

Comparative Analysis of Nigerian and California Sexual Offender Registration System

By

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Abstract

The high rate of sexual violence in Nigeria sparked uneasiness and crossness in the country prompting the enactment of Violence against Persons (Prohibition) Act (VAPP Act), 2015. The VAP Act 2015 stipulates stiff penalties and requires the registration of sexual offenders ostensibly to name and shame offenders of these filthy crimes which often leave their victims traumatised. This article, impelled by the yearnings to interrogate the very essence of sexual offender registration, employed doctrinal research methodology in comparatively analysing sexual offender registration system in Nigeria and California. The finding of this article reveals the shortcomings and fluidity of the Nigerian sexual offender registration system and proffered suggestions for law review including elevating Nigeria sexual offender registration system to be a protective measure and entrench public safety in the treatment of sex offenders.

Key words: Sex Offender Registration, Sexual Offences, Residency Restrictions, Rape, Sexual Assault.

1 INTRODUCTION

Sex crimes are a universal plague hoisting grave anxiety and provoking social unrest world over. The issue of sexual offence is an aspect of law that has thus occasioned serious agitation in the world today.¹ The prevalence of sexual offence is such that there appears to be no day without a report of case of sexual crime at least in the media.² Sexual crimes are not the exclusive preserve of sexual perverts; there are also individuals who add up greatly to the number of sex crimes by committing isolated sexual offences, for instance those under the influence of substance abuse or struck by catastrophic emotional breakdown.³ This menace has continued to ravage Nigeria despite the enactment of several laws proscribing sexual offences with stiff sanctions including the Penal Code, the Criminal Code, the Same Sex Marriage (Prohibition) Act 2013, the Trafficking in Person (Prohibition) Enforcement and Administration Act 2015, the Child's Rights Act 2003 and

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¹ M Guttmacher and H Weihofen, 'Sex Offences' (1952-1953) (43) 2 *North-western University School of Law Scholarly Commons Journal of Criminal Law and Criminology* 153.

² AM Tijah and MU Raphael, 'Sentencing Rape Offenders in Nigeria: An Appraisal,' *Nnamdi* (2021) 11 *Azikiwe University Journal of Public and Private Law* 126, 127.

³ Guttmacher and Weihofen (n1)155.

recently the Violence against Persons (Prohibition) Act (VAPP Act) 2015. Like many other countries, the development of sex offender registration in the United States and United Kingdom was not intended as a punishment, it was rather a measure by the Police to keep accurate and up-to-date records for the purpose of tracking sexual offenders to prevent re-offending, principally for public protection.⁴ In Nigeria however, the VAP Act simply introduced the registration of sexual offenders without detailed provisions as to make the purpose of the system easily discernible. This paper, in order to properly interrogate the very essence of sexual offender registration in Nigeria, is compartmentalised into five (5) major parts. Part one is the introduction, part two lays the conceptual foundation of key terms employed. The typologies of sexual offences are examined in part three. A comparative analysis of sexual offender registration is undertaken in part four, while the last part summarises and concludes the article with recommendations.

2 CONCEPTUAL FOUNDATIONS

The concepts ‘sexual offence’ and ‘sexual offender registration’ are not defined under the Violence against Persons (Prohibition) Act or other penal legislations in Nigeria. The Black’s Law Dictionary however defines ‘sexual offence’ as an offence involving unlawful sexual conduct, such as prostitution, indecent exposure, incest, pederasty and bestiality.⁵ Sexual offence or sex offence is a broad concept employed to cover several offences relating to sexual gratification or attraction. And a person convicted of a sexual offence is referred to as a sexual offender or sex offender.

The concept ‘sexual offender register’ is employed to refer to a database kept manually or electronically, that contains information about convicted sexual offenders for the purpose of monitoring and tracking convicts of sex-related crimes. The register usually contains data which properly identify the offender together with the offence committed. Sex offenders are required to register their personal information such as the offender's name, address, physical appearance, criminal history and so on.⁶ The term ‘Sexual offender registration’ is generally employed to imply a system of collecting and publicly displaying data of sexual offenders, as well as monitoring and tracking their activities immediately after conviction or the service of a term from a correctional facility, to notify and safeguard the society from sexual predators.⁷

⁴ J O’Sullivan, J Hoggett, H Kemshall and K McCartan, ‘Understandings, Implications and Alternative Approaches to the Use of the Sex Offenders Register in the UK’ (2016) 13 *Irish Probation Journal* 83, 86.

⁵ BA Garner and others (ed), *Black’s Law Dictionary* (9th edn, West Publishing Co. 1999) 1110 and 1379.

⁶ Stephanie Rose, *The Impact of Sex Offender Registration Laws on Offenders’ Reintegration into Society* (PhD thesis College of Social and Behavioral Sciences Walden University 2020) 1.

⁷ AM Tijah and IM Sheikh, ‘Interrogating the Constitutionality of Sex Offender Registration in Nigeria’ (2023) (6) 1 *UNIPORT Journal of Public Law* 216, 219.

3 TYPOLOGIES OF SEXUAL OFFENCES IN NIGERIA

There are several types of sexual offences in Nigeria proscribed in a number of legislations including the Penal Code, the Criminal Code, Sharia Penal Code, the Same Sex Marriage (Prohibition) Act 2013, the Trafficking in Person (Prohibition) Enforcement and Administration Act 2015, the Child's Rights Act 2003 and the Violence against Persons (Prohibition) Act 2015. The numerous sexual offences provided under these laws may be classified under rape; sexual offences against a child; sexual assault; offences relating to prostitution, and sexual offences against morality.

3.1 Rape

Rape is the mother of all sexual offences. It is considered a serious derogation from the right to human dignity and the cruellest violation of a victim's human rights.⁸ The offence of rape is simply defined as unlawful carnal knowledge, or non-consensual sex involving penetration without consent.⁹ In every nation around the world, rape is always criminalised to ensure that sexual relationship between a man and woman is cordial and in compliance with the moral standard and decency cherished by civilised society.¹⁰ In Nigeria, rape is considered an offence next to capital offence¹¹ proscribed and punished under the Penal Code,¹² Criminal Code,¹³ Sharia Penal Code Law,¹⁴ the Child's Right Act¹⁵ and the VAPP Act,¹⁶

3.2 Sexual Offences against Children

A child is a person under the age of eighteen (18) years.¹⁷ By reason of their innocence and young age, children are vulnerable to sexual exploitation. They are also easy prey to sex crime because of the impunity surrounding the circumstances for the commission of sex offences which is usually in secret and the child can easily be silenced, intimidated or cajoled for the assailant to escape prosecution. Recognising the naivety of a child, the law clearly stipulates that a child is incapable of consenting to sexual intercourse. Even consensual sex with a child is an offence.¹⁸ For instance, section 31 of the Child's Right Act in unequivocal terms states that sexual intercourse with a child is an offence of rape punishable by imprisonment for life and the offence is committed

⁸ *Ibrahim v State* (2015) All FWLR (pt. 770) 1401 at 1419, para A (CA).

⁹ AM Tijah and MU Raphael, (note 2) 126.

¹⁰ A Aligba and A Tijah and MU Raphael, 'Evolving Trend and Spike in Incidents of Rape in Nigeria: An Analysis of Penal Legislation' (2021) (5) 2 *African Journal of Law and Human Rights* 163, 165.

¹¹ *Popoola v State* (2014) All FWLR (pt. 715) 200 at 218-219, paras. G-B (SC).

¹² Penal Code Law (PC) Cap.89 Laws of Northern Nigeria 1963, s282-283; see also Penal Code Law of Benue State 2004 s.283.

¹³ Criminal Code Act (CC), Cap. C38 LFN 2010, s357.

¹⁴ Sharia Penal Code Law, Zamfara State, 2000, s128.

¹⁵ Child's Right Act, 2003 s31.

¹⁶ VAP Act 2015, s1; see also the VAP Law of Benue State 2019, s3.

¹⁷ Child's Rights Act 2003, s277.

¹⁸ PC s282(1)(e); Child's Rights Act, s31; and CC s218.

even where the offender believed the child is eighteen years or above; or the sexual intercourse was with the consent of the child.¹⁹ Sexual offences against children include child marriage,²⁰ defilement,²¹ child trafficking,²² and child pornography.²³

3.3 Sexual Assaults

According to the VAP Act, ‘sexual assault’ means the intentional and unlawful touching, striking or causing of bodily harm to any individual in a sexual manner without his or her consent.²⁴ ‘Sexual assault’ may also be defined as the intentional striking, touching, gesture attempts or threat to apply force of any kind to the person of another without consent, for the purpose of sexual gratification or attraction. Offences considered as amounting to sexual assaults include, indecent assault,²⁵ assault with intent to commit unnatural offence,²⁶ female circumcision or genital mutilation,²⁷ and sexual harassment.²⁸

3.4 Offences Relating to Prostitution

Prostitution is considered as the practice of selling sex.²⁹ It is the act or practice of engaging in sexual activity for money or its equivalent, it is commercialised sex.³⁰ Engaging in prostitution is not in itself an offence in Nigeria, however certain activities associated with or publicly promoting prostitution are prohibited such as trading in prostitution,³¹ causing or encouraging the seduction or prostitution of a girl under sixteen,³² keeping a brothel,³³ allowing persons under sixteen to be in brothels,³⁴ and indecent exposure.³⁵

3.5 Offences against Morality

Offences against morality are chiefly consensual sexual activities proscribed by law and which are considered as endangering the society as a whole or corrupting public morals. They are mostly victimless crimes where the consenting perpetrators are attracted to bizarre sexual

¹⁹ Child’s Rights Act 2003, s31.

²⁰ *Ibid* 2003, s23.

²¹ CC s218.

²² Trafficking in Person (Prohibition) Enforcement and Administration Act 2015, s16.

²³ *Ibid*, s17.

²⁴ VAP Act, s46; Benue State VAP Act, s2.

²⁵ PC, s268; CC, s353.

²⁶ CC, s352.

²⁷ VAP Act, 2015 s6.

²⁸ VAP Act, s46; Benue State VAP Act, s2.

²⁹ EE Aloba and R Ndifon, ‘Addressing Prostitution Concerns in Nigeria: Issue, Problems and Prospects’ (2014) (10) 14 *European Scientific Journal* 36.

³⁰ BA Garner and Others (ed), *Black’s Law Dictionary* (West Publishing Co 1999) 1238.

³¹ CC, s225A.

³² *Ibid* s222A.

³³ *Ibid*, s225B.

³⁴ *Ibid*, s222B.

³⁵ VAP Act, s46; Benue State VAP Act, ss2 and 28.

orientation against moral standard and sense of decency as cherished by a civilised society. Part 21 of the Criminal Code which houses sections 214 – 233A makes provisions strictly on offences against morality. Some of the offences against morality provided therein include unnatural offences (sodomy, homosexuality or lesbianism and bestiality);³⁶ indecent treatment of boys;³⁷ indecent practices between males;³⁸ indecent treatment of girls;³⁹ defilement of girls;⁴⁰ and trafficking in person.⁴¹ Similar provisions are contained under Penal Code,⁴² the Same Sex Marriage (Prohibition) Act 2013, the Trafficking in Person (Prohibition) Enforcement and Administration Act 2015, and the Violence Against Persons (Prohibition) Act (VAP Act) 2015 prohibiting such offences as incest,⁴³ adultery,⁴⁴ bigamy,⁴⁵ and same sex marriage;⁴⁶ and trafficking in person.⁴⁷

4 SEXUAL OFFENDER REGISTRATION IN CALIFORNIA

California in 1947 became the first State in the United States of America to have a sexual offender registration system. Provisions on sexual offender registration were first included under section 290 of the California Penal Code in July 1947. Today, the extant and main legal framework for sexual offender registration in the country, though still part of the California Penal Code 2020, is referred to as the California Sex Offender Registration Act and became operational on 1st January, 2021.⁴⁸ Section 290(a) of the California Penal Code 2020 provides that, sections 290 to 290.024 of the same Penal Code which houses the provisions on sex offender registration, ‘shall be known, and may be cited, as the Sex Offender Registration Act.’ In the United Kingdom, the Sex Offenders Act 1997 introduced the sex offender register in England and Wales. The laws on sex offender registration system in some States of the United States (particularly California) and United Kingdom contain elaborate provision on several subject matters including provisions on the offences requiring registration; registrable information; registration requirements and sanctions for failure to register; restrictions against registered sexual offenders; duration of registration; and the regulatory institutions responsible for sexual offender registration.

³⁶ CC, s214.

³⁷ *Ibid*, s216.

³⁸ *Ibid*, s217.

³⁹ *Ibid*, s222.

⁴⁰ *Ibid*, s218 and 221.

⁴¹ *Ibid*, s223, 224 and 225.

⁴² PC, s284 and 285.

⁴³ *Ibid*, s390.

⁴⁴ *Ibid*, s387 and 388.

⁴⁵ CC, s370.

⁴⁶ Same Sex Marriage Act, s1-5.

⁴⁷ Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

⁴⁸ The law is part of California Penal Code 2020 under section 290 to 290.024. Section 290(a) of the California Penal Code 2020 provides that the provisions of Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act.

4.1.1 Offences Requiring Registration

The California Sex Offender Registration Act does not define the concept ‘sexual offence’ or ‘sex offence’ but clearly outlined under section 290(c) the registrable or qualifying sets of sex crimes that, when a defendant is convicted of one or more, are required to register their information on the sexual offender registration system.

Prior to 1st January, 2021, the commencement date of the Law, there was no such classification of sex crimes or sexual offenders for the purpose of determining the duration for the registration of sexual offenders since offenders of all qualifying sex crime were registered for life. With the enactment of the California Sex Offender Registration Act 2020, the law categorised sexual offences according to the severity of the crime to create a three-tiered sex offender registration system comprising of tier one, tier two and tier three sexual offenders for adult offenders;⁴⁹ while juvenile offenders are only subject to registration for tier one and two.⁵⁰ Tier one is a classification for offenders convicted of the least sexual offences. By virtue of section 290(d)(1)(A) of the California Sex Offender Registration Act, a convict for any offence on tier one is subject to registration as a sex offender for a minimum period of 10 years. If a finding of guilt is made by a juvenile court, the offender on tier one is subject to a minimum registration period of five years.⁵¹ The offences under this tier consist of sexual battery as a misdemeanour,⁵² sexual battery as a felony,⁵³ enticing a child into a house of prostitution,⁵⁴ inducing sex by fraud,⁵⁵ sodomy as a misdemeanour (with or without a minor),⁵⁶ oral copulation as a misdemeanour (with or without a minor),⁵⁷ oral copulation in some felony cases where there is no force (with or without a minor),⁵⁸ arranging to meet with a minor for lewd purposes as a misdemeanour,⁵⁹ acts of penetration with a foreign object,⁶⁰ child pornography as a misdemeanour,⁶¹ indecent exposure,⁶² and annoying a child as a first offence.⁶³

⁴⁹ California Sex Offender Registration Act, 2020, s290(d).

⁵⁰ *Ibid*, s290.008(d).

⁵¹ *Ibid*, 2020, s290.008(d).

⁵² PC s243.4.

⁵³ *Ibid*, s243.4: that is, sexual battery as a felony if the victim is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, and if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse.

⁵⁴ PC, s266.

⁵⁵ PC s266c.

⁵⁶ *Ibid*, s286.

⁵⁷ *Ibid*, s288a.

⁵⁸ *Ibid*, s288a.

⁵⁹ *Ibid*, s288.4.

⁶⁰ *Ibid*, s289 (c), (f), (g), (h) and (i).

⁶¹ *Ibid*, ss311.1 and 311.11.

⁶² *Ibid*, s314.

⁶³ *Ibid*, s647.6.

An offender of a tier two offence according to section 290(d)(2)(A) of the California Sex Offender Registration Act, is subject to registration for a minimum of 20 years and offences under this tier are: rape when the victim is at least 18 and is incapable of giving consent due to a mental disorder or developmental or physical disability,⁶⁴ incest,⁶⁵ sodomy when the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent,⁶⁶ sodomy with a minor under 14 years of age and more than 10 years younger than the defendant (and there is no force),⁶⁷ lewd acts with a minor under 14,⁶⁸ oral copulation when the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent,⁶⁹ oral copulation with a minor under 14 years of age and more than 10 years younger than the defendant (and there is no force),⁷⁰ contacting a minor with intent to commit a felony (when committed with the intent to commit (sodomy,⁷¹ oral copulation⁷² or penetration with a foreign object⁷³),⁷⁴ acts of penetration with a foreign object when the victim is incapable of giving consent due to a mental disorder or developmental of physical disability,⁷⁵ acts of penetration with a foreign object when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, or when the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent,⁷⁶ and annoying a child as a second or subsequent offence.⁷⁷

A tier three offender is subject to registration for life.⁷⁸ However, if an offender is designated as a tier-three offender solely owing to his/her risk assessment level and not based on the offence, the registrant may petition for termination of the sexual offender registration requirement after at least 20 years from release from custody.⁷⁹ A person is a tier three offender if convicted of any of the following offences:⁸⁰ rape,⁸¹ spousal rape by force,⁸² aiding a rape or acts of penetration with a foreign object,⁸³ murder committed during the commission or attempted

⁶⁴ *Ibid*, s261.

⁶⁵ *Ibid*, s285.

⁶⁶ *Ibid*, s286.

⁶⁷ *Ibid*, s286.

⁶⁸ *Ibid*, s288.

⁶⁹ *Ibid*, s288a.

⁷⁰ *Ibid*, s288a.

⁷¹ *Ibid*, s286(b).

⁷² *Ibid*, s288a(b).

⁷³ *Ibid*, s289(h) or (i).

⁷⁴ *Ibid*, s288.3.

⁷⁵ *Ibid*, s289.

⁷⁶ *Ibid*, s289.

⁷⁷ *Ibid*, s647.6.

⁷⁸ California Sex Offender Registration Act, 2020, s290(d)(3).

⁷⁹ *Ibid*, s290.5(c)(3).

⁸⁰ PC, s290(d)(3).

⁸¹ *Ibid*, s261.

⁸² *Ibid*, s262.

⁸³ *Ibid*, s264.1.

commission of rape or another specified forced sexual act,⁸⁴ kidnapping during the commission or attempted commission of rape or another specified forced sexual act,⁸⁵ assault with intent to commit a felony, but not assault to commit mayhem,⁸⁶ sex trafficking in children,⁸⁷ sexual battery as a felony,⁸⁸ pimping and pandering with a minor,⁸⁹ giving or transporting a child under 16 for a lewd purpose,⁹⁰ taking away a minor for purpose of prostitution,⁹¹ aggravated sexual assault of a child,⁹² sodomy when the defendant is acting in concert with another or when the victim cannot consent because of intoxication or being unconscious;⁹³ sodomy by force,⁹⁴ lewd acts with a minor under 14,⁹⁵ lewd acts with a minor under 14 years by force, or the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, the defendant is caretaker and the victim is a dependent,⁹⁶ oral copulation by force,⁹⁷ oral copulation when the defendant is acting in concert with another or when the victim cannot consent because of intoxication,⁹⁸ sending harmful material to seduce a minor,⁹⁹ contacting minor with intent to commit a felony unless committed with the intent to commit a violation of subdivision (b) of Penal Code Section 286, subdivision (b) of Penal Code 288a, or subdivision (h) or (i) of 289,¹⁰⁰ arranging to meet with a minor for lewd purposes as a felony,¹⁰¹ continuous sexual assault of a child,¹⁰² sex acts against a child 10 years or younger,¹⁰³ acts of penetration with a foreign object by force or duress, when the victim is under 14 and more than 10 years younger than the defendant, or the victim is too intoxicated to consent, or the victim is unconscious,¹⁰⁴ child pornography convicted as a felony violation,¹⁰⁵ soliciting someone to commit a sex crime,¹⁰⁶ anyone sentenced to life in prison pursuant to section 667.61 of the Penal Code, anyone sentenced to 15 to 25 years to life in prison pursuant to section 667.61 of the Penal Code, and anyone who is considered a ‘habitual sex offender’ pursuant to section

⁸⁴ *Ibid*, s187.

⁸⁵ *Ibid*, ss207 and 209.

⁸⁶ *Ibid*, s220.

⁸⁷ *Ibid*, s236.1(b) or (c).

⁸⁸ *Ibid*, s243.4(a),(c) or (d).

⁸⁹ *Ibid*,s ss266h and 266i(b).

⁹⁰ *Ibid*, s266j.

⁹¹ *Ibid*, s267.

⁹² *Ibid*, s269.

⁹³ *Ibid*, 286(d), (f), or (i).

⁹⁴ *Ibid*, s286.

⁹⁵ *Ibid*, s288(a).

⁹⁶ *Ibid*, s288.

⁹⁷ *Ibid*, s288a.

⁹⁸ *Ibid*, 288a.

⁹⁹ *Ibid*, s288.2.

¹⁰⁰ *Ibid*, s288.3

¹⁰¹ *Ibid*, s288.4.

¹⁰² *Ibid*, s288.5.

¹⁰³ *Ibid*, s288.7.

¹⁰⁴ *Ibid*, s289.

¹⁰⁵ *Ibid*, s311.

¹⁰⁶ *Ibid*, s653f.

667.71 of the Penal Code. Although, the California Sex Offender Registration Act specifically states the qualifying sexual offences for which a conviction requires registration, the law further allows the court to order an offender who is found guilty of an offence other than a qualifying sexual offences to register as a sex offender where the court is of the opinion that the offender committed the said offence as a result of sexual compulsion or for purposes of sexual gratification. In such a situation, the court is required by law to state on the record the reasons for its findings and the reasons for ordering registration,¹⁰⁷ and the offender so ordered to register shall register as a tier one offender unless the court holds that the offender should register as a tier two or tier three offender and the reason for such order or decision must be stated on the record by the court.¹⁰⁸

4.1.2 Registrable Information

Where an offender is convicted of one or more offences requiring registration in California, the details properly identifying the offender and the offence committed are entered in the sexual offender register maintained in the country. Information that may be registered include, but not limited to: the offender's name, known aliases, date of birth, gender, race, physical description, photograph, address at which the offender resides, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, criminal history, prior adjudication as a sexually violent predator, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification, and date of release from confinement, but excluding information that would identify the victim.¹⁰⁹

Sexual offender registration system is being criticised for requiring sex offenders to divulge information about their sexual history, and to admit to sexual offences for which they may or may not have been convicted with, in violation of their rights against self-incrimination which is a constitutional right and reduces their chances for rehabilitation or reintegration into the society.¹¹⁰ Though sex offender registration serves the purpose of deterrence and public safety, the system is not free from collateral consequences, especially its resultant stigmatisation and hindrance of sex offender's reintegration or re-entry into society, and the fact that it promotes violence and harassment against sex offenders which in turn promotes recidivism.¹¹¹

¹⁰⁷ California Sex Offender Registration Act, 2020, s290.006(a).

¹⁰⁸ *Ibid*, 2020, s290.006(b).

¹⁰⁹ California Sex Offender Registration Act, 2020, s290.45 (b) and s290.46 (a)(1), (b)(1), (c)(1) and (d)(1).

¹¹⁰ MA Maiano, 'Sex Offender Probationers and the Fifth Amendment: Rethinking Compulsion and Exploring Preventative Measures in the Face of Required Treatment Programs' (2006) (10) 4 *Lewis & Clark Law Review* 989 and 1021.

¹¹¹ IJ Sandbukt, 'Reentry in Practice: Sexual Offending, Self-Narratives, and the Implications of Stigma in Norway' (2021) *International Journal of Offender Therapy and Comparative Criminology* 1, 3; P Reed, 'Punishment beyond Incarceration: The Negative Effects of Sex Offender Registration and Restrictions' (2017) (5) 2 *Journal of Law and Criminal Justice* 16.

4.1.3 Registration Requirements and Sanctions for Failure to Register

A sex offender convicted of one or more of the qualifying sex crimes is required under the California Sex Offender Registration Act to personally register as a sex offender with the local law enforcement within five days of release from correctional facility, or five days after sentencing, if imposed a punishment other than imprisonment.¹¹² Where a sex offender changes his or her name or changes residential address, the offender must report the change to local law enforcement within five days and where employed or enrolled in a University or College in California, the offender if residing upon the campus or in any of the facilities of the University or College, must additionally register with campus police within five days of enrolling as well as leaving the school.¹¹³

A sexual offender who becomes homeless, must report to local law enforcement every 30 days, while a sex offender diagnosed with a dangerous medical disorder, must update his/her registration with local law enforcement every 90 days. The California Sex Offender Registration Act applies to anyone residing, attending school or working in California, even if convicted of sex crimes outside of California. In the case of a conviction outside California, the offender is only required to register as a sexual offender where the offence convicted falls within any of the qualifying sex crimes under any of the three-tiered offences classified under section 290 of the California Sex Offender Registration Act.¹¹⁴ The wilful failure by a sex offender to register as required by law attracts sanctions. Where an offender is convicted for a misdemeanour for wilful failure to register, the law requires that the offender's minimum period of registration for the tier shall be extended by one year, or shall be extended by three years for each felony conviction of failing to register, without regard to the actual time served in custody for the conviction.¹¹⁵ Where a subsequent conviction requiring registration occurs, the minimum period for the completion of the required registration in tier one or two is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period.¹¹⁶

4.1.4 Rights Restrictions against Registered Sexual Offenders

Registered sexual offenders in California are subject to a number of restrictions of their rights to personal liberty, movement, freedom of association and privacy. These restrictions are made by way of residency restriction, travel restriction, Global Positioning System (GPS) and daily supervision, restrictions on the use of social media, internet or computer and restriction to work or practice certain professions.¹¹⁷

¹¹² California Sex Offender Registration Act, 2020, s290.011(a).

¹¹³ California Sex Offender Registration Act, 2020, s290(b).

¹¹⁴ *Ibid*, s290.46 (d)(2)(L).

¹¹⁵ *Ibid*, s290(e).

¹¹⁶ California Sex Offender Registration Act, 2020, s290(e).

¹¹⁷ AM Tijah and MU Raphael, '(Note 2)126, 133- 134.

The target of residency restriction in many countries is the protection of children.¹¹⁸ The residency restriction against sexual offenders in California¹¹⁹ is restrictively provided for under the California Sex Offenders Registration Act,¹²⁰ but in detailed under the various residency restriction laws or regulations made and applied by the various Municipalities. At least 400 out of the 483 municipalities in California have the residency restriction laws that prohibit sexual offenders from loitering, accessing, living or working within a specified distance in areas considered as child safety zones.¹²¹ Child safety zones are places or areas where children are likely to be found such as schools, public recreational parks, beaches, swimming pools, youth centres, day-care centres and other facilities where children congregate. Residency restriction in California is applicable only to parolees, while registered sexual offenders who are no longer on parole or probation are free to live wherever they choose.¹²² In addition, the residency restriction aggravated housing discrimination against sexual offenders in California, making it extremely difficult for sex offenders to secure accommodation in some parts of the city. As at July, 2017, not fewer than 6,329 sexual offenders were reportedly rendered homeless and many others compelled to relocate to other places.¹²³ The residency restriction in California is criticised for applying a blanket approach to all sexual offenders. The application in terms of residency ought to be classified since not all sexual offences involve violence, and not all offenders are likely to reoffend, residency restriction can be employed in a restrictive manner by the court to apply to offenders that are likely to commit the same or similar offences. Some municipalities have proposed repealing the residency restriction laws in their localities on the grounds that the blanket residency restriction on sex offenders violates their constitutional rights by limiting sex offenders' access to housing or accommodation, which exacerbates homelessness and makes it more difficult for law enforcement to monitor sex offenders.¹²⁴

In California, all registered sexual offenders on parole have GPS supervision.¹²⁵ The supervision is reassessed daily to ascertain whether an offender has encroached into restricted

¹¹⁸ AL Anderson, LL Sample and CM Cain, 'Residency Restrictions for Sex Offenders: Public Opinion on Appropriate Distances' (2015) (26) 3 *Criminal Justice Policy Review* 262.

¹¹⁹ save for offenders on parole convicted of lewd acts with a minor or continuous sexual assault of a child under sections 288 and 288.5.

¹²⁰ PC s3003(g). The section provides that 'Notwithstanding any other law, an inmate who is released on parole for a violation of section 288 or 288.5 whom the Department of Correction and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.'

¹²¹ Sandra Norman-Eady, 'Sex Offender Residency Restrictions' <<https://www.cga.ct.gov/2007/rpt/2007-r-0380.htm>> accessed 14 June 2023.

¹²² PC, s3003(g).

¹²³ S Emerson, 'Why Highland is Repealing its Sex Offender Residency Ordinances' (November 24, 2017) <<https://www.sbsun.com/2017/11/24/why-highland-is-repealing-its-sex-offender-residency-ordinances/amp/>> accessed 14 June 2023.

¹²⁴ *Ibid.*

¹²⁵ San Diego County District Attorney, 'Sex Offender Monitoring and the Law' <<https://www.sdcda.org/preventing/sex-offenders/>> accessed 14 June 2023.

areas.¹²⁶ The GPS enables law enforcement agents to ascertain the whereabouts of sex offenders; however, its effectiveness is limited as it cannot unveil the activities or conduct of the monitored offenders at such a location. While the provisions of section 3004(b) of the California Penal Code requires a lifetime monitoring of sexual offenders who have been to prison, the GPS supervision in practice is however constrained to offenders on probation or parole. There are no travel restrictions for sexual offenders in California, save for entry into restricted areas. Sexual offenders are at liberty to travel within and outside the state subject, to notifying local law enforcement agencies within five days.¹²⁷ In Australia however, registered sexual offenders are required by law to inform law enforcement agents their intention to travel from one state to another and the expected return date, they are restricted from travelling overseas without specific permission first sought and obtained by a competent authority.¹²⁸

Restriction on the use of computer, social media or the internet against sexual offenders on parole in California may be enforced where the offence convicted of, relates to the use of such gadgets or platforms. Where an offender's internet activities is required to be monitored, the California Penal Code requires sexual offenders to disclose to law enforcement their internet identifiers, which may include username on social networks and email. In some cases, sexual offenders are restricted from social media sites like twitter, Facebook, Instagram and so on, and they may be required to surrender their computer or phones for random checks, or may be required to install software on their gadget for the purpose of monitoring.¹²⁹

Registered sexual offenders in California are equally prohibited from working with children and practicing certain professions including working as:

- i. Attorney;
- ii. Psychologist;
- iii. Educational Psychologist;
- iv. Teacher;
- v. Architect;
- vi. Marriage,
- vii. Family or Child Counsellor;
- viii. Paramedic;
- ix. Respiratory Therapist;
- x. Clinical Social Worker;
- xi. Physician/Surgeon;

¹²⁶ *Ibid.*

¹²⁷ California Sex Offender Registration Act, 2020, s290(b).

¹²⁸ Alfred M Tijah and Margaret Uroko Raphael, 'Sentencing Rape Offenders in Nigeria: An Appraisal,' (2021) 11 *Nnamdi Azikiwe University Journal of Public and Private Law* 126, 133.

¹²⁹ P Reed, 'Punishment beyond Incarceration: The Negative Effects of Sex Offender Registration and Restrictions' (2017) (5) 2 *Journal of Law and Criminal Justice* 16, 19.

- xii. Dentist;
- xiii. Physical Therapist;
- xiv. School Employee;
- xv. Child Day-care Employee;
- xvi. Residential Care Facility Employee;
- xvii. Ambulance Attendant and Bus Driver;
- xviii. Park/Playground Employee if supervising minors
- xix. Wheelchair van driver.¹³⁰

On the other hand, where convicted of sexual offence that is a felony, the sexual offenders may not be allowed to practice as an Accountant; Acupuncturist; Alarm Installer; Appliance Repair; Cemetery Broker; Contractor; Cosmologist/Barber; Funeral Director; Hearing Aid Sales; Life Insurance Sales; Locksmith; Nurse; Occupational Therapist; Optometrist; Physician Assistant; Security Guard; Veterinarian and others.¹³¹ In Arkansas, sexual offenders are even prohibited from occupying a position or holding an office of public trust, like being a police officer or such position as fire-fighters and so on.¹³²

4.1.5 Duration of Registration

The duration for registration is dependent on the particular tier for which the offence convicted is categorised, and whether or not the offender is a juvenile. A person convicted for any offence under tier one is liable to registration as a sex offender for a minimum of 10 years. Where a tier one offender is a juvenile, he/she will be subject to a minimum registration period of five years.¹³³ An offender of a tier two offence is subject to registration for a minimum period of 20 years.¹³⁴ A tier two juvenile offender is subject to registration for a minimum duration of 10 years.¹³⁵ A tier three offender is subject to registration for life.¹³⁶ However, if an offender is designated as a tier-three offender solely owing to his/her risk assessment level and not based on the offence, the registrant may petition for termination of the sexual offender registration requirement after at least 20 years from release from custody.¹³⁷

The commencement date of the minimum period for registration of sexual offenders under tier one or two commences on the date of conviction or release from incarceration, placement, or commitment, including any related civil commitment on the registrable offence.¹³⁸ This

¹³⁰ San Diego County District Attorney, (n145).

¹³¹ San Diego County District Attorney, (n145).

¹³² C Sinett, 'New sex Offender Laws Now in Effect in Arkansas' <<https://www.ky3.com/content/news/New-sex-offender-laws-now-in-effect-in-Arkansas-564571831.html>> accessed on 14 June 2023.

¹³³ California Sex Offender Registration Act, 2020, s290.008(d)(1).

¹³⁴ *Ibid*, s290(d)(2)(A).

¹³⁵ *Ibid*, 2020, s290.008(d)(2).

¹³⁶ *Ibid*, 2020, s290(d)(3).

¹³⁷ *Ibid*, 2020, s290.5(c)(3).

¹³⁸ *Ibid*, 2020, s290(e).

commencement date is also applicable to tier three offenders that may apply for de-registration after the lapse of 20 years of registration. Sexual offenders are not automatically de-registered or have their registration requirement terminated at the end of their minimum tier-based term. Eligible sexual offenders must apply to the court for the termination of their registration requirement, otherwise the registration as sexual offender may remain for life. While an offender awaits such termination, he/she must continue to report regularly as required by law at the local police until the petition to remove the registration requirement is approved. According to section 290.5(a)(1) of the California Sex Offender Registration Act, a registrant must file a petition in the superior court or juvenile court in their county of residence for termination of their sex offender registration requirement upon the expiration of their mandated minimum registration period. The petition must be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and the district attorney of the county of conviction of a registrable offence if different than the county where the petition is filed. The registering law enforcement agency and the district attorney served may oppose the application, if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration, or there are pending charges against the person which could extend the time to complete the registration requirements of the tier or change the person's tier status, and the person is in custody or on parole, probation, or supervised release.¹³⁹

4.1.6 Regulatory Institutions

The California Department of Justice is one of the principal agencies responsible for maintaining and updating sexual offender register in the country. The law requires the Department to make information concerning sexual offenders available to the public through an Internet Website and update the Internet Website on an on-going basis. Information of sexual offenders is maintained on the Department's website available at: <https://www.meganslaw.ca.gov/Mobile/Default.aspx> and available to the public since 2004. Prior to 2004, the information of sexual offenders was available only to law enforcement. There is also a National sex offender registry housed under the web site: <https://www.nsopw.gov> which covers registered sexual offenders from all 50 states in the United States, Puerto Rico, Guam, the District of Columbia, and Indian Country.

The sex offender register is updated regularly by the Department of Justice through information provided to law enforcement agencies, during registration process and information from correctional facilities. According to the California Sex Offenders Registration Act, any state facility that releases from incarceration, a person who was incarcerated for a crime requiring registration as a sex offender, should, not later than 30 days of the release of a sexual offender, furnish the Department of Justice the year of release for the most recent offence requiring

¹³⁹ *Ibid.*, 2020, s290.45 (b) and s290.5 (a) (2).

registration in a manner and format approved by the department.¹⁴⁰ The State Department of State Hospitals is also required to provide to the Department of Justice, the names of all persons committed to its custody¹⁴¹ within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.¹⁴²

Other important agencies of the sexual offender registration system in California include the Police and correctional institutions. The Police are responsible for the monitoring and supervision of registered sexual offenders to ensure they do not violate the various restrictions. Sexual offenders are required to personally register with local police within a specified time.¹⁴³ The Police and correctional institutions also feed the Department of Justice with necessary information for the registration of sexual offenders.

5 SEXUAL OFFENDERS REGISTRATION IN NIGERIA

Sexual offender registration in Nigeria is principally contained under the VAP Act and the VAP Laws of the various states in Nigeria. Under the VAP Act as found in the various VAP Laws, the only provision for sexual offender registration is hemmed in section 1(4), which stipulates that ‘a register for convicted sexual offenders shall be maintained and accessible to the public.’ The responsibility of registering sexual offenders in Nigeria is bestowed on the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), pursuant to the provisions of section 44 of the VAP Act. Section 44 of the VAP Act grants NAPTIP the powers to administer the VAP Act and on the 25th day of November, 2019, NAPTIP launched the National Sexual Offender Register for the purpose of documentation not only convicted cases of sex crimes but also of reported and arraigned cases of sex crimes defined under the VAP Act 2015.¹⁴⁴

The National Register is digital and online on the website of the National Sexual Offender Database’s (NSOD).¹⁴⁵ The basic rationale for the Nigerian National Register of sexual offender is to name and shame sexual offenders including linking victims and offenders to the treatment or assistance as they may require.¹⁴⁶ As at the 31st day of August, 2022, the register contained a record of two hundred and fifty eight (258) convicted sexual offenders; six hundred and sixty-six (666)

¹⁴⁰ *Ibid.*, 2020, s290.46 (a)(2)(B).

¹⁴¹ pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

¹⁴² California Sex Offender Registration Act, 2020, s290.46 (a)(3).

¹⁴³ *Ibid.*, 2020, s290.011(a).

¹⁴⁴ National Agency for the Prohibition of Trafficking in Persons (NAPTIP), “Nigeria Sexual Offender & Service Provider Database: Frequently Asked Questions (FAQs),” <<https://nsod.naptip.gov.ng/faq.php>> accessed 14 June, 2023.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

pending/arraigned cases; and two hundred and three (203) reported cases of sexual offences under investigation.¹⁴⁷

The VAP Act is not applicable to the entirety of Nigeria despite being made by the National Assembly, but made to operate as a state law restricted only within the Federal Capital Territory, Abuja. However, the national register of sexual offenders is designed to allow States in Nigeria to link their sexual offender register to the national register. Though, about 22 States out of the 36 States in Nigeria enacted the Violence against Persons (Prohibition) Law (VAP Law), only ten (10) States¹⁴⁸ have so far established registers for sexual offender and only one State, Edo State has its register of sexual offender linked to the National Register.¹⁴⁹ A good number of the States with sexual offenders register do not contain the full details of the offenders and the registers are not updated regularly, thereby making it difficult to monitor sexual offenders, especially those that have relocated to other places.¹⁵⁰ In Nigeria, free access is granted to the general public to search the records of convicted sexual offenders on the National Register of Sexual Offender, only upon the searcher first registering an online user account using email or mobile phone number. A search for arraigned cases and cases reported pending investigation, attracts the payment of a fee of five hundred naira (N500) for a search.¹⁵¹ Records of victims of sexual offences on the other hand are restrictively available only to selected service providers including security agencies on a need-to-know basis to ensure the protection of the identity of victims.¹⁵²

The establishment and update of the national register for sexual offenders in Nigeria is the responsibility of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) by dint of section 44 of the VAP Act which vests the administration of the provisions of the VAP Act on NAPTIP. The various States which have enacted the VAP Law equally have their respective agencies responsible for the update of the States' registers. In Benue State for instance, it is the responsibility of the Benue State Ministry of Women Affairs and Social Development to administer the provisions of the Benue State VAP Law and consequentially, to establish and update the register of sexual offender in this State. NAPTIP and Ministry of Women Affairs and Social Development are seldom involved in the prosecution of sexual offences in Nigeria. They are most likely not to be aware of convicted cases, unless those reported in the media and this may account as one of the drawbacks occasioning the low number of sexual offenders registered in the country.

¹⁴⁷ *Ibid.*

¹⁴⁸ The States currently with a Sexual Offender Register includes Abia, Adamawa, Akwa Ibom, Bauchi, Bayelsa, Edo, Ekiti, Kaduna, Lagos and Ogun States.

¹⁴⁹ A Adedigba, 'Only 10 Out of 36 States in Nigeria Have Sexual Offenders Register' <<https://humanglemedia.com/only-10-out-of-36-states-in-nigeria-have-sexual-offenders-register%E1%9F%92/>> accessed 14 June, 2023.

¹⁵⁰ T Oludimu, 'Nigeria Now Has a National Sex Offenders Database' <<https://techpoint.africa/2019/11/27/nigerias-sex-offenders-database>> accessed 14 June, 2023.

¹⁵¹ National Agency for the Prohibition of Trafficking in Persons (n144).

¹⁵² *Ibid.*

Registrable sexual offences in Nigeria are not outlined or categorised by the VAP Act. The numerous sexual offences in Nigeria, some of which were discussed above, are left at the discretion of NAPTIP and the various States regulatory institutions to pick and choose those they desire to register. NAPTIP in exercise of its discretion, restricted the offences registrable on the National Sexual Offender Database to only sexual offences under the VAP Act.¹⁵³ Sexual offences under the VAP Act are very limited and they include rape,¹⁵⁴ offensive conduct,¹⁵⁵ prohibition of female circumcision or genital mutilation,¹⁵⁶ incest,¹⁵⁷ indecent exposure,¹⁵⁸ and some abhorrent conducts, though defined under the definition section of the VAP Act, but no punishment is provided under the Act. These offences include sexual abuse, sexual assault, sexual exploitation, sexual harassment and sexual intimidation.¹⁵⁹ Information of sexual offenders registrable in Nigeria on the sexual offender register is not specified by law. The information found on the National Register of Sexual Offenders, as hosted by the National Agency for the Prohibition of Trafficking in Persons on the National Sexual Offender Database's (NSOD) website includes the names and aliases of sexual offenders, their photograph, address, sex, offences committed or allegedly committed, and year of conviction.¹⁶⁰ However, there are no reporting or registration requirements for sexual offenders in Nigeria. Sexual offenders are not required to register with any law enforcement agency after serving their term in correctional facilities or upon their release after conviction. They are not required to notify law enforcement agencies after a change of name or a change of address. Once registered, the information gathered at the time of arrest or conviction remains without update on the Nigerian sexual offenders' register, and as such may become outdated in a short time, rendering identification of sexual offenders impossible, especially where there is a change of name and change in residence. This may therefore, defeat the very essence of registration.

Sexual offender registration is seemingly not a punishment in Nigeria. The idea of naming and shaming appears to be a social measure at the discretion of NAPTIP to either register an offender or not.¹⁶¹ No provisions exist in Nigeria requiring courts to order registration of sexual offenders as punishment resulting from a direct consequence for conviction as a sex offender. For any sanction to qualify as punishment for crime, the crime and punishment must be stipulated by statutory provisions.¹⁶² Sexual offenders in Nigeria are not subject to any restrictions, such as residency restriction; travel restriction; Global Positioning System (GPS) and daily supervision;

¹⁵³ *Ibid.*

¹⁵⁴ VAP Act s1.

¹⁵⁵ VAP Act s5.

¹⁵⁶ VAP Act s6.

¹⁵⁷ VAP Act s25.

¹⁵⁸ VAP Act s26.

¹⁵⁹ VAP Act, s46.

¹⁶⁰ National Agency for the Prohibition of Trafficking in Persons (n144).

¹⁶¹ AM Tijah and IM Sheikh, (note 7) 216, 217.

¹⁶² Constitution of the Federal Republic of Nigeria 1999 as amended, s36 (12).

restrictions on the use of social media, internet or computer; or restrictions to work or practice certain professions.

6 CONCLUSION

The principal aim of sexual offender registration is to ensure that law enforcement agencies and the general public keep track of sexual offenders in order to prevent the risk of re-offending and entrench deterrence, crime prevention and public safety, especially the protection of children against sex crimes in the treatment of sexual offenders. To achieve this aim, several jurisdictions around the world have their sexual offender registration system adequately sanctioned by laws. In Nigeria, the provision on sexual offender registration is limited to maintaining a register of sexual offenders and making it accessible to the public. Detailed provisions to actualise this mandate is not provided, creating doubt as to whether it is intended that the provision should be a corrective measure or merely a social requirement to simply name and shame sexual offenders.

The law on sexual offender registration in Nigeria failed to imbue the court with specific authority to order the registration of a sexual offender, but left it at the discretion of NAPTIP to do so. Even at that, no provision is made specifying the offences that may or may not be registered; the duration for registration or the requirements for de-registration are also not provided for; there are no obligations on sexual offenders to regularly report to law enforcement agencies or sanctions for failure to report; and restrictions such as residency restriction and the restriction to engage in services to children are not made to protect Nigeria children.

Owing to the circumscribed nature of the law on sexual offender registration in Nigeria, the regulatory institutions in Nigeria have limited powers to implement the global intent and aim of sexual offender registration. It is therefore recommended that the VAP Act be amended or a Sexual Offender Registration Act be enacted in Nigeria to make adequate provisions on the registrable offences, for instance classifying into tiers of offence for appropriate allocation of duration for registration and restrictions. Other details such as registrable details, reporting requirements, rights restriction and free access to register should be positively and clearly provided by law. For the effective workability of the registration system, regulatory institutions must ensure adequate publicity, or undertake enlightenment campaigns and operate manual register, especially in rural communities. The purpose of sex offender register is to prevent re-offending, entrench deterrence and ensure public safety in the prevention of sex crimes in communities without internet services.