and the value of Legal Literacy, particularly for Key Populations.

### **1.1 What is Legal Literacy?**

The word “literacy” can be defined as the ability to read and write. The word “legal,” on the other hand, is defined as by Merriam Webster as that which derives authority from or is founded on law. Taken together, therefore, the term “Legal Literacy” can be considered to mean having a basic understanding of the primary level of the Law. The main aim of providing legal literacy, particularly to Key Populations, is to educate them and build their capacity so that they are equipped to educate others and more significantly, challenge violations to their rights and those of others as they occur and from a standpoint of knowledge and power.

The term “Key Populations” is defined by the United Nations Development Program, UNDP, as groups or communities of people most susceptible to HIV infection. They are said to include sex workers, men who have sex with men, drug users and transgender people. Key Populations are the marginalized and stigmatized of society and in some instances, the justice system of the environment within which they live might actually promote these ills, further subjecting them to degrading and inhumane treatment.

### **1.2 Why provide Legal Literacy Training to Key Populations?**

As mentioned earlier, the value of legal training particularly for Key Populations in Nigeria cannot be overemphasized. When citizens grasp what the law has to offer them, they can recognise and challenge injustices with more confidence. This knowledge is valuable to them and others for the reasons adduced below:

- a. Legal Literacy equips them to recognise when they or others have a legal right or responsibility
- b. They are able to recognise when a situation requires seeking a legal solution
- c. They know what steps to take to avoid challenges and where this is not possible, how to help themselves within the confines of the provisions of the law
- d. They know how and where to access relevant information on the law as applicable to the situation at hand
- e. They develop confidence in the legal system and are convinced of the need to take recourse to it where necessary
- f. They comprehend the legal process well enough to know whether justice has been served or not

### **1.3 Legal Literacy Training in Nigeria**

A good number of Nigerians take refuge in the legal system only when already troubled by dire circumstances. Perhaps a loved one has fallen afoul of the law, is being sued for a breach of contract or is considering the dissolution of a marriage leading to property sharing and child custody challenges. Perhaps they have been duped of large sums of money or have lost their means of livelihood owing to the whims and caprices of their employer. These are just some of the instances that lead to people requiring the services of a lawyer and are not peculiar to Nigerians but can be described as a global phenomenon. People will frequently wait until they are under great stress

and without any other options for relief before turning to the law. This places them at a disadvantage of having to encounter, for the first time, the rudiments of the professional terms of an already complex field further compounding the problem and causing them confusion.

Key Populations are equally guilty of this attitude and with the hostile environment within which they frequently find themselves, there is every need to bridge the gap and empower them to stand up for themselves within the provisions of the law. In Nigeria for instance, the law prohibiting homosexual relationships and marriage known as The Same Sex Marriage Prohibition Act was passed in 2014 and outlaws even meetings by groups of gay people. While the spirit of the bill conforms largely to most Nigerian cultural practices which promote and encourage heterosexuality, its enforcement has left much to be desired especially with regard to the health and general welfare of some members of the Key Populations who have been forced underground and might now experience difficulty accessing valuable interventions.

In Nigeria, legal literacy services are not readily available and though such material and knowledge could easily be garnered online, there is still a large number of Nigerians who do not yet understand how best to maximize the use of the internet even when they have access to it hence the need for organizations such as Lawyers Alert to fill the gap.

#### **EXERCISE**

- 1) In your own words, define Legal Literacy.
- 2) Explain the value of Legal Literacy to Key Populations

## MODULE 2 - THE NIGERIAN LEGAL SYSTEM

**2.0** In this module, participants are expected to learn about Nigeria's Legal System. An overview is given which comprises, the background of Nigeria's Legal System, the courts, the constitution, the law and the bail process amongst others.

### **2.1 Background and Features of the Nigerian Legal System**

Nigeria as a political entity was a British colony until October 1, 1960. The British colonialists, who ruled the country for almost a century, brought with them the laws of England. Thus, both the Nigerian Criminal Code and the Penal Code are essentially adaptations of the criminal laws of England, though some of the offences created in these codes are totally inconsistent with the customs of the people of Nigeria.

The Nigerian legal system has the following characteristics:

**Multiplicity of law regimes** - Nigeria is a federation of 36 states including the Federal Capital Territory. Each State has its own legal system reflecting the peculiarities of its people. In many states they are customary courts, particularly in southern Nigeria, established to sort disputes in accordance with the local customs. In Northern Nigeria, Sharia courts, based on Islamic laws, are established.

**One Federal Constitution** – Despite the multiplicity of legal systems, Nigeria operates only one constitution, applicable across the Federation. Any other laws, including State laws, that are found to be inconsistent with the provisions of the 1999 Constitution, are null and void.

**Influence of International Conventions** - As a member of the international community, Nigeria has ratified some innovative international conventions. When the Federal Government of Nigeria ratifies an international convention, the National Assembly has to enact it for it to be applicable in Nigeria. However, even after this, the law cannot apply to States until it has been domesticated by each State House of Assembly. In other words, that law can't be applied in states where it is yet to be ratified. The Child Rights Act 2003, is a typical example. Despite being enacted by the National Assembly, a 2016 report indicates that only 26 of the nation's 36 states have ratified it so far.

**Judicial Precedence** - Judicial precedence or previous judicial pronouncements and judgments are another feature of the Nigerian legal system. Lawyers tend to cite judicial authorities or decided cases to buttress their arguments. Owing to court hierarchy, lower courts are expected to follow precedence as established by earlier decisions of higher courts. Thus, the Court of Appeal, for instance, is expected to abide by earlier decisions of the Supreme Court in deciding a case before it, just as a High Court is expected to do likewise with earlier decisions of the Court of Appeal. A lower court which decides to jettison earlier decisions of a higher court in deciding a case before it will have to give reasons for such a decision.

**Hierarchy** - The hierarchy of courts, in ascending order is:

- (a) Customary/Sharia courts
- (b) Juvenile court
- (c) Magistrate/Area courts
- (d) Customary/Sharia Court of Appeal (for each state and the Federal Capital Territory)
- (e) High Courts, (including Federal High Court, the High Court of the Federal Capital, Territory, Abuja, and High Court of each State)
- (f) The Court of Appeal
- (g) The Supreme Court of Nigeria

Specialized tribunals of equal rank as the High Courts can also be established as and when required because appeals against such decisions lie directly with the Court of Appeal just at the High Courts. Such tribunals include, but are not limited to, the National Industrial Court, the Securities and Exchange Tribunal, the Code of Conduct Tribunal, and Election Petitions Tribunals.

## 2.2 Outline of the Nigerian Legal System

**The Legal System** is a reference to the law, the courts, court personnel, and the administration of the justice system in a state or country. The law can generally be described as a set of rules aimed at regulating the conduct of people, with the purpose of creating an orderly society.

It is considered as important for the following reasons:

- (a) It ensures that neither offenders nor violators go unpunished
- (b) It ensures peace and order
- (c) It ensures equality and freedom of citizens
- (d) It aids societal development
- (e) It supports the preservation of lives and properties
- (f) It is the basis for good governance

## 2.3 Types of Law

Law can basically be divided into two types: Man-made Law and Divine or Natural Law. Divine laws are sometimes referred to as the laws of nature e.g. it is a common law of nature that what goes up must come down, this is also referred to as the law of gravity.

The term Man-made law is self-explanatory and can be classified into the following groups:

- (a) **Criminal Law** – This deals with rules regulating the omission or commission of crime and attracts punishment from the state.
- (b) **Civil Law** - This is the law governing conduct which is ordinarily not punishable by the state. Civil law deals with violation of private rights, which can be remedied by way of compensation, damages etc.
- (c) **Public Law** – This consists of laws which deal with the state. They include the criminal, constitutional and administrative laws and govern the relationship between individuals and the state.
- (d) **Private Law** – This deals primarily with civil rights and matters involving individuals. It covers the areas of contract, family welfare, tort, succession etc.
- (e) **Domestic Law** – The local laws of a country.

- (f) **International Law** – The body of rules which regulates the relationship between countries.

### 2.3.1 Forms of the Law

There are basically two forms of law:

Written - These are contained in written documents such as case law, statutes, or judicial precedence.

Unwritten – Verbally expressed in customs/traditions and religion. Some religious laws might become statutory e.g. the Sharia law in the Northern states of Nigeria.

Under the Nigerian constitution no one can be punished for breaking an unwritten law, but sanctions could be applied by the institutions indicated above where infringements are detected.

### 2.3.2 Branches of the Law

In the Nigerian legal system, laws are divided into two broad categories namely, Criminal and Civil law. In some cases, though, a single act may constitute both a civil and criminal offence.

## 2.4 Differences between Civil and Criminal Law

CIVIL	CRIMINAL
The action involves individuals, groups or government.	Criminal cases are usually initiated by the State against an individual or corporation.
The party initiating the action is called the <b>plaintiff</b> , and the party accused is called the <b>defendant</b>	The state is referred to as the <b>prosecutor</b> and the party accused of the crime is called the <b>accused person</b>
Civil cases involve the breach of duty imposed by law, or the violation of human and legal rights	A criminal case involves the trial of the accused person who is alleged to have committed an offence punishable under the criminal law
Where the plaintiff succeeds in his action against the defendant he/she may be awarded monetary damages to be paid by the defendant, the court may make an order of injunction, which restrains a person from doing an act or compels a person to do a specific act. If the plaintiff fails in his claim against the defendant, the action is dismissed	The prosecution must prove beyond reasonable doubt that the accused person committed this offence. Once this is achieved, the person is found guilty and a fine or sentence be imposed by the court.
Examples of civil cases are breach of contract e.g. failure to repay a loan, trespass etc.	Where the prosecution is unable to do this, the accused person is discharged and acquitted. The effect of this is that the accused person cannot be tried for the same offence subsequently.
	Examples of criminal cases are murder, rape, stealing etc.

## 2.5 Types of Nigerian Courts

### **The Supreme Court of Nigeria**

This is the highest court of appeal in Nigeria. It hears appeals directly from the court of appeal. It however, has original jurisdiction to the exclusion of any other court in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question on which the existence or extent of a legal right depends.

### **Court of Appeal**

There is only one court of appeal in Nigeria. It however, has divisions in the various geopolitical zones in the country. As the name infers, its primary function is to hear appeals from the criminal court, customary court of appeal, sharia court of appeal and the various tribunals that enjoy concurrent status with the high courts. It however, has original jurisdiction to the exclusion of any other court in Nigeria, to determine questions regarding whether any person has been validly elected to the office of the president or Vice-President, or the office of the Vice-President has ceased or has become vacant.

### **High Courts**

High Courts consist of Federal Courts and High Courts of States. Both the Federal High Court and High Court of States have concurrent jurisdictions in both criminal and civil matters. The difference between the two courts is that the Federal High Court has exclusive jurisdiction over matters involving Federal Government personnel, institutions, agencies, revenues and the regulation of companies in Nigeria. Both courts have criminal jurisdiction over offences punishable by long jail sentences, life imprisonment and capital punishment. High Courts have appellate jurisdiction. For instance, decisions of the Magistrate/Area Court in the Federal Capital Territory can be appealed against at the High Court of the Federal Capital Territory.

### **Magistrate/Area Courts**

The Magistrate Court (so called in southern Nigeria) or area court (as obtains in northern Nigeria) is a court of summary jurisdiction. This means that Magistrate Courts can pronounce judgment against a claimant or defendant regarding a claim or a particular issue if such is considered to have no real prospect of success and there are no other reasons for the case or issue to be disposed of at a trial.

The court hears both criminal and civil cases. The criminal jurisdiction of the court covers virtually every offence contained in the criminal code (used in Southern Nigeria) or penal code (used in Northern Nigeria) except offences carrying life sentences or capital punishment upon conviction. The civil jurisdiction covers such matters as the recovery of residential and business premises, recovery of debts among others. A tribunal such as the rent control and recovery of residential premises tribunal of Lagos state has concurrent status as any magistrate court but its jurisdiction is strictly limited to recovery of residential premises.

### **Customary Sharia Court**

Questions or issues relating to the customary laws of the community or people are usually decided by the customary court (as it is called in Southern Nigeria) or Sharia court (as referred to in Northern Nigeria). Legal practitioners usually do not appear for litigants at this level. The customary court judge or Sharia Court Khadi is usually someone with vast knowledge of the customs of the people and decides the questions or issues as such. Appeals against the court's decisions are made to the Customary or Sharia court of appeal and not to the magistrate or area court.

### **Juvenile Court**

A juvenile court is essentially a magistrate court with specific jurisdiction over children and young person's cases.

Generally, children and young persons are supposed to be protected and as such, they are not allowed to mix with adults right from their time of arraignment and trial to their sentence and prison custody. Accordingly, a magistrate must, when sitting with other persons to constitute a juvenile court, sit in a place different from that where s/he usually sits as a magistrate's court or on different days or at different times from those at which he sits as a magistrate's court. The current practice these days, is for the magistrate sitting as a juvenile court to ask everyone in the courtroom who has nothing to do with the case at hand, including lawyers, to leave the courtroom.

### **Other Courts**

Industrial courts – These handle labor disputes

Tribunals – This is a special body that deals with specific matters e.g. Robbery and Firearms Tribunal, Treasonable Offences Special Military Tribunal, Miscellaneous Offences Tribunal (drug offences) amongst others

## **2.6 Court Personnel**

The personnel of the courts are:

- ( a ) **The Judges and Magistrates** – They preside over cases and give the verdict at the close of hearings. They must be lawyers. The character and personality of the judge or magistrate certainly plays a role in the outcome of a case.
- ( b ) **Lawyers** – These are people trained to administer and apply the law and to assist people when they have legal problems by giving them advice or by representing them if necessary. Lawyers may also work with the government and private organizations to make policies or legislation, which affect people in their daily activities.
- ( c ) **The Registrars** – They are responsible for the administrative work of the court. They are usually not lawyers though the chief registrar has to be a lawyer and supervises the work of the registrars.
- ( d ) **Policemen** – These are law enforcement agents. They are responsible for the prevention of crime, the protection of members of the public and the maintenance of law and order in the community.
- ( e ) **The Bailiffs** – They serve court processes and execution of court orders.



*Figure 1. A blindfolded lady, carrying scales in one hand and a sword in another has come to symbolize the justice system especially in the western world and affiliates*

## **2.7 Administration of Justice**

In administering justice, controversies often arise in relation to issues such as arrests, bail, detention and search. It is therefore important for key populations to be familiar with this aspect of the justice system.

A police officer has the power to arrest a person who has committed a crime, is in the process of doing so or is about to commit a crime. Usually, a warrant is issued to enable the officer do this. A warrant of arrest is a written order that gives the power to arrest the persons whose name is written in the order. It must be signed by the magistrate that issued it and must state the offence that is said to have been committed.

However, under the police Act, a police officer can arrest without a warrant, any person whom he has reasonable grounds to suspect of having committed an indictable offence against any Nigerian law unless the written law creating the offence provides that the offender cannot be arrested without a warrant. A police officer therefore doesn't necessarily have to be carrying a warrant to effect an arrest. For instance, under section 249 of the criminal code, any person who goes about begging for alms or using children to do so in a public place may be arrested without a warrant. On the other hand, any person who unlawfully and indecently assaults a male person cannot be arrested without a warrant under section 353 of the same criminal code.

A civilian may also arrest a person who has committed a crime and is trying to escape justice. However, such a person must be handed over to the police at the earliest opportunity.

### **2.7.1 Detention**

A police officer has the power under section 35(1) (c) of the 1999 Nigerian constitution to put a person in detention under the following circumstances:

- (a) For purposes of bringing such a person before the court in execution of the order of a court
- (b) Upon reasonable suspicion that such a person has committed a criminal offence
- (c) To prevent the commission of a crime

### **2.7.2 Search and Seizure**

When a suspect is arrested, his premises or his person is searched and incriminating documents, exhibits, etc., seized. The police can search or arrest any person they suspect of possessing illegally obtained items.

While warrants can be dispensed with for some forms of arrest, it is always required for searching premises. Failure to abide by this requirement is a trespass and is an actionable offence. A search warrant is a written order empowering the police to search the premise of the person so named. In the event of body searches, only a female police officer can search a female.

### **2.7.3 Bail**

Bail is a pledge by a person, called a **surety**, to produce the person arrested for a crime whenever s/he is required by the police at the place specified in the agreement (i.e. police station or court). A detained person may be granted bail either by the police or the court, if s/he applies for such.

### **2.7.4 Bail by the Police**

If a person is taken into police custody for an offence other than one punishable by death, the officer in charge of the police station may, if it will not be feasible to bring such person before a magistrate or Justice of the Peace who has jurisdiction over the offence within twenty-four hours after arrest, inquire into the case and, if it appears to him that the offence is not of a serious nature, discharge the person upon his entering into a recognizance with or without sureties for a reasonable amount to appear before a court at the time and place named in the recognizance.

If such a person is detained though, s/he must be brought to court as soon as possible. However, in the event that the police find it necessary to hold a suspect for longer than the stipulated twenty-four-hour period, they must take said suspect before a magistrate and obtain a remand order or warrant. This has however, led to the notorious phenomenon known as “holding charge,” which often means an indefinite detention without trial of accused persons in custody.

### **2.7.5 Bail by Court**

Any person who is charged with an offence punishable by death e.g. armed robbery, cannot be granted bail by anyone other than a High Court judge. A suspect charged with a felony can be granted bail as the court deems fit. In any other case, the court shall admit the person to

bail unless it sees good reasons to the contrary.

### 2.7.6 The Bail Process

Where a lawyer represents an accused person, it is the lawyer who applies to the court for the bail of the accused. The application is usually made orally before the magistrate or by a motion on notice before the High Court judge as the case may be. Since bail is a constitutional right however, the fact that the accused has not applied for one, probably because he is not represented, does not deprive him of the right. It is for the court to grant it and for the prosecution to oppose the grant by stating its reasons. The court may then uphold or overrule the objection and state reasons for doing so.

**Surety:** This is a person who agrees to forfeit a sum of money fixed by the court if the accused fails to surrender to custody or fails to appear in court as and when required.

**Recognizance:** This is the sum of money fixed by the court to be paid by a surety to the government in the event that the accused absconds or jumps bail.

**Self-recognizance with condition:** Sometimes the court may grant an accused bail on self-recognizance with condition. This means that the accused need not produce any surety.

It is important to note that **BAIL IS FREE**. Sometimes the recognizance is misrepresented by mischievous officers of the justice system to lead the accused to think s/he is expected to present the bail amount stated at the point of release. This is false. The recognizance is only payable **IF** the accused jumps bail i.e. cannot be produced as and when required in court. For instance, some prominent Nigerians of Igbo extraction secured Nnamdi Kanu, leader of the Independent People of Biafra movement's bail when he needed such assistance. He has however, since jumped bail (i.e. absconded), and these persons have no way of getting him to be physically present when required. If there is no change in the current status quo, these sureties will have to forfeit the recognizance they pledged at the point of bailing him and equally have to face trial.

There is also a fallacy that women cannot request or be allowed to bail an accused person. No Nigerian law that supports this notion.

## 2.8 Constitution and Law Making

The constitution is the supreme law of the land which sets out the parameters of governance. It is a set of rules and regulations that governs the structures and system of organizations of a country. All other laws conform to or are derived from the provisions of the constitution. It neither replaces nor substitutes these other laws only sets the standards to be followed. It is the apex law of any country.

The same holds true for Nigeria. The Constitution must be followed by both the government and all the people of Nigeria. It ensures the protection of citizens' human rights and establishes institutions to ensure that these rights are not infringed upon, either by the state or anyone else.

For any government to function optimally, therefore, a constitution must exist and be in full use.

### **2.8.1 Layout of the Constitution**

The Constitution has a preamble (introduction) and is divided into 8 chapters and 7 schedules as shown below.

#### **Chapters**

**Chapter 1** is divided into 2 parts.

Part 1 deals with the general provisions of the constitution. It provides information regarding the Supremacy of the constitution, The Federal Republic of Nigeria, the States of the Federation and the Federal Capital Territory, Abuja

Part 2 deals with the powers ascribed to the various organs of government in Nigeria. It gives information on the arms of government i.e. the Legislative powers, Executive powers and Judicial powers. It also indicates how the three spheres of government, Federal, State and Local governments, are expected to work together. The chapter further looks at issues of creation of new states and boundary adjustments.

**Chapter 2** – Fundamental objectives and directive principles of state policy define the guiding principles to be followed in the nation's efforts at actualizing national ideals.

**Chapter 3** – In this chapter, the 3 means by which Nigeria's citizenship can be acquired are examined. These are (a) by birth (b) registration and (c) by naturalization

**Chapter 4** – Fundamental human rights are those which are protected and which every citizen has a right to claim and defend. The rights stated in this chapter are: right to life, right to dignity of human persons, right to private and family life, right to freedom of thought, right to personal liberty, right to fair hearing, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own immovable property.

**Chapter 5** – This chapter deals with the legislature and is divided into 2 parts. Part 1 is specific to the National Assembly and Part II focuses on the State Houses of Assembly.

The legislature is that arm of government which makes laws for the entire nation. At the Federal level it is called National assembly and is constituted of the Senate and House of Representatives while at the state level it is called the House of Assembly and at the local level it is referred to as the Local Government Council.

**Chapter 6** – This chapter deals with The Executive arm of government and is divided into three parts:

**Part I** – Federal Executive

**Part II** – State Executive

**Part III** – Supplemental

The executive is the part of government that makes operational, the laws made by the

legislature. The President is the head of the Federal Executive, the Governor is the head of the state executive and the Local Government Chairman heads the local government executive.

**Chapter 7** – This chapter deals with The Judiciary and is divided into 4 parts. The Judiciary is the part of government that interprets laws and deals with the administration of justice. The chapter details the different courts in Nigeria.

**Chapter 8** - This chapter deals with the Federal Capital Territory, Abuja and other general supplementary provisions. It is also divided into 4 parts:

**Part I** - Federal Capital Territory, Abuja

**Part II** - Miscellaneous Provisions including Procedure for proclamation of state of emergency, Restriction on certain citizens, Restrictions on legal proceedings etc.

**Part III** - Transitional Provisions and Savings System of revenue allocation, issues of Debts etc.

**Part IV** - Interpretation, Citation and Commencement

### **2.9 Schedules**

**Schedule 1** - Lists the States of the Federation and defines the area known as the Federal Capital Territory.

**Schedule 2** - Lists issues and areas over which both the federal and state legislatures are qualified to make laws

**Schedule 3** - Lists executive bodies

**Schedule 4** - States the functions of the local government councils and stipulates areas for which only the local government can make laws

**Schedule 5** - Contains the code of conduct for public officers

**Schedule 6** – Deals with the composition, powers and functions of election petition tribunals

**Schedule 7** - Contains the oaths to be sworn by every public officer, especially elected officers, prior to resumption of office

### **2.10 Tiers of Government**

The tiers of government are 3: federal, state, and local government. These divisions are aimed at ensuring that the benefits of good governance reach the grassroots, efficiently and effectively.

- (a) 1. **The Federal Government** handles issues that affect the nation as a whole. It consists of the federal legislature (National Assembly) which is made up of the senate and the house of representative. The executive arm is headed by the president who works with the vice president and a federal executive council, also referred to as the cabinet. Members of this cabinet are called ministers. These ministers deal with different sectors under government control e.g. finance, education, health etc. There is also the judiciary at the Federal level which includes the Supreme Court which is the highest court in the land and the Federal high courts etc.
- (b) 2. **The State Governments** focus primarily on issues affecting their states. These include the provision of basic amenities such as health services, education services etc. A state legislature makes laws for the state and is known as the House of Assembly. Each state also has an executive arm made up of the Governor, Deputy

Governor and an executive council made up of people appointed by the governor to head the different ministries in the state. At this second tier of government, they are referred to as commissioners. The state also has its own judiciary system.

- (c) 3. **The Local Government** consists of smaller communities. This tier of government deals with issues that affect the communities and brings governance closer to the people. Each local government also has an executive that consists of the chairman and deputy chairman and a legislature that consist of councilors.

**EXERCISE**

- 1) What is Bail?
- 2) Explain the term "Recognisance."
- 3) Why are women not allowed to provide bail?
- 4) How many tiers of government exist? Name them.

## MODULE 3 – THE POLICE AND THE JUDICIARY: THEIR ROLES

**3.0** This module provides an overview of the justice system, particularly outlining the relationship between the Police and the Judiciary and their own relationship with the general public.

### **3.1 Introduction**

The Judiciary and court processes, procedures officers etc have been dealt with exhaustively in the previous chapter. This chapter introduces us to the role of the Police and the relationship between the police and the Judiciary.

The Police and the Judiciary are two arms of government that play vital roles in the administration of the justice system in Nigeria. While the police, an agency under the executive arm of the government is saddled with enforcing the law, the judiciary, represented by the court, is the arm of government that bears the role of adjudication and punishment of offenders.

The police, in the course of discharging their duties of law enforcement, usually commence criminal administration of justice by arresting and detaining suspects (“suspects” here indicates persons the police believe to have committed a crime). Now, the purpose of arrest and detention by the police is not punitive, because the police lack such powers. The only arm of government imbued with the power to punish any person, is the court of law. And before the court can punish any person, such a person must have been tried and convicted.

The purpose of police arrest and detention, therefore, is to enable it carry out investigation and gather evidence ahead of prosecution. It is worthy to note, however, that in the current **Administration of Criminal Justice Act and Law of the Federal Capital Territory and Lagos State** respectively, policemen who are not lawyers working in the Legal Department of the Nigeria Police cannot prosecute cases in court. Hence, they are required to refer criminal cases to either the Ministry of Justice or the Legal Department of the Nigeria Police.

Once criminal cases are brought to court and the accused is arraigned, the court commences trial. Just as the police have no power to punish suspects, the court equally lacks the power to enforce the law by itself. For this reason, when a direct criminal complaint is brought before the court, it refers the case back to the police for investigation.

From the foregoing, it can be seen that the police and the judiciary are interwoven as they work hand-in-hand to administer justice.

The administration of the criminal justice system continues in the court from arraignment of accused persons through to trial, conviction and sentencing or discharge and acquittal, as the case may be. There is equally room for appeal where the accused or the prosecution is aggrieved by the judgment of the court.

The presumption of innocence guaranteed by the constitution applies to all, and it is to the effect that no person should be punished until s/he is proved guilty. Hence, neither the police nor the

judiciary can punish any person until such a person is tried and convicted. When this is done, justice is said to have been dispensed.

### 3.2 The Power and Function of the Police.

Section 214 (1) (a) of the **Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended**, provides for the creation of right to private and family life, right to freedom of thought, and the Nigeria Police. Section 4 of the Police Act (the enabling law) spells out the function of the police thus: “The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.”

In the course of discharging its functions, the police are expected to do so within the ambit of the law. For instance, section 35 (4) and (5) of the CFRN 1999, as amended, is to the effect that no person should be detained beyond 2 days without being charged to court, unless there is *a special circumstance that warrants it*. Similarly, section 35 (1) of the CFRN provides that no person’s liberty should be deprived save upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence. Again, section 34 (1) (a) of the CFRN provides: “Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.”

Most Nigerians have heard of brutality, torture, flogging and maiming meted out by members of the Nigeria Police to citizens. All these amount to infringements of the fundamental human rights of citizens. As stated above, the police have no right to punish or inflict harm on any person; only courts of law have the power to punish offenders, but even the courts don’t apply punishment arbitrarily, only when a suspect has been tried and convicted.

As a result of incidents of human rights violations perpetrated by some policemen, the Nigeria Police have had to pay damages amounting to millions of naira to victims on many occasions. In fact, police authorities are starting to realise the consequences of violence visited upon suspects by policemen. For instance, just recently, specifically in August 2017, the newly appointed Commissioner of Police, Lagos state, Mr. Imohimi Edgar, warned his officers against physically assaulting suspects, cautioning that such conduct would be summarily dealt with.

### 3.3 Relating with the Police

Looking at how vulnerable citizens can be in the face of the law, it is important for all to know his/her rights, the extent of the power of the police and the limits beyond which they must not go.

#### **EXERCISE**

- 1) What is the role of the Police?
- 2) What is the role of the Judiciary?
- 3) Is there any relationship between both?

**4.0** In this module participants are acquainted with the concept of Human Rights, what it is, characteristics, its frameworks and instruments, categories and what to do in the event of violations.

#### **4.1 What are Human Rights?**

Human rights are those rights that everybody has by virtue of being a human being. They are fundamental and inalienable rights essential to human beings and the fulfillment and enjoyment of their lives. They can be defined as those rights which are inherent in our nature and without which we cannot live as human beings. They are basic values without which people cannot live in dignity as human beings. Human Rights are the basic rights and freedoms that individuals are entitled to regardless of their economic status, nationality, jurisdiction, age, ability, ethnicity, sex, and or sexuality.

#### **4.2 Characteristics of Human Rights**

The nature of human rights is unique as shown by its characteristics below:

**Universality** – Human rights belong to everyone, regardless of race, religion, culture, gender etc. It is non-discriminatory and applies to everyone in the world equally

**Natural** – Human rights are not given, bought, earned or inherited. They are inherent in people by the fact of their humanity. As such they are neither meant to be given nor taken away.

**Inalienability** – Human rights are absolute rights, fundamental freedoms and liberties that cannot be taken away from any human being.

**Indivisibility** – All human rights are inter-dependent and inter-related. They cannot be divided. The promotion and enforcement of one right has a connection to the protection and/or respect of another right.

#### **4.3 Legal Framework**

Human rights instruments and treaties have been written at both national and international levels in order to ensure the protection of human rights at all levels. The international recognition of human rights principles emerged after the horrors of World War II. The atrocities committed by the German Nazi under the leadership of Adolf Hitler were horrific and alarming. To avoid a repeat performance of such atrocities, people wanted to ensure that no one would be denied their fundamental freedom and justice by ensuring that civil, cultural, economic, political and social rights were recognized as universal and indivisible.

At the end of the war, the world formed the United Nations (UN) which met in San Francisco in 1945 and pledged to promote human rights. The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly on the 10<sup>th</sup> of December 1948 and was explicitly motivated by the desire to prevent future occurrences of such atrocities. The Declaration itself goes far beyond any mere attempt to reassert all individuals' possession of the right to life as a fundamental and inalienable human right.

The UDHR consists of a Preamble and 30 articles which separately identify such things as the right not to be tortured (article 5), the right to asylum (article 14), the right to own property (article 17), and the right to an adequate standard of living (article 25) as all being fundamental human rights.

The UDHR is based on values that are shared by ancient philosophies and many religious traditions, especially the idea that along with our individual rights, we each have a responsibility to protect the rights of other human beings. The UDHR proclaims a common standard of achievement for all peoples and all nations, regardless of nationality, tribal or ethnic grouping, sex, religion, economic status etc.

The UN further created two additional documents, the International Covenant on Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

Human rights are well spelt out in the International Bill of Human Rights. The Bill is the combination of the UDHR and the two main United Nations legal instruments the ICCPR and ICESCR, both of which were adopted in 1966 and made effective in 1976. At the national level, human rights provisions are incorporated in numerous laws but most importantly in the Constitution of the Federal Republic of Nigeria.

#### **4.3.1 Human Rights Instruments**

International human rights instruments can be classified into two categories: *declarations*, adopted by bodies such as the United Nations General Assembly, which are not legally binding although they may be politically so; and *conventions*, which are legally binding instruments concluded under international law

#### **4.4 Declarations**

- (a) Declaration of the Rights of the Child 1923
- (b) Universal Declaration of Human Rights (UDHR) 1948
- (c) African Union Solemn Declaration
- (d) International Covenant on Civil and Political Rights (ICCPR) (1966)
- (e) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).
- (f) African Charter on Human and People's Rights (ACHPR) 1981 Protocol to the African Charter on the Rights of Women
- (g) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979
- (h) Optional Protocol to The Convention on The Elimination of All Forms of Discrimination Against Women
- (i) Convention on the Rights of the Child (CRC) 1989
- (j) African Charter on the Rights of the Child
- (k) Convention Against Torture (CAT)
- (l) Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- (m) Convention on the Rights of Persons with Disabilities (2006)
- (n) National Human Rights Instruments

- (o) Constitution of the Federal Republic of Nigeria (1999) (Chapter IV)
- (p) Child Rights Act (2003)

#### **4.5 Categories of Human Rights**

Human Rights are further sub-divided into a range of rights covering various aspects of life as shown below:

##### **4.5.1 Civil and Political rights**

These are referred to as first-generation rights. Civil and political rights are a class of rights and freedoms that protect individuals from unwarranted government action and ensure one's ability to participate in the civil and political life of the State without discrimination or repression. These rights include right to life, right to dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination and right to own property.

##### **4.5.2 Economic, Social and Cultural rights**

These are referred to as second generation rights. They are socio-economic human rights. They enable people to have social, economic and cultural security. They ensure different members of the citizenry equal conditions and treatments. These cover the right to employment, right to housing and shelter, right to health, right to food, right to education, right to safe water, right to preservation of one's mother tongue and other symbols of cultural identity, right to safety and security, and the right to an adequate standard of living.

Some societies choose to enshrine purported economic, social and cultural rights as legal rights, seeing them only as needs that society or government might provide if resources are available, but which are not justiciable unless they are established by some contract. Nigeria is one of such countries.

##### **4.5.3 Environment and Development Rights**

These are called third generation rights. The term "third-generation human rights" remains largely unofficial, and thus houses an extremely broad spectrum of rights, including: right to self-determination, right to economic and social development, right to a healthy environment, right to natural resources, right to communicate and communication rights, right to participation in cultural heritage, rights to intergenerational equity and sustainability etc.

##### **4.5.4 Special Groups**

Some groups of people are vulnerable to discrimination and abuse. Group rights are the rights held by a group rather than by its members severally, or rights held only by individuals within the specified group. More recently though, demanding group rights is seen as a way of actively addressing issues of marginalization and realizing equality. This is where the group is regarded as being in a situation that requires special protective rights if its members are to enjoy human rights on terms equal with the majority of the population. Examples of such groups may include indigenous peoples, ethnic minorities, women, children and people with disability.

#### **4.5.5 Constitutional Rights**

Constitutional rights are those aspects of human right that are guaranteed by the constitution of a country. In Nigeria for instance, civil and political rights are guaranteed under chapter four of the 1999 constitution and are therefore, justiciable or enforceable in a law court. On the other hand, many of the socio-economic and cultural rights indicated earlier are but not justiciable.

Thus, constitutional rights can be classified into guaranteed and justiciable rights and recognized but non-justiciable rights respectively.

#### **4.5.6 Guaranteed and Justiciable Rights under the Nigerian Constitution**

These include:

- (a) Right to life; S.33
- (b) Right to dignity of human person; S.34
- (c) Right to personal liberty; S.35
- (d) Right to fair hearing; S.36
- (e) Right to private and family life; S.37
- (f) Right to freedom of thought, conscience and religion; S.38
- (g) Right to freedom of expression and press; S.39
- (h) Right to peaceful assembly and association; S.40
- (i) Right to freedom of movement; S.41
- (j) Right to freedom from discrimination; S.42
- (k) Right to acquire and own immovable property; S.43
- (l) Right to compensation in case of compulsory acquisition of property by the state; S.44
- (m) Right to financial assistance or legal aid in case of an indigent victim of human rights violations subject to the promulgation of appropriate laws by the National Assembly;

#### **S.46(4)(b)**

(c) Right to information on asset declarations of any public office holder subject to the terms and conditions prescribed by the National Assembly through appropriate laws; third schedule, part 1, para. 3(c) (m)

Right to federal character representation in public offices and to enforce same through the Federal Character Commission; Third schedule, part 1, para. 7(c).

#### **4.5.7 Recognized but Non-Justiciable Constitutional Rights**

These include:

- (a) Right to security and welfare-S.14(2)(b)
- (b) Right to adequate transport facilities -S.15(3)(a),
- (c) Right to social justice, equality of status and opportunity-S.16(1)(b)
- (d) Right to a just economic system; S.16(2)(c)
- (e) Right to suitable and adequate shelter, food, national minimum wage, old age care, pensions, unemployment and sick benefits, welfare in case of disability; S. 16(2)(d),
- (f) Right to human actions by the government; S.17(2)(c)
- (g) Right to easy access to courts; S.17(2)(e)
- (h) Right to adequate means of livelihood and employment; S.17(3)(b)

- (i) Right to just and human working conditions; S.17(3)(b)
- (j) Right to health and safety at workplace; S.17(3)(c)
- (k) Right to adequate medical and health facilities; S.17(3)(d)
- (l) Right to children, young persons and the aged to freedom from all forms of exploitation and neglect; S.17(3)(f)
- (m) Right to public assistance for the needy; S.17(3)(g)
- (n) Right to free education at all levels; S.18(2)
- (o) Right to safe environment-water, air land; S.20
- (p) Right to protection and preservation of one 's culture; S,21.

#### **4.6 Understanding Women's Rights**

The reason that women's rights are emphasized even within human rights is because traditionally, women have not enjoyed equal access to basic human rights, protection, resources, and services. Neither international nor national human rights principles have been applied to effectively redress the disadvantages and injustices being experienced by women just because of their sex. Women need particular kinds of legal protections in order to fully enjoy their rights.

Women comprise more than half the world's population. They are 70% percent of the world's poor, and constitute two-thirds of those described as illiterate. Though the primary care givers in most societies, their work is rarely seen as valuable - not by economists, not by historians, not by popular culture, not even by the state.

##### **4.6.1 CEDAW**

The Convention on the Elimination of all forms of Discrimination Against Women, CEDAW, is, to date, the most exhaustive international agreement in the history of women's rights. With its spirit rooted in the goals of the UN, the convention integrates all gender provisions from several documents into one decisive international legal instrument. Yet, CEDAW also goes one step beyond earlier human rights conventions by exposing the specific inequalities that concern women.

#### **4.7 Understanding Child's Rights**

The Nigerian Child's Rights Act, 1999 defines a child as anyone under the age of 18 years. The Act makes it a crime for any parent or guardian to deny a child or ward education, especially at the primary level.

The *UN Convention on the Rights of the Child*, urges that children be raised in a family environment, in an atmosphere of happiness, love and understanding in order to ensure the full and harmonious development of his or her personality so that they can live an individual life in society...in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

#### **4.8 When Violations Occur**

It is not enough to know your rights, you must also know what to do when your rights are violated. The first point to note is that when your rights are violated, you are entitled to seek redress. It does not matter whether it is the police that violates your rights. It does not matter whether it is the state or other law enforcement agencies that violate your rights. You have the right to redress.

It is worthy of note that one of the reasons citizens' rights are violated with impunity is that the vulnerable ones among them who cannot afford the services of lawyers tend to forego their rights. However, this is a trend that is gradually shifting as there are now many human rights organisations willing to offer free legal representation to victims of human rights violations. Two good examples of such organisations are COLaHR (Coalition of Lawyers for Human Rights) and LA (Lawyers Alert).

### **3.4 Seeking Redress**

Certain procedures can be explored when seeking redress as shown below:

#### **a. Complaint to Police**

You can lodge a complaint at any police station close to you, and the police can commence criminal action. But where it is the police that have violated that right, the better option is to get a lawyer to file a fundamental rights action in court against the police to enforce your rights.

#### **b. Complaint to Human Rights Organisations**

In situations where you cannot afford the services of a lawyer, and perhaps can't access the police or do not want to do so, you may get in touch with any human rights NGO. The NGO will provide you free services or where they can't, refer you to other human rights organisations who can take up the matter.

#### **c. Government Agencies**

There are quite a number of government agencies that can provide succour to victims of human rights violations. These include, the National Agency for the Control of AIDS (NACA), National Human Rights Commission (NHRC), Public Complaints Commission (PCC), Consumer Protection Council (CPC), etc. And of course, we have the Legal Aid Counsel of Nigeria, which provides free legal services to indigent citizens who cannot afford the services of lawyers.

#### **EXERCISE**

- 1) How would you define Human Rights?
- 2) Name some of its characteristics?
- 3) are Women's Rights set aside?
- 4) How do you seek redress when your rights are violated?

## MODULE 5 - HIV AND AIDS, HUMAN RIGHTS AND GENDER

**5.0** This module is aimed at giving participants a clear understanding of what HIV and AIDS is, and its relationship with Human Rights and Gender.

### **5.1 What is HIV and AIDS?**

HIV means Human Immuno-deficiency Virus while AIDS means Acquired Immune Deficiency Syndrome. HIV and AIDS is reported to kill about 8000 people daily across the world. Nigeria's HIV prevalence rate is 2<sup>nd</sup> only to South Africa on the African continent. Although efforts are being made to find a cure, at the moment there is still no known cure or preventative medication.

There are different modes of transmission:

- a. Sexual involvement
- b. Sharing of instruments such as razor blades, toothbrushes, earrings, etc.
- c. Nursing those who are infected without protection
- d. Blood transfusion
- e. Mother to child transmission

While there are currently no vaccines or other preventive medications, lifestyle modification and choices could help prevent the spread of the virus. These include the ABC acronym which simply stands for:

Abstinence – Avoiding sex altogether

Being faithful – Mutual fidelity to one uninfected partner

Condom use – Though this is a practice frowned upon by some religious sects, the proper use of condoms has been found to be an effective way of stemming the spread of the virus.

Avoiding sharing certain sharp objects with infected people e.g. razors, shaving stick, clipper, needle etc.; ensuring that blood is thoroughly screened ahead of transfusions the use of certain medications to prevent mother to child transmission during childbirth are also effective ways of preventing HIV spread.

### **5.2 HIV and AIDS and Gender**

Gender is an inextricable part of the HIV and AIDS equation. Women are said to be more vulnerable to infection than men because of poverty and their biological features. HIV and AIDS can be transmitted through sex, from mother to child, use of sharp unsterilized objects etc.

### **5.3 HIV and AIDS and Human Rights**

Failure to recognize and respect human rights increases HIV prevalence and worsens the impact of HIV and AIDS. The spread of HIV and AIDS also undermines progress in the realization of human rights, as the pandemic places a strain on the resources of the country.

The main human rights issue for people living with HIV and AIDS is stigma and discrimination by members of the society. There are various forms of discrimination against People Living with HIV and AIDS (PLWHA) and People Affected by AIDS (PABA). These forms of discrimination include the following:

- (a) Desertion by spouses, friends and other family members

- (b) Refusal to offer treatment by medical personnel to such people
- (c) Denial or removal from such persons any treatment or medication or any support or enabling facility including accommodation for their functioning in the society
- (d) Failure to remove, eliminate or ameliorate any obstacle that unfairly limits or restricts such persons from enjoying equal opportunities or failing to take steps to accommodate the needs of such persons.
- (e) Refusal to admit HIV positive or affected persons into educational institutions or discontinuing their education
- (f) Denial of access to and use of religious or worship areas and services
- (g) Denial of access to and use of communal places
- (h) Denial of access to credits, loans and insurance services so long as the persons had disclosed, where required, in utmost good faith, their status to the insurance company or financial institution
- (i) Depriving such persons of the right to an elected or appointed public office or admission to a public function.
- (j) Denial of access to any place of human endeavor

#### 5.4 Remedies for Victims

**Legal Action** - Unfortunately, for the victims of discrimination on grounds of HIV AND AIDS status, the Nigerian constitution 1999 does not offer much hope in terms of provisions that can help with the enforcement of rights. Section 42 of the constitution which guarantees every person the right to freedom from discrimination only prohibits discrimination on the grounds of *community, ethnic group, place of origin, sex, religion or political opinion*. It stays quiet with regard to discrimination on the Grounds of health status (or HIV and AIDS status). Thus, unless a judge engages in extensive legal activism, it may be impossible for a victim of discrimination on grounds of health status to enforce his/her right under section 42 of the constitution. There is an urgent need for a law to be enacted which can protect people living with HIV and AIDS from discrimination.

**Counseling:** Victims of discrimination can report to appropriate NGOs and government departments for counseling on how to manage the situation to avoid being infected by HIV and AIDS.

#### **EXERCISE**

- 1) Define the acronyms HIV and AIDS
- 2) How does HIV spread? Name some ways.
- 3) Is there any correlation between HIV and Human Rights?
- 4) Where Rights have been violated, what remedies are open to victims?

## MODULE 6 - SEX AND GENDER

**6.0** The terms “gender” and “sex” are frequently used interchangeably in our daily interactions. However, there are differences between the two along with attendant social issues. This module expatiates.

### 6.1 Defining Gender and Sex

Gender can be seen as the full range of personality traits, attitudes, feelings, values, behaviors and activities that society ascribes to the two sexes on a differential basis. Gender refers to: the socially constructed and learned economic, social and cultural attributes, characteristics and opportunities associated with being male or female; roles that men and women play and the expectations placed upon them. These vary widely among societies and change over time and include ideas about feminine/female and masculine/male characteristics abilities and commonly shared expectations about how women and men should behave in various situations. These ideas and expectations are learned from family, friends, opinion leaders, religious and cultural institutions, schools, the workplace, advertising and the media. They reflect and influence the different roles, social status, economic and political powers of women and men in society.

Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences in activities undertaken by men and women, their access to and control over resources, as well as the decision-making opportunities that they have.

**Sex**, on the other hand, refers to the biological/physiological differences between women and men that are universal and fixed. Sex and gender are often seen as same but they are not. **Sex** is determined by biology.



*Figure 2. African women are expected to tend the children and handle domestic chores*

### 6.2 The Difference Between Sex and Gender

As earlier mentioned, sex roles are defined by biological differences between men and women. For instance, pregnancy, child-bearing, breast feeding are female sex roles that men cannot assume. Women, for their part, lack the biological capacity to get other women pregnant.

**Gender roles** are not the same as biological roles of men and women. These are the roles both sexes carry out in a society as defined by the virtue of being male or female. The roles that men and women play are influenced by the cultural and sometimes religious norms of the society, their social status in that society, and the image the individual wants

to develop for him/herself. Such roles can change depending on economic, social and cultural changes in the community but have nothing to do with one's physical capacity to perform such functions.

The table below further simplifies the two

<b>Gender</b>	<b>Sex</b>
<p>Socially created ideas and practices of what it is considered to be female or male.</p> <p>The social roles and relationships between men and women, they are context-specific and can change according to circumstances, and from generation to generation.</p> <p>Gender is influenced by other factors as wealth, class, age, education, race, ethnicity, religion and ideology</p> <p>Gender is imposed by human society, which generates some deep and far-reaching sense of inequality between the sexes</p>	<p>Universal, biological differences between men and women</p> <p>Physical traits which categorize a person as being either female or male</p> <p>Biological sex differences are very few and are unimportant in terms of determining gender inequality.</p> <p>Sex is a basic fact of nature and does not unfairly assign biological roles</p>

### 6.3 Gender Concepts and Issues

<b>Gender Analysis</b>	The study of differences in the conditions, needs, participation rates, access to resources and development, control of assets, decision making powers etc. between women and men and their assigned gender roles (European Commission, 1998)
<b>Gender Awareness</b>	The understanding that there are socially determined differences between men and women based on learned behavior, which affect ability to access and control resources
<b>Gender Based Violence</b>	Gender-based violence includes any physical, mental, or social abuse which is directed against a person because of their sex or gender sex and is an offshoot of gender inequality. It refers to violence meted out to women and men mainly because of the roles assigned to them by the society.
<b>Gender Blindness</b>	This is the failure to recognize that gender is an essential determinant of social outcomes, including health.
<b>Gender Discrimination</b>	This means that individuals are treated differently on the basis of their sex. In many societies, this is maintained by structural

	discrimination against women in the distribution of income, access to resources and participation in decision-making. Discrimination based on gender affects both women and men adversely. Women are disproportionately represented among the poor, the less educated, the underpaid, the assaulted and the powerless.
<b>Gender Budgeting</b>	This is a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality
<b>Gender Equality</b>	This is the absence of discrimination on the basis of a person's sex in decision-making, opportunities, allocation of resources or benefits as well as access to services. It is therefore, the equal valuing by society of both the similarities and differences between men and women, and the varying roles that they play. It refers to the equal rights, responsibilities and opportunities of both males and females.
<b>Gender Equity</b>	This is ensuring fair treatment for men and women alike according to their specific peculiarities and circumstances. For true gender equality to be achieved, the concept of equity must be put in place. Gender Equality and Gender Equity are frequently used one for the other but actually mean different things. For instance, while the laws of the land encourage the acquisition of formal education for all (equality), the girl-child faces the disadvantage of being held back by parents who might require her help with domestic chores. Instituting policies that ensure that parents have no choice but to put children in school regardless of sex ensures that equity prevails.
<b>Gender Stereotyping</b>	This occurs when men or women are persistently attributed certain characteristics or roles, thereby creating the belief that these are invariably linked to gender. Gender stereotyping reinforces gender inequality by portraying assumptions and conditions that maintain the inequality as biologically or culturally fixed
<b>Patriarchy</b>	This refers to male domination of the control of resources that maintain gender discrimination. Patriarchy is maintained by an assertion of male superiority that claims to be based on biological differences between women and men, on cultural values, or on religious doctrines.

#### 6.4 Impediments to Gender Equality

Gender Equality connotes the elimination of differences which perpetuate the unequal distribution of power and resources. It also refers to the equal presentation, rights, responsibility and participation of women and men in all spheres of private and public

life. Gender equality does NOT mean that women and men will become the same BUT that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. It implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.

The main obstacle to gender equality is unequal power relations between women and men. In Nigeria, patriarchy is well entrenched and based on male dominance and precedence. Gender manifests in various degrees and forms, although it is seen basically as discrimination against women in all spheres of life – social, political, cultural and economic.

In Nigeria it is manifested in different ways including:

- a) Harmful traditional practices
- b) Gender based violence
- c) Low value for women
- d) Gender stereotypes
- e) Double standards for men and women especially with regards to moral and other issues

## **6.5 Achieving Gender Equality**

Achieving gender equality involves implementing a range of strategies, including

- (a) New Initiatives – These could increase women's visibility within the country, for example via the introduction of quotas or affirmative actions.
- (b) Capacity building – Activities such as gender training at various levels should be carried out and include males, thereby encouraging the prospects of including gender issues as part of national planning processes.
- (c) Advocacy – This is with a view to increase budgeting.
- (d) Gender mainstreaming- This is a very good strategy for addressing gender inequality. It will assist in integrating gender considerations and perspectives into policy formulation, planning, programming and allocation at all levels.

## MODULE 6 - GENDER AND SEXUAL BASED VIOLENCE

**6.0** This module explores the link between Gender issues and violence. Rape and harmful traditional practices are also explored.

### **6.1 What is Violence?**

United Nations defines violence against women as “any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life.

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

-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.

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

### **6.2 Gender Based Violence**

Gender-based violence includes any physical, mental or social abuse which is directed against a person on the basis of gender or sex and has its roots in gender inequality. GBV largely affects females in most societies; males are also victims/survivors of GBV, but most gender discrimination occurs against females because they are more vulnerable in most societies when compared to their male counterparts. It usually involves the abuse of power.

Examples include but are not limited to, domestic violence/violence against women, battery, sexual harassment/assault, manipulation within the home, the workplace or academic environment, exploitation and or trafficking, rape, emotional abuse, pornography, harmful traditional practices such as Female Genital mutilation (FGM)/female circumcision, early/forced marriage, dowry abuse, widow ceremonies, punishments directed at women for defying cultural norms, denial of education etc. The impact of gender-based violence is far-reaching both for the victim, and the society as a whole.

#### **6.2.1 Contributing factors**

Some of the factors which contribute to GBV are listed below:

- (a) Poverty
- (b) Religious beliefs
- (c) Alcohol/drug abuse
- (d) Traditional tensions, feuds
- (e) Desire for power and control
- (f) Cultural and traditional practices
- (g) Collapse of traditional society and family supports
- (h) Gender Inequality (power imbalances between men and women)
- (i) Male attitudes of disrespect towards women (including lack of respect for the human rights of women and girls)

- (j) Assumptions about appropriate male and female behavior
- (k) Political motives, including as a weapon of war, for power/control of resources

## **6.2.2 Some Consequences of Gender Based Violence**

### **Health**

- (a) Injury, disability, or death.
- (b) STDs and AIDS.
- (c) Injury to the reproductive system including menstrual disorders, childbearing problems, infections, miscarriages, unwanted pregnancies, unsafe abortions.
- (d) Depression, leading to chronic physical complaints and illnesses
- (e) FGM, resulting in shock, infection, excessive bleeding or death, and longer-term effects such as emotional damage, including anger, fear resentment, self-hate and confusion.
- (f) Loss of desire for sex and painful sexual intercourse
- (g) Difficult pregnancy and labor, chronic pain and infection, infertility

### **Impact on the Wider Society**

- (a) Expensive, a drain on community resources, family, neighbors, friends, schools, community leaders, social service agencies, etc.
- (b) Victim unable to continue as contributing member of society; unable to keep up with child care, unable to earn an income.
- (c) If perpetrators not apprehended or arrested, this sends a strong message that the behavior is somehow acceptable, leading to further incidents of violence.

### **Legal/Justice System**

- (a) Lack of access to legal system
- (b) Lack of knowledge of existing laws
- (c) Confusion regarding the most appropriate channels of seeking redress i.e. criminal, civil, traditional etc.
- (d) Victim reluctant to report due to heavy stigma attached to sexual abuse.
- (e) Legal costs incurred by the victim.

### **Security, Physical Environment of the Community**

- (a) Victim feels insecure, threatened, afraid
- (b) Climate of fear and insecurity impacting women's freedom and perception of personal safety
- (c) Lack of female participation in community life
- (d) Fear of commuting to and from school or work.

## **6.3 Violence Against Women**

According to the United Nations, VAW refers to any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether in private or public life. VAW is a form of GBV.

Types of Violence against women can be classified loosely into three, namely:

- (a) **Physical Violence:** All forms of physical abuse including but not limited to shoving, slapping, punching, kicking, assault with objects, acid etc.
- (b) **Psychological Violence:** All forms of emotional abuse including verbal attacks (name calling), threats of violence, humiliation etc.
- (c) **Sexual Violence:** all forms of sexual attack or abuse such as defilement of the girl child, rape, indecent assault, forced marriage, forced pregnancy and forced prostitution/sexual slavery



*Figure 3. A man beats a woman in a typical depiction of GBV*

### 6.3.1 Causes of Violence against women

- (a) Power and Control
- (b) Cultural and social attitudes about women
- (c) Learned behavior

### 6.4 Sexual Offences

The moment sexual offences or violence is mentioned, the word which immediately comes to mind is rape. But how is rape defined? Under section 357 of the Criminal Code, rape is defined thus:

“any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by impersonating her husband, is guilty of an offence which is called rape”.



*Figure 4. Picture depicting a rape scene*

It is important to note however, that the terms, “sexual violence”, “sexual assault”, and “rape”, are different from each other.

Sexual violence is defined by RAINN (Rape, Abuse & Incest, International Network) as “an all-encompassing non-legal term that refers to crimes like sexual assault, rape and sexual abuse.”

#### 6.4.1 Other Sexual Offences

Apart from rape, there are other sexual offences contained in Nigeria’s penal laws. These include:

**Defilement:** This refers to the unlawful carnal knowledge of a girl under the age of sixteen years. The offence attracts life imprisonment if the girl defiled is under the age of thirteen years but two years imprisonment if she is above thirteen years but below sixteen years.

**Indecent Assault:** This covers all forms of abuse of a women’s body such as forcing a woman to perform a sexual act which she is uncomfortable with; touching a woman’s sensitive parts or forcefully exposing her nakedness

**Procuration:** This refers to the use of tricks, fraud or drugs (e.g. sedatives) to procure a woman for the purpose of having an unlawful carnal knowledge of her. If found guilty the offender is liable to two years imprisonment.

**Abduction:** Absconding with an unmarried woman under the age of eighteen years with intent to have unlawful carnal knowledge of her is an offence which is punishable with two years’ imprisonment.

**Unlawful Detention:** Detaining or confining a girl or woman against her will with intent to have unlawful carnal knowledge of her is an offence punishable with two years’ imprisonment.

**Operating Brothels:** keeping women in brothels or in any place for the purpose of prostitution or procuring men to have carnal knowledge of them is an offence punishable with one-year imprisonment.

**Sexual Slavery:** Women and girl-children being held against their will and owned by one or several persons in order to provide sexual services to their owners. Sexual slavery may be preceded by forced marriage of women and girl children.

From the above, it can be seen clearly that Nigeria’s laws do not accommodate the notion that a male could be raped or have sexual violence meted out to him. The words “woman”, “girl”, shown in all the literature having to do with sexual violence all point to this fact. And even globally, most traditional definitions of rape/ sexual violence conform to this thinking. There is also no mention made of rape within the context of marriage e.g. if a married woman denies her husband sex and he forces himself on her, can that be categorized as rape?

New schools of thought however, observe that a man or boy could be raped or sexually assaulted either by a fellow man (anally or orally, which are also penetration) or by a woman who uses

coercion, misrepresentation or other such means to get him to penetrate her against his will.

The offence of rape is punishable with **life imprisonment** while an attempt to commit the offence of rape is punishable with **14 years'** imprisonment. To prove the offence of rape, the slightest penetration is sufficient and it is not necessary to prove an injury or the rupture of the hymen to establish the offence.

#### **6.4.2 Self Defense Tips**

- (a) Make efforts to escape.
- (b) Try to deceive the attacker by saying you have an STD, HIV or even that you are on your period.
- (c) If you feel your life is in danger, do not fight, try to talk to your attacker, humanize yourself by telling him a little about yourself, your responsibilities, your family. S/he might change his/her mind.
- (d) Don't be docile. Try to fight back especially where s/he is not armed and shout as loudly as you can to attract attention.

#### **6.4.3 In the Event of a Rape**

- (a) Report to the police and they will give you medical police report for you to take to the hospital for treatment.
- (b) Consult a doctor and narrate your experiences so that the doctor will know how to treat you.
- (c) Give the medical police report to the doctor, as he will document his observations and diagnosis on the paper.
- (d) Do not destroy or wash the clothes and underwear you had on during the attack as they are pieces of evidence
- (e) Ask the doctor for Post Exposure Prophylaxis (PEP) within 72 hours to cut your risk of contracting HIV to the barest minimum level

#### **6.4.5 Steps to Take**

- (a) Report the matter to the police at the earliest opportunity for investigation and prosecution.
- (b) Protect your children from sexual assaults by refraining from sending them to hawk in the streets and ensuring that you monitor the companies they keep and the characters of male children and adults living with you as they relate to her.

#### **6.4.6 The Culture of Silence**

A lot of people do not report incidences of violence for a variety of reasons including:

- (a) Shame
- (b) Fear of being blamed for instigating the attack
- (c) Attacker's threats
- (d) Fear of reprisal family/cultural expectations/stigma
- (e) Family/cultural expectations
- (f) Lack of information and access to services
- (g) Lack of economic means
- (h) Poor response or inappropriateness of services

- (i) Hopefulness that the situation will change
- (j) A belief that men are supposed to discipline their wives as they see fit
- (k) Potential loss of relationships, home or children for victims of domestic violence

#### **6.4.7 Available Remedies**

- (a) Reporting to the police - Victims can report the incident to the police for investigation and possible prosecution of the assailants.
- (b) Recourse to court and taking advantage of the legal system: Victims can go to court to enforce their fundamental rights against torture, degrading and inhuman treatment and seek compensation. Finances should not be a constraint to seeking redress as victims can go to the legal aid councils, office of public defenders or Non-Governmental Organizations.
- (c) Accessing various services provided by Non-Governmental Organizations (NGOs): Victims can seek counseling, mediation and even legal assistance from NGOs operating in the field of human rights. There are various organizations that assist women victims of GBV.

### **6.5 Harmful Traditional Practices**

Harmful traditional practice is also a form of Gender Based Violence.

#### **6.5.1 Types of Harmful Traditional Practices against Women**

Widowhood rites and practices such as compelling the widow to...

- (a) Drink the water used in washing the corpse of the late spouse to exonerate her of the spouse's demise (common particularly in Nigeria's South East).
- (b) Swim underneath a tree trunk close to the river bed as a means of absolving themselves of a spouse who was royalty (still practiced in some riverine communities of the South-South).
- (c) Sleep, either alone in the same room, with the corpse of the late spouse, or on the same bed.
- (d) Remain in confinement after the death of the spouse for an assigned period.
- (e) Vacate the matrimonial home on the grounds of lack of a son or biological children.
- (f) Shaving the head or hair on other parts of the body.
- (g) Wear s p e c i f i e d mourning clothes f o r a s p e c i f i e d a m o u n t o f t i m e
- (h) Be remarried to a relative of the late spouse.
- (i) Visit any shrine or perform any other cultural rituals
- (j) Forsake her matrimonial home

Apart from the ordeal of widows, women are also subjected to other harmful traditional practices such as:

- (a) Female Genital Mutilation
- (b) Early and or forced marriage
- (c) Male child preference

## **6.6 Laws on Gender Based Violence**

Acts of gender-based violence violate numerous principles of international human rights: right to life, equality, security of person, equal protection under the law, freedom from torture and other cruel, inhumane or degrading treatment. There are also various local laws around gender based violence.

### **6.6.1 International Laws addressing Gender-Based Violence**

Key international documents include:

- (a) The Convention on the Rights of the Child (CRC) (As well, the Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution)
- (b) The Declaration on the Elimination of Violence Against Women (UN General Assembly)
- (c) Rome Statute of the International Criminal Court (entered into force July 2002)
- (d) UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children
- (e) African Union Protocol on the Rights of Women in Africa
- (f) African Charter on Human and People's Rights
- (g) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

#### **EXERCISE**

- 1) How would you define Gender Based Violence?
- 2) What is rape?
- 3) Do victims of rape like talking about it? Why?
- 4) Mention some fallacies associated with rape

## CONCLUSION

It is not difficult to agree that Nigeria has a lot of laws that address issues of the rights of Key Populations, at least at the federal level. However, the country being a federation, requires that the relevant laws be domesticated in the various states in order to be applicable in those states. Achieving this feat in Nigeria has been elusive at best. For example, the HIV/AIDS (Anti-Discrimination) Act, passed since 2014, has only enjoyed domestication in about 7 States of the Federation. Similarly, the Violence Against Persons, Act (VAPP) which has been acclaimed in many quarters as the best thing to happen to the rights of minorities is not known to have been domesticated in any state of the federation, yet. Such situations do not augur well for the protection of the rights of Key Populations.

The existence of these laws does not offer the much-expected protection of rights in any society. Beyond the laws, there must be the awareness of same and the willingness to have any infringement of the rights redressed. There must also be a readiness on the part of all prosecuting agencies to take up all complaints lodged with them and dispatch same with the seriousness deserved. By this, people will be encouraged to want to take up issues of the violations of their rights at all times.

All Non-Governmental Organizations (NGOs), State Actors, and even individuals involved with the protection of the rights of members of Key Populations must be willing to do more in the area of rendering pro-bono services to members of the public. This becomes essential in view of the level of pervasive poverty in developing societies like ours.

For us to achieve so much, all hands must be on deck.

The objective of human rights organisations everywhere is to protect and defend the rights of citizens - free of charge! Human rights organisations like COLaHR and Lawyers Alert are always at the forefront of rendering free legal services to victims of human rights violations. Below are the contacts of both organisations:

### **Lawyers Alert**

Hotline: 08036081967

Email: [lawyersalert@lawyersalertng.org](mailto:lawyersalert@lawyersalertng.org), [rommym@lawyersalertng.org](mailto:rommym@lawyersalertng.org)

### **COLaHR**

Hotline: [08026826761](tel:08026826761)

Email: [Colahr.nigeria@gmail.com](mailto:Colahr.nigeria@gmail.com)

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