

PLATEAU STATE PENAL CODE LAW 2017: HIGHLIGHTS OF SOME INNOVATIONS*

Abstract

The Plateau State Penal Code Law, 2017 (PSPCL 2017) has replaced the Penal Code Law of Northern Nigeria, 1963, as the Law which regulates crimes or offences in Plateau State. The PSPCL 2017 has some novel and notable provisions which either did not exist in the Penal Code Law of Northern Nigeria or have been updated and made relevant to contemporary times in the State. In this regard, fourteen (14) offences were reviewed where novel offences like Sexual Harassment, Correction of Child, Pupil or Servant, Smoking in Public Places, Harmful Practice of Religion and Unnatural Offences were examined. Also, the offence of Rape has been upgraded to remove the hurdles of proving penetration and establishing corroboration. It was found that the PSPCL 2017 is a step in the right direction in the regulation of crimes in the State and for effective administration of criminal justice. It is recommended that the terms of imprisonment and fines of some offences be increased substantially to serve as deterrence to prospective offenders. It is also recommended that the omission of the word 'mother' to the offence of Incest be inserted. It is suggested that the offence of Adultery be re-considered as it concerns those married under native law and custom since some form of church marriage in the State is considered as customary marriage.

Keywords: Penal, crime, offence, justice administration, sexual harassment, rape, gross indecency, smoking in public place.

1. Introduction

One of the characteristics or features of law is that law is dynamic. In this wise, law evolves as society does. In functional and progressive societies, laws reflect the times and circumstances these societies find themselves at any point in time. It is therefore worthy to note and commend law making which reflects the changing times. In Nigeria, some laws are old and obsolete. Thus, when modern challenges arise, these laws are insufficient to handle them. A case in point is the current Corona Virus Disease (Covid-19) that is raging and decimating humanity. In a bid to contain its spread in Nigeria, the President, Muhammadu Buhari, GCON, declared a lockdown in Lagos State, Ogun State and the Federal Capital Territory, Abuja, due to the prevalence of the disease. There have been many arguments for and against the powers of the President to so declare. In agreeing with the President's declaration, some have cited the Quarantine Act of 1926.¹ Though the latter legislations have undergone three compilations in 1929, 1954 and 2004, its efficacy in 2020 is doubtful given that the contemporary societal challenges were not envisaged by the legislators in 1926. It can therefore be safely said that an old law operated in a modern time will not be effective enough to deal with its subject matter and will also not be efficient enough in tackling what it was set to tackle.

If there is a sphere where the currency of the law is required, it must be the sphere of criminal justice administration. It is against this background that this article seeks to review some notable innovations in the law of crime within Plateau State of Nigeria. The new legislation which seeks to regulate crime or offences in Plateau State is known as the Plateau State Penal Code Law, 2017 (hereinafter called the 'PSPCL 2017'). Before the advent of the latter legislation, Plateau State operated the Penal Code Law of Northern Nigeria 1963. The said Penal Code Law of Northern Nigeria covered the nineteen (19) Northern States in Nigeria. The Penal Code Law of Northern Nigeria was enacted by the then Northern Nigeria government under the leadership of Sir Ahmadu Bello and it was patterned after the Penal Codes of Pakistan, India and Sudan with local peculiarities.² However, society has developed and so also the Northern part of Nigeria. The need for a contemporary Penal Code therefore arose and same commenced on 24th October, 2018 when the the Law was officially Gazetted.³ The new law caters for emerging crimes in society while it gives a modern dimension to old crimes which were captured in the Penal Code Law of Northern Nigeria 1963. This work therefore sets out to consider an overview of the PSPCL 2017 and in doing so, to highlight some notable innovations. A few references may be made to the Penal Code of Northern Nigeria 1963 while discussing these notable innovations. In the same vein, case law will be referred to where necessary to underscore some points made.

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¹ No. 18 of 1926, No. 7 of 1929, Law of Nigeria 131 of 1954 and then compiled as Cap. Q2 Laws of the Federation of Nigeria, 2004.

² SSRichardson, Notes on the Penal Code Law Cap. 89, Laws of Northern Nigeria 1963 (fourth edition, Ahmadu Bello University Zaria) 1-4

³By the Plateau State Notice No.7, vol.1 of 2018.

2. Brief Overview of the Plateau State Penal Code Law 2017

As earlier alluded to, the PSPCL 2017 was enacted as a Law of Plateau State and Gazetted on 24th October, 2018 upon the assent of the Bill by the Governor of Plateau State. The PSPCL 2017 as a new legislation for criminal justice administration in Plateau State has the mandate of meeting the purpose of the criminal adjudication, which are deterrence, punishment and restoration/rehabilitation. The PSPCL 2017 consists of 398 sections. It is divided into thirty-two (32) Parts. Parts I cover Citation, Commencement and Interpretation; Part II covers Punishment of Offences; Part III cover Criminal Responsibility; Part IV cover Punishments and Compensation; Part V cover Joint Acts; Part VI cover Abetment; Part VII cover Attempt to Commit Offence and Criminal Conspiracy; Part VIII cover Unlawful Society; Part IX cover Breach of Official Trust; Part X cover Offences Against Public Peace; Part XI cover Offences by or Relating to Public Servant; Part XII cover Contempt of the Lawful Authority of Public Servants; Part XIII cover False Evidence and Offences Relating to the Administration of Justice; Part XIV cover Public Nuisance; Part XV cover Lotteries and Gaming Houses; Part XVI cover Offences Relating to Animals; Part XVII cover Offences Relating to Religion; Part XVIII cover Offences Relating to Ordeal, Witchcraft and Harmful Practice of Religion; Part XIX cover Offences Affecting the Human Body; Part XX cover Terrorism; Part XXI cover Offences Against Property; Part XXII cover Forgery; Part XXIII cover Criminal Breach of Contract of Service; Part XXIV cover Offences Relating to Marriage and Incest; Part XXV cover Defamation; Part XXVI cover Criminal Intimidation, Insult, Annoyance and Drunkenness; Part XXVII cover Idle Person and Vagabond; Part XXVIII cover Thugs and Thuggery; Part XXIX cover Use of Premises for the Purpose of Committing an Offence; Part XXX cover Attachment and Forfeiture; Part XXXI cover Federal Offences and Fiat of Federal Attorney-General and Part XXXII cover Repeal and Savings.

3. Some Notable Innovations in the Plateau State Penal Code Law 2017

For the benefit of this work, we will consider fourteen (14) provisions of the PSPCL 2017 which are novel given the dynamism of society. For clarity, the focus of this work is on the following sections of the PSPCL 2017: 19, 85, 150, 151, 183, 256 & 257, 258, 259, 260, 261, 364, 365, 368 and 370.

Section 19—Correction of Child, Pupil or Servant

The above section provides:

Nothing is an offence which is done by a:

- (a) Parent or guardian for the purpose of correcting his child or ward;
- (b) School master for the purpose of correcting a child entrusted to his charge; or
- (c) Master for the purpose of correcting his servant or apprentice being a child.

Provided that such correction is of such a kind that will normally not cause any harm to the person corrected and is not excessive.

Since law is normative in nature, it is highly influenced by our norms. One of our cherished norms in Africa and Nigerian societies is physical discipline. The PSPCL 2017 notes this and so does not criminalize any act done within acceptable standards or limits of discipline. Though we now have different approaches to physical discipline borne from the influence of western societies, the law as it applies to Plateau State permits the application of physical discipline to a child, pupil or servant for correctional purposes only. Where such physical discipline surpasses the limits considered as normal or where such is excessive, it then becomes an offence of battery. The foregone section of the PSPCL 2017 accords with sections 3 and 4 of the Child Rights Act, 2005 of Plateau State which provides as follows:

In every action concerning a child, whether undertaken by an individual, public or private body, institution or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration. (Underlining for emphasis)

4(1) A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, services, agencies, organizations or bodies legally responsible for child.

(2) Every person, institution, service, agency, organization and body responsible for the care protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.

By setting the limits of physical discipline to be meted out to a child, pupil or servant, the PSPCL 2017 works in tandem with the norms of our culture which allow a degree of physical discipline on a child, pupil or servant by the person responsible for the growth and development of the child, pupil or servant at a point in time. This is novel and commended.

Section 85—Third Party Profiting from Bribery

The section under review provides viz:

Whoever knowingly profits from any bribery or benefit obtained in any of the circumstances mentioned in sections 80, 81 or 84 but does not take any part in obtaining such bribe or benefit shall be punished with imprisonment for a term of not less than one (1) year or with fine of not less than Fifty thousand Naira (50,000) or both.

This offence is predicated on the *mens rea* of knowledge, which may be proved or established via surrounding circumstances like the role of such third party in any transaction, the amount involved etc. This section expands and extends the rope of the law to cover cases involving third parties in any bribery allegation. This is important given the anti-corruption war ongoing in Nigeria. It is however noted that the punishment of the offence is not severe to deter prospective offenders. Any such third party should forfeit the bribe money or an equivalent property or liquid asset to the Government or a term of imprisonment of five years or both.

Section 150—Unlawful Use of External Loudspeaker

In dealing with this offence, the PSPCL 2017 provides as follows:

Whoever, without lawful authority uses external loudspeaker or mounts external loudspeaker in any residential area for any religious purpose or for whatsoever reason, is guilty of an offence and shall be punished with imprisonment for a term of not less than one (1) year or with fine of not less than Fifty thousand Naira or both.

In modern times, the country has been pummeled by religious bigotry which is displayed in the form of all manner of religious teachings from residential areas using external loudspeakers. The Plateau State government now regulates this practice and thus a person must obtain lawful permission to disseminate any religious content using an external loudspeaker within a residential area. This is a welcome idea with the rise of places of worship in residential areas. It is hoped that this law will be enforced without fear or favour to ensure sanity in residential areas.

Section 151—Smoking in Public Place

This section provides thus: ‘Whoever smokes in a public place is guilty of an offence and shall be punished with Imprisonment for a term or not less than Three Months or with Fine of not less than Ten Thousand Naira or both’. This is a laudable provision. It was not part of the old regime i.e. the Penal Code Law of Northern Nigeria, 1963. This provision keeps faith with contemporary challenges posed by public smoking. It endangers the lives of others and puts them at risk of contracting terminal illness like cancer of the lungs and other respiratory problems. The National Assembly of Nigeria enacted the National Tobacco Control Act, 2015⁴, which *inter alia* regulates the sale, consumption, advertisement, etc of Tobacco in Nigeria. Part IV of the National Tobacco Control Act, 2015, covers sections 9 to 11. Specifically, section 9 regulates public smoking. Section 11 provides the penalties for non-compliance; thus, a person who smokes in public if found guilty shall be sentenced to a term of not less than six months imprisonment or liable to Fine of Fifty Thousand Naira or both.

Section 183—Harmful Practice of Religion

The above section provides as follows:

Whoever promotes harmful practice of religion, insults, intimidates or inflicts injury on any person in the operation or practice of any religion shall be punished with:

- (a) Imprisonment for a term of not less than Three Years or with Fine of not less than Five Hundred Thousand Naira or both;
- (b) Death, where such practice results in the Death of any person.

With the rise of religious intolerance and harmful religious practices, the provision of the PSPCL 2017 is not only relevant, it is apt. In this era of civilization, it is therefore curious to find some bizarre religious practices among Africans especially. Some illustrations will suffice: In South Africa, two churches - Rabboni Ministries and End Times Disciples Ministries - made headlines here when the churches posted images of their leaders feeding followers snakes and rats, or instructing congregants to drink petrol and eat grass. The images caused a nationwide outcry. At the time, the man dubbed the ‘snake pastor’ by local media, Prophet PenuelMnguni, said he was ‘doing God’s work and didn’t need to explain God’s ways to people’.⁵ Also, the Nigerian media was awash with

⁴ Commenced on 26th May, 2015, Government Notice No. 73 on 10th June, 2015.

⁵PFihlani, ‘Why some African governments are clamping down on churches’, available at <<https://www.bbc.com/news/world-africa-35362567>> accessed on 6th April, 2020

discoveries of rehabilitation centres in some parts of the country especially the Northern part. Some examples are supplied:

In the space of one month, a total of 818 persons, suspected to have been sexually harassed and physically tortured were discovered as inmates in rehabilitation centres, which claimed to be Islamic, in the northwestern part of the country. First, Kaduna Police rescued three hundred persons chained together in Rigasa, Igabi council of the state. The 300 persons, including minors and a PhD holder, were rescued following a raid on the home allegedly used as an Islamic Centre. Subsequently, news of another illegal rehabilitation centre in Katsina state, where 360 persons were physically abused filtered through. According to reports, more than 200 out of the 360 persons detained in the facility in Daura, Katsina State, escaped after their revolt against homosexual abuse and other forms of inhuman treatment meted out by their minders. A week after the raid on the Katsina home, Kaduna state governor, Malam Nasir El-Rufai led a raid on another illegal rehabilitation centre called Malam Nigga Rehabilitation Centre in Rigasa community, Igabi local government area of Kaduna State, the same area where 300 inmates were earlier freed in another centre. During the raid, 147 inmates including 22 females and five children were evacuated. The raid on two other illegal rehabilitation centres in Zaria Council, where security operatives rescued another 11 persons, brought the number of persons discovered in illegal facilities to 818.⁶

The new law is an upgrade of the Penal Code Law of Northern Nigeria 1963, which only criminalizes unlawful juju.⁷ The new law extends the scope to cover any harmful religious practice. So if such harmful, unreasonable, health-threatening and ignorant religious practices take place in Plateau State, the so-called religious leaders who administered such practices would be properly handled by the law.

Sections 256 and 257—Rape

These sections provide that:

- (1) A man is said to commit Rape who, save in the circumstances referred to in sub-section (2) of this section has sexual intercourse with a woman in any of the following circumstances:
 - (a) against her will;
 - (b) without her consent;
 - (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;
 - (d) with her consent, when the man knows that he is not her husband and that the consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; or
 - (e) with or without her consent, when she is of unsound mind and below 18 years old.
 - (2) Sexual intercourse by a man with his own wife is not rape.
 - (3) Penetration is not limited only to penetrating by penile shaft, but includes penetration by any object.
- 257(1) Whoever commits rape, shall be punished with imprisonment for life or a term not less than twenty-one (21) years.
- (2) When a Court is trying the offence of Rape, corroboration shall be immaterial.

When compared with the Penal Code Law of Northern Nigeria, 1963, there are noticeable differences in the offence of rape. First, section 282 of the Penal Code Law of Northern Nigeria does not have a sub-section (3) like the PSPCL 2017 does. The said sub-section (3) provides that penetration is not limited to penile shaft only i.e. penetration via the penis, but by any object. This is in keeping with modern trends the offence of rape has attained. Secondly, section 282(1)(e) of the Penal Code Law of Northern Nigeria, 1963 provides inter alia that rape is committed by a man who has sexual intercourse with a girl of unsound mind or who is less than 14 years. However, section 256(1)(e) of the PSPCL 2017 increases the age to 18 years. The latter may be unconnected with the fact that the marriageable age under the Child Rights Law 2005 of Plateau State is put at 18 years.⁸ Thirdly, section 283 of the Penal Code Law of Northern Nigeria, 1963 prescribes imprisonment for life or any less term and the person may also be liable to fine. However, the PSPCL 2017 stipulates firmer punishment by imposing imprisonment for life or for a term not less than twenty-one (21) years. The latter may be due to the prevalence of the offence in Nigeria. Fourthly, the PSPCL 2017 solves a major problem associated with proving rape during

⁶A Alabi, 'Rehab Centres have no connection with Islam, Northern leaders' legacies', available at <<https://guardian.ng/sunday-magazine/rehab-centres-have-no-connection-with-islam-northern-leaders-legacies/>> accessed on 6th April, 2020

⁷ See section 215 of the Penal Code Law of Northern Nigeria, 1963, which provides as follows: '*The Governor in Council may by order declare the worship or invocation of any juju to be unlawful.*' Note that the section only gives the Governor discretionary powers to declare any juju as unlawful.

⁸ See Section 23 of the Child Rights Law 2005 of Plateau State.

adjudication—corroboration of the evidence of the victim. In most cases, the alleged offence of rape occurred outside the glare of witnesses; it is thus a word of the victim against the alleged offender. Therefore, the Courts have resorted to medical evidence in the form of medical report or real evidence like the clothes or article of the victim to corroborate the evidence of the victim in order to ground a conviction for rape. We refer to the case of *NdewenuPosu & Anor. v The State*⁹, where the Supreme Court held as follows:

- Corroboration in a rape case means evidence which confirms the evidence of the prosecutrix...Where rape is denied by the accused, the evidence of corroboration that the court must look for is, for instance—
- (a) Medical evidence showing injury to the private part or other parts of the body of the prosecutrix which may have been occasioned in a struggle; or
 - (b) Semen stains on her clothes or the clothes of the accused or on the place where the offence is alleged to have been committed....As a rule of prudence and the settled course of practice, the court should seek for corroboration in all cases of rape. This is so because it has been found to be unsafe to convict for the offence of rape on the uncorroborated evidence testimony of the prosecutrix.

It is the view of the present authors that given the provision of the offence of rape under the PSPCL 2017, establishing the offence of rape in Plateau State by the prosecution is now made easier and without the hurdles of the past. This is of utmost importance considering the fact that the offence of rape has now risen astronomically in recent years.

Section of 258—Unnatural Offences

For this offence, the Law provides as follows: ‘Whoever has sexual intercourse against the order of nature with any man, woman or animal such as sodomy, lesbianism or Bestiality, shall be punished with imprisonment for a term of not less than Fourteen Years and shall also be liable to fine of not less than One Hundred Thousand Naira (100,000)’. This provision is deeply influenced by the Natural Law School; whose proponents like St. Augustine of Hippo and Thomas Aquinas believe that Law must be in line with God’s law. In the same School of Law, the naturalists or moralist philosophers also hold that nothing should go against the order of nature. Thus, sodomy (homosexuality), lesbianism (a woman having sexual intimacy with another woman) or bestiality (sexual intercourse with an animal) are considered against the order of nature. In nature, sexual intercourse is between a man and a woman. In Plateau State, the corpus of criminal law prohibits unnatural sexual relations.

Section 259—Acts of Gross Indecency

The section provides viz:

Whoever commits an act of gross Indecency upon the person of another without his consent or by the use of force or threat compels a person to join with him in the commission of such act, shall be punished with imprisonment for a term not less than Fourteen (14) Years and shall be liable to Fine of not less than One Hundred Thousand Naira (100,000) or both.

Provided that a consent given by a child to such an act when done by any person, his teacher, Guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section.

This section starts with the word: ‘Whoever...’ This suggests that any person may commit this offence; whether male or female. Additionally, the word ‘him’ used in the provision also covers the female gender as provided for in Part I of the PSPCL 2017 which covers inter alia the interpretation aspect. Thus, it is provided that: ‘he’ and its derivatives are used for any person whether male or female. It follows therefore that a woman can commit this offence of Acts of Gross Indecency on a man. The section provides that the offence is only an offence where consent is not given willingly. Invariably, where consent is given, it is no longer an offence. Of note is the proviso or qualification as regards consent of a person against whom this offence is committed. The Law exempts the consent given by a child. This is logical given the fact that a child being a minor does not possess the mental and emotional capacity to so donate such consent given the stage of his/her life. Under the PSPCL 2017, a child is defined as a person, ‘under the age of Eighteen Years’.¹⁰ The same age is also provided for by the Child’s Rights Act 2005 of Plateau State as, ‘a person under the age of eighteen years.’¹¹ In effect, it is not a defence for a Defendant charged with Acts of Gross Indecency to claim that a child gave consent to the act. This defence will

⁹(2011) NWLR (PT. 1234) 393, 419, para. A, 417, paras.E-F & F-H and 419, paras. B-G

¹⁰ Part I of the PSPCL 2017; which is the Interpretation segment of the Law.

¹¹ Part I of the Child’s Rights Law, 2005 of Plateau State; which is the interpretation segment of the Law.

fail by the proviso to the section under review. This is good protection of minors by the Law given the rise in sexual violence against them.

Section 260—Unlawful Detention with intent to have unlawful Sexual Intercourse

This section provides as follows:

- (1) Any person who detains another person against such person's will or on any premises for the purpose of unlawful sexual intercourse with the person detained, is guilty of an offence and is liable to imprisonment for a term of not less than three (3) Years or with Fine of not less than Fifty Thousand Naira (50,000) or both.
- (2) A person is deemed to detain another person in or on any premises for the purpose of unlawful sexual intercourse if, with intent to compel or induce the person to remain in or on the premises, the person puts the other person in a state or condition which makes it impracticable for the person to leave.
- (3) It is lawful for any person to take any wearing apparel as may be necessary to enable the person leave a brothel or any premises upon which the person had been unlawfully detained.

The need for this provision of the Law arose from frequent cases of unlawful detention with threat or inducement in or on premises without consent. In such cases, most women are affected with intent to sexually molest them by men. This provision therefore specially caters for such cases. Though no age is put, it means that those who are minors and those who are of majority age can be so unlawfully detained with the intent to commit sexual intercourse. Thus, where the act of sexual intercourse does not occur, a man may still be convicted if the ingredients/elements of threat or inducement, unlawful detention and intent to have sexual intercourse are all established. This is very important considering the fact that it is sometimes difficult to establish the offence of rape and since there is no such offence as attempted rape, this will cover such cases. The provision of the Law also permits a person so detained in a brothel or any premises to secure any apparel as may be necessary to leave such place of detention. This is because in most cases of unlawful detention with intent to have sexual intercourse, the woman's clothes are taken by the man and she is mostly left without them. This therefore empowers the victim to get any clothing available in order to leave the place of confinement without being guilty of theft or stealing such clothes. This is a case of law taking note of societal dynamisms.

Section 261—Sexual Harassment

The said section 261 provides as follows:

- (1) Sexual harassment is unwelcome sexual advances, requests for sexual favours and other visual, verbal or physical conduct of sexual nature which when submitted to or rejected:
 - (a) Implicitly or explicitly affects a person's employment or educational opportunity or unreasonably interferes with the person's work or educational performance;
 - (b) Implicitly or explicitly suggests that submission to or rejection of the conduct will be a factor in academic or employment decisions; or
 - (c) Creates an intimidation, hostile or offensive learning or working environment.
- (2) Any person who sexually harasses another is guilty of an offence and shall be liable to Imprisonment for a term of not less than Three Years or with Fine of not less than One Hundred Thousand Naira or both.

This is another novel provision of the PSPCL 2017. It is no longer news that sexual harassment is now a feature of today's modern world due to limited opportunities. Thus, people with power in their side use threat, intimidation and subtle means to get unnecessary advantage of those below them or who are seeking for some opportunities. This section therefore makes it an offence to use undue influence or even duress on another in order to actualize any sexual advances. Again, it is worthy of note that any of the gender may be guilty of the offence of sexual harassment; though women are more at the receiving end of this offence. We note with due respect that, the section limits instances of sexual harassment to employment and education. However, reality shows otherwise. While it is a fact that in employment and education, sexual harassment issues are glaring, there are still other instances like sports, commerce, politics, entertainment/creative industry etc. That having been said, the provision of the law is still commendable.

Though we are reviewing the PSPCL 2017, a civil suit where the issue of sexual harassment was properly evaluated will suffice. The National Industrial Court of Nigeria (NICN) had reason to pronounce on such issues

in the suit of *EjjekeMaduka v Microsoft Nigeria Ltd. & 3 Ors.*¹² In that case, the Claimant alleged that one of the Respondent management staff had sexually harassed her at the workplace and that when she refused to give in to his advances, the said management staff influenced the termination of her employment without justification. She commenced this suit and sought for damages including exemplary and aggravated damages against the Respondent. In entering judgment in her favour the Court observed thus:

Section 42 of the 1999 Constitution as amended and Articles 15 and 19 of the African Charter on Human and Peoples Rights (Ratification and Enforcement Act) seeks to protect a citizen against the application of any law in force in Nigeria that is discriminatory on account of sex, race, religion, ethnic group, place of origin, political opinion or any opinion national, and social origin, fortune, birth or other status.

Section 42 provides thus:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person—

- (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject to;

Articles 15 and 19 of the African Charter provides:

(15) Every person shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

(19) All people shall be equal. They shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of some people by another.¹³

The NICN resorted to the provisions of section 42 of the 1999 Constitution and Articles 15 and 19 of the African Charter on Human and Peoples Rights to further establish and/or emphasize the inordinacy of the acts of the respondents against the applicant. That means, their acts were offensive to both statutes and therefore held reprehensible by the Court.

On when exemplary damages can be awarded, the NICN held as follows;

Exemplary damages are awarded in very restricted and enumerated situations as a punitive measure where malice or gross disregard for the law is proved. The applicant has asked for an award of general damages and exemplary and aggravated damages. By the authority of section 19(d) of the National Industrial Court Act, 2006 the court however reasoned that an award of general damages which she is entitled to will meet the justice of this case. The applicant's fundamental rights have been violated. Her pride, dignity and sense of self-worth have been injured by the actions of the respondents.¹⁴

It is to be noted that NICN granted the applicant the sum of N13, 225, 000.00 against the 1st, 2nd and 3rd respondents¹⁵ (i.e. a cumulative sum of N39, 675, 000.00) for acts amounting to violations of her rights as enshrined under sections 34 and 42 of the 1999 Constitution as amended and Articles 2, 5, 14, 15 and 19 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, the Court refused the grant of exemplary and aggravated damages. It is our submission that the Court should have awarded the exemplary and aggravated damages sought by the applicant. This is because the Court had laid the condition precedent for the grant of such a head of damages when it held inter alia that, 'Exemplary damages are awarded in very restricted and enumerated situations as a punitive measure where malice or gross disregard for the law is proved.' (Underlining supplied for emphasis). In the instant case, the acts of the respondents was gross disregard for law, that is, the provisions of CEDAW General Recommendation No. 19 of 1992 and ILO Discrimination (Employment and Occupation) Convention 1958 No. 111, which Nigeria duly ratified and which the Court applied in the instant case.

We cannot end discussing this section without referring to the aspect of sexual harassment which is educational in nature. Regardless of what is argued in the court, sexual harassment is real in educational institutions especially the tertiary institutions. For emphasis, this occurs more on female students who are the target of unscrupulous lecturers. If this happened in Plateau State, such person would be tried in accordance with the PSPCL 2017. If the NICN could ensure that punitive damages are awarded in the face of such sexual harassment, this new provision in the PSPCL 2017 is indeed novel, commendable and meets international best practices. Tendencies

¹²(2014) 41 N.L.L.R (part 125) 67, judgment delivered on 19th December, 2013 per Hon. Justice O.A. Obaseki-Osaghae in Suit No. NICN/LA/492/2012.

¹³ See pp.147-148, paras. D-E.

¹⁴ See pp. 151-152, paras. D-A.

¹⁵ See p.153, paras. B-D.

and inclinations of bias and sentiments against any gender should be punished where proven to exist as a form of deterrence to prospective offenders. Making it part of the criminal laws of Plateau State is a good development.

Section 364—Deceitfully Inducing Belief of Lawful Marriage

This section states that:

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with Imprisonment for a term of not less than Ten Years or with Fine of not less than One Hundred Thousand Naira (100,000) or both.

This offence can only be committed by a man. Since the word ‘man’ is expressly used in this section and Part I of the PSPCL 2017 defines ‘man’ to denote ‘a male human being’, the Latin Maxim *expressio unit est exclusion alterius* applies in the application of this section. The latter Maxim states that when one word or phrase is expressly mentioned, no other word or phrase may be applied by implication. This found judicial pronouncement in the case of *Peoples Democratic Party (PDP) v Independent National Electoral Commission (INEC) & 25 Ors.*,¹⁶ the Supreme Court held as follows:

The express mention of something is to the exclusion of all others. The principle derives its life from the Latin maxim *expressio unit est exclusion alterius*, meaning, the express mention of one excludes any other which otherwise would have applied by implication with regards to the same issue.

This offence is important given the fact that urbanization has made it extremely difficult to ascertain the marital status of city dwellers. In most cases, through threats or inducement, a man makes a woman to cohabit with him in the belief that they are lawfully married and they engage in sexual intercourse owing to that belief. Since it is founded on deceit, the Law makes it an offence. This is to ensure that women are not taken undue advantage of or in any guise.

Section 356—Bigamy

This section holds as follows:

- (1) Whoever having a husband or wife living, marries in any case in which such marriage is void by reason of it’s taking place during the life of such husband or wife, shall be punished with Imprisonment for a term of not less than Seven Years and shall also be liable to Fine of not less than One Hundred Thousand Naira:
Provided that the former marriage was conducted under the Marriage Act or by a registered and licensed Church.
- (2) This section shall not extend to any person:
 - (a) whose marriage with such husband or wife has been legally dissolved; or
 - (b) who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the span of Seven Years and shall not have been heard of by such person as being alive within that time:
Provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person whom the subsequent marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

This provision of the Law creates the offence of Bigamy but with some important exceptions. By this Law, Bigamy i.e. contracting two marriages during one’s lifetime is an offence in Plateau State. However, to constitute the offence of Bigamy, it must be shown that the former (first) marriage was conducted under the Marriage Act or by a registered and licensed Church. Therefore, if it is either Islamic marriage or customary marriage simpliciter, Bigamy cannot be sustained. In most parts of Plateau State, marriages are conducted in the Church. It is now incumbent on the Defendant charged for Bigamy to show that his/her marriage though conducted in a Church, but same was not registered and licensed to so conduct the first marriage. Also, other exceptions include where any of the parties can show that they are legally divorced i.e. there has been a valid and subsisting dissolution of marriage order by a court of competent jurisdiction depending on the type of marriage contracted. Furthermore, if a person can establish that his/her wife or husband of the first marriage has been absent from him/her for the span of seven years and the fact of the person being alive cannot be ascertained, then any subsequent marriage contracted is valid and does not constitute Bigamy. In proving the latter, the man/woman is to inform the prospective subsequent partner of the fact of the spouse of the first marriage has not been heard from

¹⁶(2014) 17 NWLR (PT. 1437) 525 at 559, paras. D-F

for seven years and his/her state of being alive cannot be ascertained. The PSPCL 2017 has now widened the dimension as to what constitutes the offence of Bigamy. It is no longer the narrow view of contracting two marriages during one's lifetime.

Section 368—Adultery

This offence is captured thus:

Whoever, has sexual intercourse with a person who is not and whom the person knows or has reason to believe is not the person's spouse, such sexual intercourse not amounting to the offence of Rape, is guilty of the offence of Adultery and shall be punished with Imprisonment for a term of not less than Two (2) Years or with Fine of not less than Fifty Thousand Naira (50,000) or both:

Provided that this provision shall not apply to persons married under Native Law and Custom.

In the Penal Code Law of Northern Nigeria, 1963, sections 387 and 388 provided for the offences of Adultery by Man and Adultery by Woman respectively. It provides *inter alia* that where a man or woman is subject to any native law or custom in which extra-marital intercourse is recognized as a criminal offence, and such man or woman has such sexual intercourse which does not amount to rape, the offence of Adultery is committed. However, the PSPCL 2017 makes Adultery an offence only where the marriage was contracted under the Marriage Act or Islamic law. Those who contracted their marriage customary or native law cannot be charged with Adultery. It is a radical shift from the old regime. It now means that Adultery is not an offence under customary or native law in Plateau State. What is debatable however is if the marriage was contracted in a registered and licensed Church. Is such marriage customary or statutory? In our opinion, such marriage is customary and so a charge of Adultery cannot be sustained thereto. Is this section in tandem with the Christian belief against adultery? Will this exception not be used by persons suspected to have committed adultery as an escape route?

Section 370—Incest

This section provides thus:

Whoever being a man has intercourse with a woman who is and whom he knows or has reason to believe to be his daughter, granddaughter, female ascendants or descendants, sister or the daughter of his brother or sister or his paternal or maternal aunt and whoever being a woman voluntarily permits a man who is and whom she knows or has reason to believe, to be her son, grandson, father, or any other of her male ascendants or descendants, brother or the son of her brother or sister or her paternal or maternal uncle to have sexual intercourse with her, shall be punished with Imprisonment for a term of not less than Fourteen (14) Years and shall liable to Fine of not less than One Hundred Thousand Naira (100,000).

Under the old regime i.e. the Penal Code Law of Northern Nigeria, 1963, for a man to be guilty of the offence of Incest, it must be established that the sexual intercourse involved a blood relation like his 'daughter, his granddaughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his brother or sister or his paternal or maternal aunt...' Underlining supplied. Under the PSPCL 2017, the word 'mother' was omitted from a man's list of blood relations. Could it be a harmless omission? Certainly, it cannot be inferred that the PSPCL 2017 intends to permit sexual relations between a man and his mother! Or is the consideration of some customary or native law the case here, where a man may marry his 'mother' i.e. his father's concubine or second wife? Since the Law operates in Plateau State, do we have any such culture among the people which permit a man to have sexual relations with his 'mother'?

4. Conclusion and Recommendations

We set out to consider some notable provisions of the PSPCL 2017. In all fourteen (14) of such were considered due to their novel provisions viz-a-viz the provisions of the old regime which governed criminal justice in Plateau State i.e. the Penal Code Law of Northern Nigeria, 1963. In considering these 14 sections, it is noted that while there are far-reaching changes in some like the offences of Correction of Child, Pupil or Servant, Rape, Unnatural Offences, Bigamy, Unlawful use of external Loudspeaker in residential areas, Third Party Profiting from Bribe, Harmful Practice of Religion, Sexual Harassment, Smoking in Public Place, etc., some provisions are controversial like the offence of Incest, Bigamy and Adultery. Being a first overhaul of the Penal Laws of the State, it is the right step in the right direction in establishing a modern criminal justice system for the State. In the course of the discussion, it is observed that the terms of Imprisonment and Fines payable were increased from what obtained in the Penal Code Law of Northern Nigeria, 1963. This is important given the dynamism of society. It is our opinion that this Law can be improved upon in future to cater for more contemporary offences which may

arise. It is also hoped that law enforcement agencies operating in Plateau State would be abreast with the provisions of this Law in order to properly administer criminal justice in the State. Also, prosecutors, legal advisers and legal practitioners should take advantage of this new Law in the administration of criminal justice in the State.

In the course of the work some issues were raised and we recommend the following: For the offence of Sexual Harassment (section 261, PSPCL 2017), more instances beyond employment and educational spheres should be included in scenarios likely to attract Sexual Harassment. The current position is narrow and not all encompassing. For the offence of Incest (section 370, PSPCL 2017), the 'mother' should be included in the list of person's a man should not have sexual relations with. Even if the justification of native law and custom accounts for the reason why 'mother' was omitted, same cannot be in conformity to equity, natural justice and good conscience. In other words, it is repugnant to natural justice, equity and good conscience. Additionally, it offends public policy. The term of imprisonment of not less than one year for the offence of Third Party Profiting from Bribe (section 85, PSPCL 2017) is not sufficient given the nature of the said offence and also in the anti-corruption war in Nigeria. It should be increased to at least seven years and also the defaulter should forfeit the amount collected in bribe(s), its equivalent in property. This will serve as deterrence for prospective offenders. For the offence of Adultery (section 368, PSPCL 2017), damages should be made payable to the party who suffered the injury from the adulterer. This would ensure sufficient compensation to the injured spouse. It will also achieve the desired effect of stabilizing the family and discouraging unlawful sexual intercourse by the married as sought by the Law. For the offence of Smoking in Public Place (section 151, PSPCL 2017), the term of imprisonment fixed at not less than three months and fine of not less than ten thousand naira should be increased to a term of not less than six months or imprisonment or community service or fine of thirty thousand naira or both. This will be close to the section 9 of the National Tobacco Control Act, 2015. If the provision of section 151 of the PSPCL 2017 is not punitive enough, prosecutors will prefer to charge under the National Tobacco Control Act, 2015, which as a federal legislation, covers the field. Making the sentence stringent will discourage this anti-social behavior with its many health challenges to both active and passive smokers.