

DOMESTIC VIOLENCE AND LEGAL REFORMS IN NIGERIA: PROSPECTS AND CHALLENGES

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Women in Africa, like their counterparts the world over, suffer domestic violence irrespective of class, age, religion or social status.¹ Incidents of domestic violence include battery, beatings, torture, acid baths, rape, and even death through honor killing.² It is estimated that one in every three women suffers domestic violence from the hands of those who claim to love and protect them.³

Many of the victims do not speak out about violations of their rights due to lack of positive response from the society. Domestic violence is so entrenched in the society that even the victims condone such violations of their rights, some claiming it is a sign of love.⁴ Due to poverty and economic dependence on men, many victims suffer in silence for fear of losing the economic support of the male perpetrator—where a victim summons the courage to report to law enforcement agents, the issue is trivialized and termed a “private matter.”⁵

Many African countries do not have specific laws prohibiting domestic violence and punishing perpetrators of domestic violence.⁶ Current laws do not adequately protect victims of domestic violence. In fact, some existing laws

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¹ See Susanne Hamm, *Violence Against Women Takes Center Stage at the Women’s World Forum Against Violence*, HUMAN RIGHTS TRIBUNE, Vol. 7, No. 4 (Dec. 2000), available at <http://www.hri.ca/tribune/viewArticle.asp?ID=2595>.

² See Heidi Hudson, *A Feminist Reading of Security in Africa*, 20 CARING SECURITY IN AFRICA, 126-131 (1998).

³ *Id.*

⁴ LEGAL DEFENCE AND ASSISTANCE PROJECT, BACKGROUND PAPER AND DOMESTIC VIOLENCE BILL 13 (2003) [hereinafter BACKGROUND PAPER].

⁵ AMNESTY INTERNATIONAL, NIGERIA: UNHEARD VOICES (2005), available at <http://web.amnesty.org/library/index/engaf440042005> [hereinafter NIGERIA: UNHEARD VOICES] (reporting that a police spokesperson in Lagos stated that the police do not take violence in the family seriously “unless it is a case of the rape of a child or the husband kills his wife.”).

⁶ Berta Esperanza Hernandez-Truyol, *Conceptualizing Violence: Present and Future Developments in International Law*, 60 ALB. L. REV. 607, 623 (1997).

encourage and condone domestic violence.⁷ This is further evidence of the rules of procedures in courts are not friendly to victims of domestic violence especially, when it is in the form of sexual assault. Judicial officers and law enforcement officers, like officials of other institutions, are not sensitized to issues of domestic violence or trained on how to respond to this issue.⁸ Many of them likely also operate from the prejudices and stereotypes of the male dominated society. The combined factors of economic vulnerability and financial dependence of the woman on the man, social and cultural practices that condone domestic violence, and lack of prosecution or punishment of perpetrators discourage victims from speaking out and seeking redress.⁹ The widespread poverty and the political, cultural, and religious marginalization of women in Africa make the African woman more vulnerable to domestic violence.¹⁰

In recent years, there have been increased efforts to enhance the protection and promotion of women's rights through the international, regional, and national enactment of laws and policies. Such efforts have resulted in standard setting documents like the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action at the international level. Some countries have passed laws and policies incorporating such international standards into their domestic laws.¹¹ For example, Nigeria has incorporated the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Convention Against Transnational Organized Crime, and the Convention on the Rights of the Child into domestic law.¹² The African Charter on Human and Peoples' Rights has also been incorporated.¹³

⁷ See, e.g., Penal Code of Northern Nigeria: Correction of Child, Pupil, Servant, or Wife § 55.

⁸ See BACKGROUND PAPER *supra* note 4, at 12 (reporting that "Police officers, prosecutors and judges lack sensitization and training on issues of violence against women in general and violence in the family in particular.")

⁹ Nigeria's combined 4th and 5th Country Report (CEDAW/C/NGA/405) submitted to CEDAW Committee and deliberated upon in January 2004 reported that numerous customary laws and practices such as widowhood rites, women's inheritance, and succession to property impede the promotion of women's rights. See Press Release, Tripartite Legal System Hinders Progress Towards Gender Equality in Nigeria, Say Experts on Women's Anti-Discrimination Committee, U.N. Doc. WOM/1427 (Jan. 20, 2004), available at <http://www.un.org/News/Press/docs/2004/wom1427.doc.htm>.

¹⁰ UNITED NATIONS, ECONOMIC COMMISSION FOR AFRICA, SYNTHESIS REPORT, SUB-REGIONAL MEETING ON THE DECADE REVIEW OF THE IMPLEMENTATION OF BEIJING PLATFORM OF ACTION: WEST AFRICA ¶13, available at <http://www.uneca.org/beijingplus10/Rapport%20Ade%20l'Ouest-Beijing+10.pdf> [hereinafter SYNTHESIS REPORT] (participants observed that despite the multiplicity of poverty eradication policies and strategies to date, women still represent the highest proportion of the poor).

¹¹ This is the dualist system under which ratified treaties are not enforceable or justiciable until the Parliament enacts a law to incorporate them into domestic laws.

¹² United Nations, Office on Drugs and Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html> (last visited Dec. 3, 2007).

¹³ University of Minnesota, Human Rights Library, Ratification of International Human Rights Treaties – Nigeria, <http://www1.umn.edu/humanrts/research/ratification-nigeria.html> (last visited Apr.

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In many other countries, however, women are faced with various and diverse obstacles to the enforcement of international human rights standards and therefore suffer from a lack of protective laws that would meet recent international standards. Such obstacles include lack of political will by the government to integrate ratified international instruments as required by their constitutions, discriminatory cultural and traditional practices, religion, and poverty.¹⁴ Others include lack of participation in politics and decision-making processes, denial of access to education and inheritance, high cost of legal services, and prejudices against women in all the communities. In these societies, women are afforded inferior status in relation to men, despite the significant contributions made by women to the development of the community.¹⁵

Nigeria, the focus of this research, is one such country where international human rights instruments have yet to be incorporated into domestic laws.¹⁶ The long-standing military regime in Nigeria resulted in gender-insensitive laws and policies passed by military leadership. Despite increased awareness of democracy and the need to sustain democratic rule in the country, women's rights issues are still not properly articulated in terms of policies and have yet to be given their proper priority by the government. An example is the declaration of May 29 of every year as "Democracy Day" by the government of Olusegun Obasanjo.¹⁷ The majority of women's rights activists, as well as other human rights activists, are not experienced in the art of lobbying and advocacy in a democratic regime, having spent most of their time working under a military dictatorship.¹⁸

However, there have been initiatives to integrate international instruments and protect victims and survivors of domestic violence. Current initiatives include an advocacy campaign for the passage of a law on violence against women, which would provide rehabilitation services including shelters and skills acquisition programs for victims and survivors.¹⁹ Other initiatives include the Domestic

24, 2007).

¹⁴ Ada Agina, *Gender and Elections in Nigeria*, GENDER ISSUES 7, 11. This is a publication of Legal Defence and Assistance Project, a non-governmental organization based in Lagos, Nigeria.

¹⁵ SYNTHESIS REPORT, *supra* note 10. Participants noted that the concept of equality of men and women does not always find acceptance, in the society and among very many leaders.

¹⁶ See Ratification of International Human Rights Treaties – Nigeria, *supra* note 13.

¹⁷ SYNTHESIS REPORT, *supra* note 10. Participants agreed that gender issues are not systematically addressed in government or parliamentary discussions on political or institutional reform. It is also difficult for gender issues to be included in national budgets because the requisite technical expertise is lacking and disaggregated gender-based data is unavailable.

¹⁸ Emmanuel O. Ojo, *Taming the Monster: Demilitarization and Democratization in Nigeria*, 32 ARMED FORCES AND SOCIETY, 254 (Jan. 2006), available at <http://afs.sagepub.com/cgi/reprint/32/2/254.pdf> (stating that Nigeria gained independence from Britain on October 1, 1960.) Out of the forty-six years of independence (1960-2006), Nigerians have spent only fifteen years, including the present seven year old civilian government, under civilian administration. The remaining years were spent under successive military regimes. Human rights activists were greatly involved in the struggle to enthrone democracy and to take political power away from the military. *Id.*

¹⁹ This is an advocacy campaign for a national law on violence against women by a coalition of over one hundred non-governmental organizations working on women's rights in Nigeria.

Violence Bill Advocacy project, a campaign that involves raising awareness about domestic violence, and campaigning for the enactment of a domestic violence law in twelve states in Nigeria.²⁰ These initiatives have been met with various obstacles and challenges at different stages of the law reform process.

The objective of this article is to examine the prospects and challenges of legal reform regarding domestic violence in Nigeria. It will focus on efforts by activists in Nigeria to provide a better legal regime for victims of domestic violence and the peculiar challenges faced by them in dealing with this issue. It is the desire of the writer to provide resource material on the issue of domestic violence for activists, policy makers, legislators, and law reformers who are engaged in providing a better legal framework for the protection and promotion of women's rights in her country, Nigeria. Having worked extensively on this issue, the author will also rely on her experience on law reform advocacy in Nigeria.²¹

Part I addresses the issue of domestic violence in Nigeria and highlights the prevalence of the problem. It provides sample cases of domestic violence and discusses the cultural attitudes and beliefs that excuse domestic violence in Nigerian society. It analyzes the international instruments ratified by Nigeria which affect women's rights, as well as national laws and policies in that affect women's equality with men, particularly the failure of the current criminal justice system. Part II discusses current initiatives for legal reform, including the campaign for the Violence Against Women Bill at the National Assembly and the Domestic Violence Bill Advocacy Project, an ongoing project initiated by the author in twelve states in Nigeria.²² The challenges of legislative advocacy faced by female activists engaged in law reform under the present civilian administration will also be documented. Part III highlights the obstacles to the realization of a better legal regime for victims of domestic violence in particular, and women's rights generally in Nigeria. This section will focus on areas such as law enforcement, access to justice, rights awareness, and tripartite legal systems. Part IV is devoted to a discussion of the prospects, if any, of a better legal regime in Nigeria. This will be followed by recommendations and a conclusion.

²⁰ The Domestic Violence Bill Advocacy Project is an advocacy project of the Legal Defence and Assistance Project (LEDAP), a non-governmental organization of lawyers and law related professionals engaged in law reform advocacy for the protection and promotion of human rights and the rule of law in Nigeria.

²¹ The author has over eight years experience working on various women's rights issues in Nigeria, including trafficking, domestic violence, women and the media, and women in decision-making. Specifically, she designed and led the campaign for the passage into law of the domestic violence bill in twelve states in Nigeria. Components of the project included drafting the domestic violence bill, media advocacy, organizing training programs, several advocacy visits to each of the twelve states, and parliamentary hearings on the domestic violence bill. She has also written articles and collaborated with many organizations within and outside Nigeria on legislative advocacy on women's rights. The bill was passed into law in two states and is at various stages in other state houses of assembly.

²² The Embassy of Nigeria, <http://www.nigerianembassy.nl/nigeria.htm> (last visited Apr. 24, 2007) (stating Nigeria is divided into thirty-six states and the Federal Capital City. These 36 states are grouped into six geo political zones of six states each. For the purpose of implementing this project, two states were selected from each of the geo-political zones.)

I. DOMESTIC VIOLENCE IN NIGERIA

A. *Forms and Prevalence of Domestic Violence*

According to an Amnesty International report on Nigeria:

[o]n a daily basis women are beaten and ill-treated for supposed transgressions, raped and even murdered by members of their family. In some cases, vicious acid attacks leave them with horrific disfigurements. Such violence is too frequently excused and tolerated in communities, and not denounced. Husbands, partners, and fathers are responsible for most of the violence against women.²³

In Nigeria, women and girls are subjected to multiple forms of violence in the homes. However, the most common form of violence is wife battery ranging from slapping, kicking, verbal abuse, denial of financial resources, rape, and death.²⁴ Due to a dearth of official statistics, it is difficult to establish the extent of domestic violence. However, it is believed that gender based violence is of “epidemic proportions,”²⁵ and is “seldom reported because of fear of reprisal and lack of response from law enforcement officials... [s]tatistics relating to this problem would not be available until women are motivated to report domestic and other forms of violence.”²⁶

Non-governmental organizations rely on media reports and the number of victims who come to them for assistance for statistics. For example, “No Safe Haven: An Annual Report of Attacks on Women in Nigeria,”²⁷ reports a total of 170 cases based on media reports covering the period from December 2004 to November 2005.²⁸ These do not include incidents reported to the police or to civil society organizations. Obviously, this is just the tip of the iceberg, as hundreds of cases go unreported and undocumented.

Domestic violence cuts across all communities in Nigeria and at times is excused by a woman’s actions or inaction.²⁹ When a woman suffers violence due

²³ NIGERIA: UNHEARD VOICES, *supra* note 5.

²⁴ PROJECT ALERT ON VIOLENCE AGAINST WOMEN, NO SAFE HAVEN: AN ANNUAL REPORT OF ATTACKS ON WOMEN IN NIGERIA, available at <http://www.projectalertnig.org/nosafehaven2003-2004.pdf> [hereinafter NO SAFE HAVEN]. Out of six murder cases, two of the alleged perpetrators were from the extended family, one a former employee and three were husband or partner. *Id.*

²⁵ Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, *2nd and 3rd Periodic Reports of States Parties: Nigeria*, CEDAW/C/NGA/2-3 (Feb. 26, 1997) at 23, available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N97/267/73/img/N9726773.pdf?OpenElement>.

²⁶ *Id.*

²⁷ See NO SAFE HAVEN, *supra* note 24. This report is published by Project Alert, a non-governmental organization based in Lagos, Nigeria. The statistics contained in the report are from media reports on the issue.

²⁸ A breakdown of these cases showed as follows: Domestic Violence – 43, Rape/Incest – 46, Assault on women – 12, Murder of women – 40, Acid bath – 10, Kidnap/Abduction – 19.

²⁹ NIGERIA: UNHEARD VOICES, *supra* note 5.

to failure to meet some socially accepted standard of behavior, such failure is usually an accepted excuse for the violence she suffers, especially within the family context.³⁰ A woman could suffer violence for refusing sex, nagging, or challenging the man's behavior; for example, if he took a second wife or is an alcoholic.³¹ She could be subjected to violence for not preparing meals on time, having, or being under suspicion of having, a sexual relationship outside the marriage, or being accused of witchcraft.³²

Interestingly, under certain circumstances, women, more than men, tend to justify the infliction of violence. In a survey conducted in 1999, a higher proportion of female than male respondents justified "wife beating," and this proportion was found to be higher in the northern central zone and lowest in the southwestern zone.³³

In another survey carried out by Project Alert in 2001, women and girls in Nigeria were asked about abuses within the family unit.³⁴ Participants in the survey were picked randomly and included women working in the market,³⁵ women in other work places, and students at the university.³⁶ In a particular state, Lagos, more than half of the participants confirmed their partners, boyfriends, or husband had beaten them.³⁷ Some of the reasons why they were beaten included drunkenness, financial problems and refusing to have sex with the perpetrator.³⁸ Many of the participants had reported physical injuries and threats to their family, the perpetrator's family and to their religious leaders while some just endured the abuse.³⁹ There was no report of any respondent filing a complaint with the police or seeking redress in court.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*, See also JOSEPHINE EFFAH ET AL., UNEQUAL RIGHTS: DISCRIMINATORY LAWS AND PRACTICES AGAINST WOMEN IN NIGERIA 54 – 55 (1995). See also OMONUBI MCDONNELL, GENDER INEQUALITY IN NIGERIA 39 (2003).

³³ NIGERIA: UNHEARD VOICES, *supra* note 5. Referencing the only known official survey of public opinion on violence against women. The report stated that: 36.3 percent of women and 21.3 percent of men justified wife beating if the wife goes out without telling her husband; 39.3 percent of women and 25.4 percent of men justified it if the wife neglects the children; 52.5 percent of women and 31.0 percent if the husband thinks the wife is unfaithful; 23.7 percent of women and 13.0 percent of men if meals are not ready on time; 33.3 percent of women and 18.3 percent of men if the wife argues with her husband; 34.4 percent of women and 19.1 percent justified it if the wife refuses to have sex with her husband. *Id.*

³⁴ NO SAFE HAVEN, *supra* note 24.

³⁵ Market Women, <http://mccoy.lib.siu.edu/jmccall/otherafricas/marketwomen.html> (last visited Apr. 24, 2007) (stating that market women is a general term for women traders in the local markets.).

³⁶ NO SAFE HAVEN, *supra* note 24.

³⁷ NIGERIA: UNHEARD VOICES, *supra* note 5 (stating that beatings were endured by 64.4 percent of 45 women in offices, 56.2 percent of 48 market women, 7 percent of 57 girls and young women.).

³⁸ *Id.* (stating the reasons - 8 percent said the man was drunk, 8 percent said it was due to financial problems and 15 percent because the woman refused to have sex. Among the market women, 16.6 percent said they were beaten for financial problems, 25 percent for returning home late, and 18.7 percent for refusing sex.).

³⁹ *Id.* 13.3 percent of the women in the work place had reported the abuse to the perpetrator's family and 6.6 percent to the church or religious leader. 18.75 percent of the women in the market place had reported violence, 10 percent to their own family, and 8 percent to the perpetrator's family. 6.6

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A recent form of violence against women in Nigeria is the use of acids, which are corrosive chemicals usually used in laboratories and factories, and cause permanent disfigurement of the victims.⁴⁰ The most commonly available acids, which can be bought on the street, include sulphuric acid, hydrochloric acid, hydrofluoric acid, and phosphoric acid.⁴¹ Acid baths first gained public attention when, in 1990, a former beauty queen was permanently disfigured by her boyfriend when she refused to renew their relationship.⁴² Many cases of acid baths are a result of the refusal of the woman to renew, or at times submit to, a relationship with the perpetrator.⁴³ Despite repeated calls for a ban on the sale of acids, the government and law enforcement agents have turned a blind eye to this form of violation of human rights.⁴⁴ The police consider acid bath a bailable offense not worthy of prosecution as long as the victim is alive irrespective of the extent of disfigurement or deformity the victim suffers.⁴⁵ According to “Liquid Hate: Acid Bathes of Women in Nigeria,” published by Project Alert, there are no exceptions to the victims as young and old, irrespective of social status, are victims of acid bath.⁴⁶

Another aspect of domestic violence which is often ignored is abuse of domestic servants, especially female domestic servants. Some of these domestic servants are as young as twelve to thirteen years old and are expected to serve as nannies and carry out general cleaning in the house. They are usually the last to go to bed and the first to wake up in the morning, taking care of kids who may be their age or just a few years younger. They are denied access to education and are physically abused.⁴⁷ In many instances, the police are reluctant to act and protect the domestic servant. For example, *The Daily Sun Newspaper* reported the case of a young girl known as Oluchi who was allegedly burned with a hot iron by her

percent of women in the work place had endured the violence for years before reporting. Of the 7 percent of girls and young women in the university and colleges who reported being raped, only 1 percent had reported the abuse. *Id.*

⁴⁰ NO SAFE HAVEN, *supra* note 24. (stating that there were 10 incidents of acid bathe reported in 2005 based on media reports for the year.)

⁴¹ BRIDGET OSAKWE & MARY FAVOUR IMONA, PROJECT ALERT ON VIOLENCE AGAINST WOMEN, LIQUID HATE: ACID BATHE OF WOMEN IN NIGERIA 10 (Josephine Effah-Chakwama, ed., 2004), available at <http://www.projectalertnig.org/Liquid%20Hate.pdf>.

⁴² *Id.* at 13.

⁴³ *Id.*

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 13.

⁴⁶ An 18-year-old girl was bathed with acid for refusing the love advances of a man. *Id.* at 16. A middle-aged woman and a one-year-old baby boy were bathed with acid by unknown men. *Id.* at 17. A six-month-old baby was fed acid by his parents' neighbor. *Id.* at 23. A 69-year-old, retired public servant was bathed with acid. *Id.* at 25. And a female politician in her 60s was attacked with acid by men who claimed they had a gift for her from the Governor. *Id.* at 26. Many of the assailants, if not all, have not been arrested or prosecuted.

⁴⁷ NIGERIA: UNHEARD VOICES, *supra* note 5, at 4. (stating that “Fatima,” a domestic worker aged twelve, was reportedly doused with kerosene and set on fire after she was accused of stealing meat from her employer.)

guardian as punishment for stealing.⁴⁸ The neighbors claimed that they often had to feed the girl, as she was denied of food. The neighbors reported the abuse to the police and her guardian was arrested. She was later released because according to the police, if the case was charged to court, it would make the girl suffer further. Moreover, it is a family matter.⁴⁹

Many female domestic servants are also sexually abused by the male members of the house, especially their employer's husbands. *The Daily Sun Newspaper* also reported the case of thirteen-year-old Hannah, who was living with her aunt.⁵⁰ According to Hannah, her aunt's husband frequently abused her sexually at night while her aunt was on permanent night duty. When her mum visited, she told her mum and asked to be taken away from the house. Her mum promised to return for her. However, when her mum did not appear for a long time, she decided to leave the house by herself. With no place to go, she roamed the streets until she was picked up and taken to the Juvenile Center.⁵¹ Many of these young women become pregnant as a result of which they are thrown out of the house on to the streets. Some are sent back to their parents who in many instances also drive them out for dishonoring the family name.⁵²

B. Cultural and Societal Excuses for Culture of Domestic Violence

Culture can be defined as the norms and values of a particular group that have developed over time in a community.⁵³ The UNESCO Universal Declaration on Cultural Diversity regards culture as the set of distinctive spiritual, material, intellectual, and emotional features of society or a social group, and it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions, and beliefs.⁵⁴ Culture therefore includes beliefs and norms, which regulate power relations and decision making within the community at large and the family. Based on these norms and beliefs, societies assign their expected characteristics to each sex. Mothers bring up their daughters with specific instructions on what a girl is expected to do in the society and how she is expected to behave. While a male child is expected to be strong and fearless, a female child is expected to be weak and submissive.⁵⁵ In school, young children are taught gender constructions through both formal and informal curriculum—for instance, most fairy tales teach girls the importance of their looks, and boys are taught that

⁴⁸ THE DAILY SUN, July 14, 2004.

⁴⁹ *Id.*

⁵⁰ THE DAILY SUN, Oct. 18, 2005.

⁵¹ *Id.*

⁵² Legal Defence and Assistance Project, GENDER ISSUES 1, 5 (2003).

⁵³ Kevin Avruch, *Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators*, 9 HARV. NEGOT. L. REV. 391, 393 (2004).

⁵⁴ UNESCO Universal Declaration on Cultural Diversity, available at http://www.unesco.org/education/imld_2002/universal_decla.shtml (last visited Apr. 27, 2007).

⁵⁵ I still recall my aunt telling me that a good girl is expected to know three things—hair braiding, sewing, and cooking. These, she said, would make a girl more appealing to a man.

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their actions are important. In elementary school, girls are taught needlework and gardening to prepare them for their roles as wives, while boys are out in the field playing football, learning boxing, and wrestling.⁵⁶ This culture of masculine violence transcends to domestic violence tendencies due to the societal portrayal of women's inferiority and the emphasis on men's physical strength.

1. Cultural Practices in Nigeria

Customary practices (customs and religion) across Nigeria generally hold that the man is the head of the house and has the greatest control and decision-making powers. With respect to marriage, the man is generally expected to pay a bride price to the family of the bride. This payment of bride price has led to the idea of ownership of the woman, the exchange of bride price being evidence of a commercial transaction. According to Akande:

The institution of bride price in traditional times was not conceived as a sale of the girl but was a proof of the girl's importance to both families. Her family must be compensated for her loss and it ensures that the husband's intentions are serious and not just a desire for frivolous association.⁵⁷

In modern times, however, the bride price symbolizes the sale of the girl and ownership by her husband and his family.⁵⁸

Due to this misinterpretation of customary law, the woman is regarded as the property of the man and he is therefore entitled to discipline her as he sees fit. The notion of subjugation of women is so entrenched that all in Nigerian society tend to accept violence against a woman as justified.⁵⁹ Even the victim herself often condones the violence and tries to enforce it on others. For example, the *umuadas* in the eastern part of the country have become notorious for their role in enforcing degrading and inhuman treatment on women married into their families.⁶⁰ Any woman who tries to challenge or defy such cultural norm is usually punished and ostracized by the community. Moreover, when a victim is courageous enough to report incidents of domestic violence to law enforcement agencies, it is trivialized and termed a "private matter." The victim is usually blamed for the incident and

⁵⁶ Different sets of rules are made for boys and girls. Growing up around boys, it was very easy for me to follow their lead and want to do what boys do. At an early age, I developed the love for football (soccer) and often sneaked out with the boys to the stadium to watch football. I still recall the looks of horror and condemnation I got from men and women for attempting to join the "boys club."

⁵⁷ Jadesola Akande, *Women and the Law*, in *WOMEN IN LAW* (Akintunde O. Obilade ed., 1993).

⁵⁸ A former chief Judge of a state quoted from a cartoon in a Nigerian daily to exemplify this point. The wife said, "you always remind me how exorbitant my bride price was. Can you prove it?" The husband retorted, "as a degree holder in marketing, you think I won't have a receipt for everything I buy?"

⁵⁹ See generally, Kerri L. Ritz, *Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of All Forms of Discrimination Against Women*, 25 *SUFFOLK TRANSNAT'L L. REV.* 191 (2001).

⁶⁰ These are daughters of the family who act as custodians of culture of the community.

told to “go home and be a good wife.” Among the educated elites, domestic violence is accepted as a way of life and efforts to combat it are considered western and foreign.⁶¹

2. Poverty

The worsening economic situation in Nigeria is often an excuse given for domestic violence. As a man becomes unable to provide for the family, the woman is left to support the family economically. In order to compensate for their own feelings of weakness or insecurity, many men resort to hitting the woman, become abusive, unnecessarily possessive and suspicious of the woman.⁶² The man resorts to domestic violence in order to stamp his mark of authority over the woman and members of his family. He sees this kind of power as the guarantee of his manhood. In most case, abuse is perpetrated after excessive amounts of alcohol have been consumed, the abuser’s drunkenness being a smokescreen for his intentions.⁶³ In a case reported by Amnesty International,⁶⁴ envy of a woman’s financial ability appeared to be the reason for the beating of a teacher by her medical doctor husband.

In addition, many children grow up witnessing or directly experiencing domestic violence. Many witness their mothers being beaten, and grow up to believe that this is what men are supposed to do. In many instances, these boys repeat the circle of domestic violence, believing that violence is the only way of getting things done or proving their manhood.⁶⁵

C. Nigeria’s Obligation Under Regional and International Legal Instruments

1. Regional Instruments

The African Charter on Human and Peoples’ Rights (the African Charter) entered into force on October 21, 1986.⁶⁶ It has been domesticated by Nigeria,⁶⁷

⁶¹ During the advocacy campaign for the domestic violence bill in several states in Nigeria, the author was informed on several occasions that the idea of getting a court order against an abusive spouse is foreign, as domestic violence is just part of matrimonial life.

⁶² BACKGROUND PAPER *supra* note 4, at 12

⁶³ *Id.*

⁶⁴ NIGERIA: UNHEARD VOICES, *supra* note 5, at n.3. According to this report, a middle-aged woman with a university degree collapsed after the last set of battery by her husband who just left her on the floor. She was advised to go to the police but she wanted to go home to her children and did not want to press charges. She had to undergo surgery to remove a blood clot and the beating continued.

⁶⁵ AMERICAN BAR ASSOCIATION, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN (1994).

⁶⁶ African Charter on Human and Peoples’ Rights, Organization of African Unity, Jun. 27, 1981, available at <http://www.hrcr.org/docs/Banjul/afhr.html> [hereinafter African Charter].

⁶⁷ Section 12 of the Nigerian Constitution provides that “no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly”

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and is now a part of the domestic law.⁶⁸ The African Charter recognizes women's rights in three clear provisions.

Article 18 (3) ensures the elimination of every discrimination against women and ensures protection of women.⁶⁹

Article 2 contains a non-discrimination clause, providing that the rights enshrined in the Charter shall be enjoyed by all irrespective of race, ethnic group, color, sex, language, political or any other opinion, national or social origin, fortune, birth or other status.⁷⁰ The equal protection clause in Article 3 provides for equality before the law and equal protection before the law.⁷¹

This Charter, however, was inadequate in protecting the rights of women in Africa. It did not take into consideration critical issues such as custom and marriage. Within the marital relationship, there was no provision on the age of marriage and equality of spouses. More importantly, the Charter promoted African traditional values and traditions without due consideration to the harmful effects of some traditional values on women.⁷² Because of these and other issues, there was a heightened agitation by women's rights advocates for a regional instrument on women's human rights that resulted in the African Women Protocol discussed below.

Violence against women was first highlighted within the African context in the Dakar Declaration of 1994—African Platform for Action and the Dakar Declaration of 1994—as widespread in most African countries.⁷³ The Dakar Declaration acknowledged that violence deprives women of their ability to achieve their full potential and threatens their safety, freedom and autonomy.⁷⁴ It also acknowledged that violence is often unreported, as the majority of women do not speak out or report to the court but keep silent out of fear, shame or misplaced feeling that they are somehow responsible.⁷⁵

⁶⁸ *Id.* NETWORK AGAINST HUMAN TRAFFICKING IN WEST AFRICA, COUNTRY REPORTS – NIGERIA, available at <http://nahtiwa.virtualactivism.net/countryreports.htm#NIGERIA> (stating that Nigeria has recently domesticated the United Nations Convention Against Transnational Organized Crimes and its Supplementary Protocol and the Convention on the Rights of the Child.)

⁶⁹ African Charter, *supra* note 66, art.18(3) provides “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”

⁷⁰ African Charter, *supra* note 66, art. 2 states, “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status”.

⁷¹ African Charter, *supra* note 66, art. 3.

⁷² African Charter, *supra* note 66, art. 17 (3) states, “The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”

⁷³ African Platform for Action, adopted at the 5th Regional Conference on Women, Dakar, Nov. 16-23, 2004. UN Doc. E/CN.6/1995/add.2, par. 67, available at www.un.org/documents/ecosoc/cn6/1995/ecn61995-5add2.htm.

⁷⁴ *Id.*

⁷⁵ *Id.*

a. *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which was ratified by the required fifteen member states, including Nigeria, and came into force on November 26, 2005, places an obligation on state parties to take measures to address not only violence against women, but also other aspects of women's rights.⁷⁶ Article 1 defines violence against women as:

All acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life, in peace time and during situations of armed conflict or of war.⁷⁷

Interestingly, unlike many Constitutions and laws of African states, this definition of violence against women widens the scope of sexual violence to include marital rape. Prohibition of marital rape is further emphasized in Article 4, which requires states parties to prohibit, prevent, and punish "all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."⁷⁸

Other key provisions of the Protocol include Article 1(f), which guarantees the enjoyment of women's rights regardless of marital status in all spheres of life.⁷⁹ This provision implies that national laws and constitutions that discriminate against married women—an example is Section 26 of the 1999 Nigerian Constitution—are in conflict with the Protocol and violate its non-discrimination principles.⁸⁰

Article 1(g) defines harmful practices as practices that "negatively affect the fundamental rights of women and girls such as their rights to life, health, dignity, education, and physical integrity."⁸¹

Article 3 imposes an obligation on all parties to the Charter to combat all

⁷⁶ African Commission on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *available at*: http://www.achpr.org/english/_info/women_en.html.

⁷⁷ African Charter, *supra* note 66, art. 4a.

⁷⁸ *Id.* at art. 4(2). Article 4(2) states, "States parties shall take appropriate and effective measures to (a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."

⁷⁹ *Id.* at art. 1f. In its definition clause, the Protocol defines discrimination against women as "any distinction, exclusion, or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life."

⁸⁰ CONSTITUTION, Sec. 26 (1999) (Nigeria). Section 26 of the Constitution enables Nigerian men to confer citizenship by registration to their foreign wives but does not extend the same rights to foreign men married to Nigerian women.

⁸¹ African Charter, *supra* note 66, art. 1g. According to Article 1(g) harmful traditional practices means "all behavior, attitude, and/or practices which negatively affect the fundamental rights of women and girls, such as their rights to life, health, dignity, education and physical integrity."

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forms of discrimination against women through appropriate legislative, institutional, and other measures. States should, among other things, include in their constitutions and other legislative instruments the principle of equality between men and women and ensure its effective implementation.⁸² Article 3 reaffirms women's rights to dignity inherent in a human being and the recognition and protection of her human and legal rights. It obligates state parties to adopt and implement appropriate measures to ensure the protection of every woman's right and protection from all forms of violence, particularly sexual and verbal violence.⁸³ Having already defined harmful traditional practices,⁸⁴ Article 5 focuses on measures to be taken by the government to eliminate them such as public awareness, legislative measures, provision of necessary support to victims, etc.⁸⁵

Importantly, Article 6 establishes the minimum age for marriage as 18, thereby abolishing child marriages.⁸⁶ It also gives women the right to acquire, own, and freely manage their property. In the case of divorce, Article 7 provides the right to an equitable sharing of the joint property deriving from the marriage.⁸⁷

⁸² African Charter, *supra* note 66, art. 3(1). Article 3 (1) states:

[t]hat every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights; (2) Every woman shall have the right to respect as a person and to the free development of her personality; (3) States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women; (4) States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

⁸³ *Id.* at art. 3.

⁸⁴ *Id.* at art. 1(g).

⁸⁵ *Id.* at art. 5. Article 5 provides:

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them; c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting; d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

⁸⁶ African Charter, *supra* note 66, art. 6 (b) states, "States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: b) the minimum age of marriage for women shall be 18 years."

⁸⁷ African Charter, *supra* note 66, art. 7 states:

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that: a) separation, divorce or annulment of a marriage shall be effected by judicial order; b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage; c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance; d) in case of separation, divorce or annulment of marriage, women and men shall have the right to

Under Article 8, state parties have an obligation to reform existing discriminatory laws and practices in order to promote and protect the rights of women.⁸⁸

For the first time in an international instrument, women have the right to medical abortion in cases of rape, sexual assault, incest, and where the pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child.⁸⁹ Widows' rights are provided for under Article 20, and state parties are urged to take appropriate legal measures to ensure that widows are not subjected to inhuman, humiliating, or degrading treatment.⁹⁰ A widow automatically becomes the guardian and custodian of her children unless this is contrary to the best interest and welfare of the children. A widow also has the right to equitable share in the inheritance of the property of her husband and shall have the right to continue to reside in the matrimonial house.⁹¹ Nigeria has signed and ratified this instrument and is therefore bound to implement its provisions.

2. International Instruments

As a member of the United Nations, Nigeria has signed and ratified several of the human rights instruments. Some are general human rights instruments that specifically recognize the right to non-discrimination. Such general instruments

an equitable sharing of the joint property deriving from the marriage.

⁸⁸ African Charter, *supra* note 66, art. 8 states:

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure: a) effective access by women to judicial and legal services, including legal aid; b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid; c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women; d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; e) that women are represented equally in the judiciary and law enforcement organs; f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

⁸⁹ African Charter, *supra* note 66, art. 14 § 2(c) states:

States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas; b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

⁹⁰ African Charter, *supra* note 66, art. 20 provides:

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions: a) that widows are not subjected to inhuman, humiliating or degrading treatment; b) a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children; c) a widow shall have the right to remarry, and in that event, to marry the person of her choice.

⁹¹ *Id.*

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that provide protection against non-discrimination which Nigeria has signed and ratified include the International Covenant on Economic, Social and Cultural Rights (in force in 1976), the International Covenant on Civil and Political Rights (in force in 1976), the Convention on the Rights of the Child.

There are also other instruments, which focus specifically on women such as the Declaration on the Elimination of Discrimination Against Women,⁹² and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).⁹³

Nigeria signed and ratified CEDAW on June 13, 1985 without any reservations.⁹⁴ It also ratified the Optional Protocol to CEDAW on November 22, 2004. CEDAW provides the basis for ensuring equality between men and women.⁹⁵ It urges state parties to condemn discrimination against women in all its forms and pursue without delay a policy of eliminating discrimination against women by embodying the principles of equality of men and women in the Constitutions.⁹⁶

Article 4 encourages the principle of Affirmative Action as a temporary special measure to ensure women's advancement.⁹⁷ Sexual exploitation of women, especially for prostitution and trafficking, are addressed in Article 6 and state parties are obliged to take all appropriate measures to ensure trafficking and other forms of sexual exploitation are eliminated.⁹⁸

Article 15 grants women equality before the law,⁹⁹ while Article 16 obliges state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to family relations.¹⁰⁰

⁹² Declaration on the Elimination of Discrimination Against Women, G.A. Res. 2263 (XXII) (Nov. 7, 1967).

⁹³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/Res/34/180 (Sept. 3, 1981).

⁹⁴ NIGERIA: UNHEARD VOICES, *supra* note 5.

⁹⁵ *Id.*

⁹⁶ CEDAW, *supra* note 93, art. 2 provides:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.

⁹⁷ CEDAW, *supra* note 93, art. 4 states:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

⁹⁸ CEDAW, *supra* note 93, art. 6 states, "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

⁹⁹ CEDAW, *supra* note 93, art. 15 provides, "States Parties shall accord to women equality with men before the law."

By ratifying CEDAW and its Optional Protocol, Nigeria promises to incorporate the principles of equality in the Nigerian legal system, abolish all discriminatory laws, and adopt appropriate legislative and other measures to eliminate discrimination against women. By ratifying CEDAW and its Optional Protocol without reservation, Nigeria is promising the international community that it would be bound by those provisions and would repeal laws that impede the success of women. However, the Nigerian government is yet to domesticate CEDAW in line with Section 12 of the Constitution.¹⁰¹ This means that at best, the principles of CEDAW can only have persuasive influence on the domestic legal system.

3. Domestic legislations, Policies, and Guidelines

The civilian administration that began in 1999 has provided the opportunity for advocacy on women's rights in Nigeria. Laws and policies have been formulated to eliminate gender-based discrimination and bridge the gap between men and women. Some of these include 1999 Constitution of the Federal Republic of Nigeria,¹⁰² the National Policy on Women,¹⁰³ the Infringement of a Widow's and Widower's Fundamental Rights Law No. 3 of Enugu State,¹⁰⁴ the Prohibition of Female Genital Mutilation Law - Cross River State,¹⁰⁵ the Prohibition of Early Marriages Act, Kebbi State,¹⁰⁶ the Retention in School and Against withdrawal of girls from school Act, Kano State,¹⁰⁷ the Trafficking in Persons Prohibition, Enforcement and Administration Act of 2003,¹⁰⁸ the Child Rights Act.¹⁰⁹

¹⁰⁰ CEDAW, *supra* note 93, art. 16 states, "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women"

¹⁰¹ CONSTITUTION, Sec. 12 (1999) (Nigeria). This section provides that international treaties can only be enforced upon the enactment of a domestic law to that effect by the Parliament.

¹⁰² See Press Release, *supra* note 9. Section 42 of the 1999 Constitution confers equality on all citizens of Nigeria irrespective of ethnic group, place of origin, sex, religion or political opinion.

¹⁰³ See WOMEN'S CONSORTIUM OF NIGERIA, REPORT OF THE DECADE OF REVIEW OF THE IMPLEMENTATION OF BEIJING PLATFORM FOR ACTION (BEIJING + 10) (2004), at 18, *available at* http://www.wildaf-ao.org/fr/IMG/doc/Nigeria_ENG-2.doc. This policy guideline is based on the principles of CEDAW. However, it is just a guideline without any legal force, It is not binding on any government, organization or individual.

¹⁰⁴ *Id.* at 12. This law aims at eradicating harmful rites and practices that accompany the death of one's spouse, especially inflicted on the woman on the death of her husband.

¹⁰⁵ *Id.* The goal is to abolish female genital mutilation.

¹⁰⁶ *Id.* The law focuses on early marriage very common in the northern part of Nigeria.

¹⁰⁷ *Id.* This is intended to prevent early marriage as most girls are withdrawn from school and given out in marriage in some parts of the country.

¹⁰⁸ *Id.* at 22. This is a comprehensive law to combat trafficking in persons and provide rehabilitation and reintegration services to victims.

¹⁰⁹ *Id.* This Act domesticates the Convention on the Rights of the Child and echoes the requirement of free compulsory education and punishment for the marriage of a girl child.

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a. Failure of the Existing Criminal Justice System

Some provisions of the law, rather than protecting women from domestic violence, encourage incidents of domestic violence and give the accused person wide room to escape punishment. For instance, in Sec. 55 (1) d of the Penal Code a man is empowered to correct an erring child, pupil, servant or wife.¹¹⁰ The section provides “[n]othing is an offence which does not amount to infliction of grievous hurt upon any person which is done... by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law and custom under which such correction is lawful.”¹¹¹

The Penal Code designates the following as grievous hurt:

emasculat[i]on, permanent deprivation of sight in an eye, of the hearing of an ear, or of the power of speech, deprivation of any member or joint, destruction or permanent impairing of the power of any member or joint, permanent dislocation of the head or face, fracture or dislocation of bone or tooth, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pains or unable to follow his ordinary pursuits.¹¹²

Another provision states, “Nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause any injury if that injury is so slight that no person of ordinary sense and temper would complain of such injury.”¹¹³

Since there is no law against domestic violence in Nigeria, at best a victim who seeks protection under the law will rely on the provisions of the Criminal Code on common assault.¹¹⁴ The Criminal Code considers assault on a woman as a misdemeanor while assault on a man is a felony.¹¹⁵ This lower sentence of two years means that assault on a woman is not as serious as assault on a man. Victims of domestic violence are reluctant to use the justice system—as it is not victim friendly. In some cases, the judges openly blame the victims for the violations of their rights.¹¹⁶ Women are asked demeaning questions during investigation and trial, and the fear of these intrusive questions about their private lives prevents victims from reporting rape and using the legal system.¹¹⁷

¹¹⁰ Laws of Northern Nigeria, Cap 89.

¹¹¹ *Id.*

¹¹² *Id.* at § 216.

¹¹³ *Id.* at § 58.

¹¹⁴ Laws of Northern Nigeria, Criminal Code Act (1990), Cap. 77.

¹¹⁵ § 353 of the Criminal Code prescribes 3 years punishment for a indecent assault on a man, calling it a felony while § 360 prescribes 2 years punishment for the same offence on a woman calling it a misdemeanor. *Id.*

¹¹⁶ NIGERIA: UNHEARD VOICES, *supra* note 5, at § 4.

¹¹⁷ *Id.*

Under the Criminal Code, sexual abuse of children between the ages of thirteen to sixteen is known as defilement and is not as serious as rape.¹¹⁸ In some states, sexual abuse of a girl child between the ages of eleven to thirteen is merely a misdemeanor or indecent treatment with a punishment of two years imprisonment.¹¹⁹ In many cases of sexual assault, the law requires corroboration in addition to the victim's testimony.¹²⁰ In particular, Section 221 of the Criminal Code requires corroboration before a conviction for defilement of a girl under the age of sixteen can be sustained. Since sexual assault is hardly carried out in the open, the requirement of corroboration cannot be met.¹²¹ As a result, many accused persons are set free; this further traumatizes the victim and prevents other victims from speaking out and seeking redress. Moreover, the burden of proof of lack of consent in rape allegations is with the prosecutor.¹²² This means that the victim herself has to prove she did not consent. This is often difficult to do, especially as these offenses take place where there are no witnesses.

The offense of rape is defined as:

Unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating [sic] her husband.¹²³

The punishment for rape is life imprisonment "with or without caning."¹²⁴ A man cannot be guilty of raping his wife because under common law, which gave rise to the Criminal Code, there is mutual consent and contract between a man and his lawful wife. Thus, the wife had given up herself unto her husband, which she cannot retract.¹²⁵ Shari' a Law is said to forbid marital rape generally.¹²⁶ However, the husband may withdraw maintenance to his wife if she refuses him sexual intercourse.¹²⁷ In establishing the offence of rape, the state must prove that the victim did not give her consent.¹²⁸ At the same time, the accused in defending

¹¹⁸ BACKGROUND PAPER *supra* note 4.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See Upaha v. The State* [2003] 6 N.W.L.R Part 816 (Nigeria) (where the court held that medical evidence did not satisfy the requirement for corroboration.)

¹²² Yemi Akinseye-George, *The Dilemma of Legal Aid in the Protection of Human Rights*, 3 J. HUM. RTS. L. & PRACTICE 102 (1993).

¹²³ Laws of Northern Nigeria, Criminal Code Act (1990), Cap. 77 § 357 (Nigeria).

¹²⁴ *Id.* at § 358.

¹²⁵ 1 Hal. P.C. 629; *See also* J.C. SMITH & BRIAN HOGAN, 401 CRIMINAL LAW (4th Ed. 1965).

¹²⁶ BAOBAB FOR WOMEN'S HUMAN RIGHTS, WOMEN'S ACCESS TO JUSTICE AND PERSONAL SECURITY IN NIGERIA: A SYNTHESIS REPORT (2002).

¹²⁷ NIGERIA: UNHEARD VOICES, *supra* note 5.

¹²⁸ Laws of Northern Nigeria, Evidence Act, (1990) Cap. 112 § 138(2) (Nigeria).

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himself is allowed to give evidence of prior sexual history of the victim, the partner not withstanding.¹²⁹

Under the present legal framework, it is most likely that a victim of domestic violence who lays complaint and pursues legal remedy against the perpetrator will break up her home or generate insecurity in herself and her children. It is likely that she will lose the economic support of the male perpetrator. She may be forced out of her marital home and if she returns to her father's house might be driven back to her husband's house of horror. As she cannot support herself and the children, they may end up on the streets or become victims of other forms of abuse or she may return to the violent home to face a more aggressive and more arrogant husband. This vulnerability of women discourages them from reporting cases of domestic violence or abuse against them at home, or to seek legal redress. There are no provisions for shelter or other victim rehabilitative services.¹³⁰

The Nigerian legal system is more adversarial than reconciliatory. The indirect outcome of most judicial proceedings is usually the termination or straining of the relationship of the litigants, and this is true of a domestic violence victim who takes the perpetrator to the police station or the court for redress under the present law. Many victims of domestic violence, who lay complaints at police stations, usually get taunted, and humiliated, or their complaints are trivialized. In this way, the victim suffers more emotional and psychological violence because law enforcement officials, like officials of other male dominated institutions, are not sensitized on the issue of domestic violence or trained on how to respond to such complaints. The police also operate from the prejudices and stereotypes of the male dominated customs and traditions in the society. Without any effective remedy to protect a victim and her children while still allowing them to remain in their home, she remains silent and sometimes dies from the continued violence. Again, relatives, neighbors, and the community who witness the violence in the home may be willing to help, but cannot directly do so under the present legal system, because the victim needs to initiate the complaint as there is no provision for third party complaint.¹³¹

Under the current legal framework, there is no confidentiality of proceedings nor are there specially designated family courts.¹³² The result is that domestic violence cases, especially of sexual abuse, become a public affair and the victims

¹²⁹ *Id.* at § 211.

¹³⁰ I recall the day a young woman of twenty-two years walked into my office with her aunt and sister in law. Her husband had brutalized her and threatened to take her children away from her if she did not endure the beatings. At the end of the discussion, the only thing she was certain of was that she did not want to end her marriage and did not want her husband prosecuted. All she wanted was for the violence to stop. She did not want to lose the economic support of her husband and how I was going to stop the violence without her cooperation and within the confines of the existing domestic law is something I am still trying to figure out.

¹³¹ BAOBOB FOR WOMEN'S HUMAN RIGHTS, *supra* note 126.

¹³² NIGERIA: UNHEARD VOICES, *supra* note 5.

are further traumatized by the disclosure of private matters.¹³³ The legal system does not take into consideration the specific needs of a domestic violence victim; neither does it offer any specific protection.

The current laws do not make adequate provisions for the protection of victims of domestic violence.¹³⁴ The victims are usually women and children, and the combination of inadequate laws and male dominated customary and religious practices make the victims more vulnerable, without legal or social remedy.¹³⁵ There is a need for a complete overhaul of the criminal justice system in Nigeria using a victim friendly human rights approach.¹³⁶

II. CURRENT INITIATIVES FOR LEGAL REFORM IN NIGERIA

Initiatives for legal reforms have come mainly from civil society organizations and human rights activists. Such initiatives include the following.

A. *Violence Against Women (Prohibition) Bill 2003*

The Violence Against Women (Prohibition) Bill 2003—(VAW)—is an initiative of a coalition of non-governmental organizations involved in law reform advocacy as well as provisions of services to victims and survivors of violence against women.¹³⁷ In addition to drafting a comprehensive bill on violence against women, the coalition aims at creating awareness that will promote attitudinal changes in the society that are necessary for the Bill's successful implementation. The Bill was first submitted to the House of Representatives in 2000, but did not see the light of day until the end of that legislative session in 2003. It was then reintroduced to the same House of Representatives in 2003 but has yet to be passed into law.¹³⁸

The VAW Bill aims at addressing obstacles to the practice of constitutional principles arising from all forms of gender based violence. Section 1 of the Bill prohibits certain acts that constitute violence against women, including willfully placing or attempting to place a woman or girl in fear of physical injury, coercing a woman or girl—by force or threat—to engage in any act—sexual or otherwise—to the detriment of her physical or psychological well being, mutilating, attempting or aiding the mutilation of a woman's or girl child's genitals, indecently assaulting a woman or girl, raping a woman or girl, committing incest with a woman or girl, marrying or giving an under-aged girl into marriage, sexually harassing a woman or

¹³³ *Id.*

¹³⁴ Amnesty International, Nigeria: Level of Violence Against Women in the Home Shockingly High, <http://news.amnesty.org/index/ENGAFR440122005> (last visited Nov. 30, 2007).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ The coalition is known as the Legislative Advocacy Coalition on Violence Against Women (LACVAW). It is a national membership organization made up of 55 organizations and 6 individuals.

¹³⁸ As at the time of writing this article, it was very difficult to get information on the position of the Bill. The only certainty was that it was still with the House Committee on Women.

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girl, sexually assaulting a woman or girl, sexually exploiting or enslaving a woman or girl, sexually abusing a woman or girl, forcing a woman or girl into prostitution, slavery or trafficking, depriving a woman of her liberty, denying a woman of economic benefit without just cause, exposing any woman or girl to forced labor, forcing any woman to isolate herself from family and friends, inflicting any emotional abuse on a woman, abandoning wife or children without any means of subsistence, stalking or intimidating any woman or girl and inflicting any domestic violence on a woman.¹³⁹

Any person who attempts to commit any of the offenses listed there or any person who aids, incites or counsels another person to commit any of these offenses is deemed to have taken part in committing the offence. If the court finds that person guilty, such a person will be liable on conviction to imprisonment for a minimum of two years or a minimum fine of 10,000 Naira or both fine and imprisonment.¹⁴⁰ The State High Court is designated as the court of competent jurisdiction to hear cases of violence against women brought pursuant to the provisions of the proposed bill.¹⁴¹

The Bill empowers police officers to use their discretion to arrest any person whom they suspect of having committed any of the offenses under Section 1.¹⁴² A police officer may also arrest any person against whom a complaint of having committed any of the offenses listed in the bill has been made. Such arrest can be made without a court order or warrant of arrest.

The Bill stipulates conditions for issuing a Protection Order for survivors of violence and provides that an application for a protection order may be made before any High Court following a complaint of violence against a woman as defined under Section 1.¹⁴³ According to Section 6 (1) (a)–(g), only certain persons or agencies may apply for a Protection Order at the State’s High Court, namely, the complainant, the Commission on violence against women, the police, a relative of the victim, a social worker or health worker, a representative of a relevant civil society organization, or any person who witnesses the act of violence.

The modalities and procedures for applying for a protection order are also included in the Bill.¹⁴⁴ The Bill provides for an Interim Protection Order in circumstances where there is reasonable cause to believe that unless the order is issued, the applicant or dependent will be at risk of acts of violence by the respondent.¹⁴⁵ Subsection 2-3 provide that applications for a Protection Order must be made *ex parte* supported by an affidavit of the applicant or any person

¹³⁹ Violence Against Women (Prohibition) Bill 2003 (Nigeria)[Proposed].

¹⁴⁰ *Id.* at § 1.

¹⁴¹ *Id.* at § 5.

¹⁴² *Id.* at § 13.

¹⁴³ *Id.* at § 6-12.

¹⁴⁴ *Id.* at § 6(2-9).

¹⁴⁵ *Id.* at § 7.

knowledgeable about the matters concerned and can be heard by the judge in chambers.¹⁴⁶ Such application must be heard within twenty-four hours of being filed.¹⁴⁷ The return date on the interim protection order should not be more than fourteen days from the date the interim order is made and a copy of it must be given to the respondent.¹⁴⁸ The police officer must assist a survivor of domestic violence to file a complaint, provide or arrange safe transport to alternative residence or shelter, provide transportation to the nearest medical facility for treatment and inform the survivor of her rights to protection against domestic violence.¹⁴⁹

Section 15 provides for the establishment of a Commission on violence against women which will monitor and supervise the implementation of the provisions of the Bill. The Commission will also administer the operation of the Trust Fund provided for in the Bill to provide aid for survivors of violence such as rehabilitation and reintegration, shelters, legal aid and supporting organizations that provide direct assistance to survivors of violence.

As stated above, this Bill has been in the lower House of Representatives for the past five years and has not even been listed in the Order Paper for hearing.¹⁵⁰ At a meeting organized by the House Committee on Human Rights, the author raised concern about the slow progress of the Bill. A member of the Committee in the House of Representatives explained in confidence that the provision on marital rape has delayed the passage of the bill into law. According to this source, committee members view this provision as western and against the culture of Nigeria and once this “issue” is settled, the Bill will be passed into law. With just a few more months left before this legislative year ends in 2007, the possibility of passing the Bill into law grows dimmer every day.

B. Domestic Violence Bill Advocacy Project

The Domestic Violence Bill Advocacy Project is an initiative of the Legal Defense and Assistance Project—LEDAP—a non-governmental membership organization of lawyers in Lagos, Nigeria.¹⁵¹ As the then Coordinator of the women’s program of LEDAP, the author drafted the Domestic Violence Bill between June and September 2000. In drafting this bill, the first of its kind in Nigeria, references were made to the Family Violence Law of South Africa as well

¹⁴⁶ *Id.* at § 7 (2).

¹⁴⁷ *Id.* at § 7 (3).

¹⁴⁸ *Id.* at § 7 (2-4).

¹⁴⁹ *Id.* At § 14.

¹⁵⁰ A Bill goes through 5 stages before it is passed by the legislature. The stages are First Reading, Second Reading, Committee Stage, Report Stage and the Third Reading. At the Third Reading, the Bill is placed before the legislature for a final vote. However, the Bill has to be listed in the Order Paper for the particular day before it can go through the first Reading, which is basically a formality to notify members that the Bill is now before them. The Bill on Violence Against Women is yet to be formally presented to the House. It has not undergone the First Reading yet.

¹⁵¹ Legal Defence and Assistance Project, <http://www.ledapnigeria.org/> (last visited Nov. 30, 2007).

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as other laws on domestic violence and/or family violence.¹⁵² The goal of the project is to raise awareness about the dangers of domestic violence in the project states and mobilize support for the campaign to enact a law on domestic violence. The project is being implemented in twelve states in Nigeria.¹⁵³

Several strategies were adopted for the campaign on domestic violence taking into consideration the state and the geopolitical zone of the country. Generally however, the following strategies were adopted in all the project states:

a) Stakeholders Consultative Forum on the draft bill—This first meeting after the drafting of the bill was the Stakeholders Consultative Forum held in Lagos on November 16, 2000. Participants included non-governmental organizations, lawyers, legislators, members of the Ministry of Justice and Ministry of Women's Affairs, and Journalists. Three key learning points at the roundtable were: the need to sensitize and enlighten men on the dangers of domestic violence and carry them along in the campaign, the need for counseling services for the perpetrators of domestic violence in the draft bill and the willingness and enthusiasm of other women's groups to support and contribute to the success of the project and carry them along in the campaign. A Strategic Committee of eleven civil society activists and five media partners was set up to harmonize the views of participants at the consultative roundtable and produce the second draft.¹⁵⁴

b) As part of the advocacy campaign, the first ever National Workshop for men on domestic violence was held from August 15 –17, 2001 in Abuja.¹⁵⁵ This workshop provided an opportunity for Nigerian men to discuss the issue of domestic violence and their role in raising awareness and campaigning for the enactment of the Domestic Violence Act. Participants included students, legislators, journalists, lawyers, judges, religious leaders, and police officers. Participants at the workshop highlighted the need for a multi-disciplined lobby and advocacy network of men on domestic violence, identification of strategies for

¹⁵² I have been asked on different occasions why I embarked on this project. As a young child, I was not exposed to domestic violence until my father had a new tenant, a young couple with two beautiful children. Even though the man was half the size of the woman, he was constantly beating her up to the extent that she had to be admitted to the hospital. Anytime I think of domestic violence, this incident comes to my mind. I remember wondering why she could not take him to court, or in any case, just retaliate and beat him up too. After all, she was bigger than him. I never understood why she endured the beatings. When I had the opportunity to design and implement a project on women's rights, I could not think of a better project than a domestic violence bill project.

¹⁵³ The author designed and raised funds for this project which was carried out in two phases. The first phase involved six pilot states, one project state from each of the six geo political zones in Nigeria. This first phase of the project was funded and supported by the Department for International Development (DFID) through the Nigeria Governance Fund managed by the British Council, Nigeria. The second phase of the project included another six states, one each from the six geo political zones in Nigeria. The United Nations Development Fund for Women (UNIFEM) provided the funding for this second phase of the project. The twelve states are Cross River, Benue, Jigawa, Edo, Ekiti, Enugu, Akwa Ibom, Ebonyi, Katsina, Kaduna, Lagos, and Plateau.

¹⁵⁴ Members of this Committee subsequently became project state coordinators with the responsibility of coordinating the activities of the network in the state.

¹⁵⁵ This workshop was supported by the Canadian International Development Agency (CIDA).

lobby at the States Houses of Assembly as well as creation of awareness at pilot states and at the National Assembly. An important output of this workshop was the formation of all male lobby groups in the project states to campaign for the Domestic Violence Bill. This network, known as the Blue Ribbon, played a vital role in the advocacy campaign.¹⁵⁶

c) Series of Legislative Advocacy Training and Strategic Linkage workshops were held in all the project states. The goal of the training and strategic linkage workshops was to train civil society organizations on the skills of legislative advocacy with particular focus on the domestic violence bill.¹⁵⁷ This provided a link and platform for interaction and networking for community based organizations and other agents of change in the state. It also built a network of civil society organizations in the states on legislative advocacy and promotion of rights of women and other vulnerable persons. These workshops also provided participants the opportunity to discuss the provisions of the draft bill and make suggestions in line with the peculiarities of the states. Participants at these workshops formed the legislative advocacy coalitions, which lobbied intensively for the passage of the bill into law. They followed the progress of the bill in the parliament and lobbied legislators to pass the bill into law. Members of the coalition engaged in several consultation and advocacy visits with state legislators. At the roundtable, the legislators were given the opportunity to discuss the provisions of the bill and for the coalition to lobby for sponsors of the bill. It also provided an opportunity to open dialogue between the legislators and civil society organizations.

d) The Enlightenment and sensitization program was launched in each of the project states on the issues of domestic violence and its implications on the lives of the people as well as the benefits they will derive if the bill is passed into law. The goal was to raise awareness of women's human rights generally and the issue of domestic violence in particular and to provide information to lobby legislators on the issue. Campaign materials included radio and television interviews, posters, booklets, rallies and use of t-shirts.¹⁵⁸

The media proved to be a strong ally in the domestic violence bill campaign. In each of the project states, the state or national media provided wide coverage on

¹⁵⁶ The Blue Ribbon is the first network of men focusing on women's rights in Nigeria. This network was vital to the campaign as male policy makers tended to pay more than the usual attention to other men discussing the issue of violence against women. The fact that men, who are majority of the perpetrators, are speaking out against domestic violence was a novelty and participation of men in the campaign facilitated easy access to several offices and individuals.

¹⁵⁷ The outcome of the training workshop included the formulation of strategies for introducing, lobbying and promulgating the bill at the state house of assembly, formulation of strategies for creating awareness and enlightenment on domestic violence and women's human rights in general as well as networking and collaboration between agents of change in the state.

¹⁵⁸ These campaign materials were of various concepts, depending on the common form of domestic violence prevalent in the particular project state. Also taken into consideration was the target audience of the enlightenment program.

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the issue of domestic violence and encouraged state legislators to pass the bill into law. In one of the states, Cross River State, the state media provided a live television phone-in program, which allowed members of the public to air their views on domestic violence.¹⁵⁹ Two days before the public hearing on the bill, an analysis of domestic violence and the key provisions of the bill were highlighted and members of the public urged to turn out for the public hearing. This strategy was hugely successful as the state legislature eventually passed the bill into law.¹⁶⁰

C. Unique Provisions of the Domestic Violence Bill

The Bill provides a quasi-criminal, quasi-civil procedure in that the legal process under the bill does not involve arrest, or trial or punishment of the perpetrator but only aims at protecting the survivor from violence within the home. It is only when the perpetrator violates the court order that he can be arrested.

Under the Bill, a survivor of domestic violence or third party who is qualified to do so may approach any court in the state and ask for a protective order against the perpetrator for a certain period of time, within which also the perpetrator undergoes counseling. If the perpetrator continues with the violence despite the protective order against him or her, the court may make an order to protect the woman's insecurity with respect to her subsistence, shelter, and maintenance of the children while the perpetrator is compelled to comply with the protective order.

The bill enjoins the court to hear complaints under the bill in strict confidence and in chambers. This is to protect the social, psychological and personal integrity of the parties, especially the survivor. It also aims at protecting the children from undue attention and publicity.

A third party, usually a relative, welfare officer, community health, social or welfare worker, the community itself, or such other person as defined by the bill may intervene to obtain a protective order in favor of the survivor who has refused or is unable to seek legal remedy.

D. Summary of the Proposed Domestic Violence Bill

The Bill is cited as the Domestic Violence and Other Related Matters Bill. The interpretation clause contains definition of terms and phrases used in the bill. Under the bill, a police officer is bound to assist a complainant of domestic violence at the scene of the incident or when it is reported, either to find a suitable shelter and obtain medical treatment, or to explain to the complainant the remedies available to the complainant and the right to lodge a criminal complaint if

¹⁵⁹ The author was interviewed on all the media activities in all the project states as well as members of the network and the Blue Ribbon.

¹⁶⁰ Even though the legislature passed the bill into law, it still required the Governor's Assent which was not forthcoming as the Governor was said to be out of the country. After 30 days without the Governor's Assent, the bill could not revert to the House as the legislative year had ended and new elections were being conducted.

applicable.¹⁶¹ The police officer may arrest the respondent at the scene of an incident of domestic violence when he or she reasonably suspects the respondent of having committed an offense containing an element of violence against the complainant.¹⁶²

A complainant or any other person that has a material interest in the well-being of the complainant can apply for a protection order with the consent of the complainant. Consent may not be imperative for third party application if the complainant is a minor, mentally retarded, unconscious or a person whom the court is satisfied is unable to provide the required consent. The application can be heard at any time, whether in court or in chambers, by a magistrate or high court judge.¹⁶³ The court has an obligation to consider the application within 48 hours, and if a prima facie case is established, make an interim protection order, even if the respondent has not been served. If the court does not grant the order, the respondent should be served with a notice calling him to show cause on the specified date why a protection order should not be issued against him.¹⁶⁴ If the respondent does not appear on the return date after he has been served, the court must issue a protection order. If he appears, the court must hear the matter. If the court finds that the respondent has committed or is committing the act of domestic violence, the court must issue the protection order. A copy of the order is then forwarded to a police station of the complainant's choice.¹⁶⁵ The court may prohibit the respondent from committing any act of domestic violence either by himself or through another person, and from entering the complainants' place of employment or residence. The court may also order emergency monetary relief.¹⁶⁶

Once a court issues a protection order, a warrant of arrest of the respondent must also be issued and an order suspending the execution of such warrant may be made subject to compliance by the respondent. Further warrant can be issued on application.¹⁶⁷ Any firearm or dangerous weapon in possession of the respondent, whether used in the violation or not, will be seized and kept at the police station until the court orders it released to the respondent or the rightful owner, or it be forfeited to the government.¹⁶⁸

A complainant or respondent can apply for the setting aside or variation of the protection order. In the case of the complainant, the court must be satisfied that the application is made freely and voluntarily.¹⁶⁹ The only parties to be present at

¹⁶¹ Domestic Violence and Other Related Matters Bill (Nigeria)[Proposed], § 2.

¹⁶² *Id.* at § 3.

¹⁶³ *Id.* at § 4.

¹⁶⁴ *Id.* at § 5.

¹⁶⁵ *Id.* at § 6. This is an important provision as the victims decide the police station which will receive the copy of the protection order. It is also important as wealthy perpetrators have been known to have police officers in their pay.

¹⁶⁶ *Id.* at § 7.

¹⁶⁷ Domestic Violence and Other Related Matters Bill (Nigeria)[Proposed], § 8.

¹⁶⁸ *Id.* at § 9.

¹⁶⁹ *Id.* at § 10.

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the hearing of the application under the bill are officers of the court; parties to the proceedings; person bringing an application on behalf of the complainant; legal representatives; witnesses; not more than three persons for the purpose of providing support to the complainant; and any other person permitted by the court. The court may order that information relating to the proceedings should not be published.¹⁷⁰

Any court within the state in which the complainant or the respondent resides, carries on business or is employed or where the cause of action arose has jurisdiction to hear a case under the Bill. A protection order is enforceable throughout the Federation irrespective of where the order was made.¹⁷¹ Service of documents under the Bill is in the prescribed manner by registrar of court or the Sheriff and Civil Processes Act.¹⁷² The provisions in respect of appeal and review in the Magistrate's Court Laws or High Court Law of the relevant state shall apply to any proceedings.¹⁷³

Any person who contravenes any prohibition, condition, obligation or order imposed is guilty of an offense and liable to conviction to a maximum fine of 100,000 Naira; imprisonment for a period not exceeding five years; or to both fine and imprisonment. Alternatively, a maximum fine of 20,000 Naira, or imprisonment for a period not exceeding one year or to both fine and imprisonment may be imposed.¹⁷⁴

No police officer shall withdraw a charge or refuse to institute a prosecution unless authorized by the Attorney General of the State.¹⁷⁵ The Chief Judge of the State may promulgate regulations, which he deems necessary or expedient to be prescribed in order to achieve the objects of the Act.¹⁷⁶

III. CHALLENGES OF LEGAL REFORM ADVOCACY

The civilian government which came into being in 1999 provided women's rights organizations with the opportunity to lobby and advocate changes in the laws and policies for a better legal regime for women in Nigeria. All the state Houses of Assembly and the National Assembly had one bill or another aimed at empowering women. Many of these initiatives were unsuccessful for several reasons, three of which will be highlighted here. Because I have engaged in legislative advocacy at both the national and state levels, these challenges are based on my personal experiences on law reform in Nigeria.

¹⁷⁰ *Id.* at § 11.

¹⁷¹ *Id.* at § 12.

¹⁷² *Id.* at § 13.

¹⁷³ Domestic Violence and Other Related Matters Bill (Nigeria)[Proposed], § 14.

¹⁷⁴ *Id.* at § 15.

¹⁷⁵ *Id.* at § 16.

¹⁷⁶ *Id.* at § 17.

A. Lack of Advocacy Skills

Many activists have lived most of their lives under the military and are used to advocacy under a totalitarian military regime for the enforcement of civil and political rights. They are accustomed to the military practice of returning to the barracks and handing over power to civilian government through a free and fair election. The coming into power of the civilian government necessitated a change of tactics to ensure citizen's participation in the new democracy. However, women's rights activist have been found wanting in the art of advocacy and lobbying in a democratic setting. This was particularly evident in the first legislative year of 1999-2003, when the Violence Against Women Bill was submitted by the National Coalition to the House of Representatives, the Lower House in the bicameral legislative structure. Apart from getting a sponsor for the Bill, nothing much was achieved despite a collaboration with the House Committee on Women of the Lower House. Some international human rights organizations recognized the need for training on advocacy and stepped in to provide some form of training on lobby and legislative advocacy. Such organizations include Global Rights (formerly known as the International Human Rights Law Group) who provided the first training on legislative advocacy at the onset of the civilian administration.

The second legislative year, which began in 2003, seems to have already yielded some fruits as more bills on women's rights issues have been passed. For example: Infringement of a Widow's and Widower's Fundamental Rights Law No. 3 of 2001 in Enugu State; The Law Against Female Genital Mutilation (FGM) in Edo, Ekiti, Bayelsa, Ogun, Delta, Ebonyi, and Cross River States; prohibition of early marriages in Kebbi and Niger States; retention in schools of girls from schools in Kano, Borno, Gombe, and Bauchi states; trafficking in women and children in Edo State; Child Rights Act; Trafficking in Persons (Prohibition) Law Enforcement and Administration Act; The Nigerian Constitution; National Human Rights Commission (Gender Desk); National Action Committee on Women in Politics; Universal Basic Education; and Women Development Centres in all the states.¹⁷⁷

No doubt women are learning fast about the art of lobbying in a democratic setting. However, more needs to be done.

B. Lack of Female and Gender Sensitive Representation

In spite of enhanced political awareness, the level of women's participation in governance and decision-making in society has not improved. Factors such as lack of education, cultural prejudices, gender insensitivity in party programs and manifestos, economic disabilities, and lack of skills in the art of politicking have

¹⁷⁷ For more information on efforts by the present civilian administration to promote women's rights, see Press Release, *supra* note 9.

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contributed to the non-realization of women's political rights.¹⁷⁸ The actual percentage of women representatives is a far cry from the expected thirty percent representation stated in the Affirmative Action principle as well as the principles contained in the National Policy for Women. Both documents provide for at least thirty percent women representation in the legislative and executive arms of government as well as political party hierarchies.¹⁷⁹

FEMALE REPRESENTATION IN 1999 AND 2003

Position	No. of Seats Available	No. of women elected and % in 1999	No. of women elected and % in 2003
Presidency	1	0 (0%)	0 (0%)
Senate	109	3 (3.7%)	3 (3.7%)
House of Representatives	360	12 (.33%)	21 (5.83%)
Governorship	36	0 (0%)	0 (0%)
State Houses of Assembly	990	12 (1.21%)	29 (3.84%)

In states like Adamawa, Cross River, Ebonyi, Jigawa, Kano, Katsina, Kebbi, Nasarawa, Oyo, Sokoto, Yobe, and Zamfara, no woman has been elected into the state House of Assembly.¹⁸⁰

The result of non-female representation in Nigeria is that gender sensitive laws and policies are not a priority either at the state or national level. In the campaign for the Domestic Violence Bill, attaining access to male dominated legislatures and sustaining the interest of men in an issue considered "domestic" and "private" was a major obstacle. The obvious entry point is the Women's Committee of the various State Houses of Assembly. This becomes a burden, however, when the Committee is not only headed by a man but is also all male containing members reluctant to discuss what is termed a "domestic matter" between a husband and a wife.

¹⁷⁸ *Id.* In its statement to the CEDAW Committee in January 2004, the leader of the government delegation stated that attempts had been made to increase women's participation in political and public life. According to her, several political parties had made positive concessions to encourage women's participation in politics and cited the waiver of mandatory registration/nomination fees for women by the ruling Peoples' Democratic Party and a declaration by the All Nigerian Peoples Party that in the event of a tie between a male and female candidate during the primary elections, the male candidate would step down. These steps however do not combat the root causes of lack of participation of women in the political process such as women membership of political parties, constitutional constraints, violence, and negative attitude to women's leadership.

¹⁷⁹ National Policy on Women, art. 15.3. Art. 15/3 states, "Affirmative Action of proportionate ratio or 30% representation will be employed to increase the total representative seats in each of the legislative houses, executive arm, party hierarchy and structures shall be reserved for women for trial period up to year 2000."

¹⁸⁰ WOMEN'S ADVOCATES RESEARCH AND DOCUMENTATION CENTER, GENDER AUDIT: 2003 ELECTION AND ISSUES IN WOMEN'S POLITICAL PARTICIPATION IN NIGERIA, available at <http://www.boellnigeria.org/documents/Gender%20Audit%202003%20Elections.pdf>.

When I had the opportunity to address the Parliament of the Lagos State House of Assembly, some individuals showed genuine interest and asked questions at the end of the presentation. Others challenged me to go to the Shari' a states to discuss women's rights issues, believing that Shari' a law prohibits women's rights.¹⁸¹ In other words, if I can convince an advocate of Shari' a law that domestic violence is a crime, then I can count on his support. I was very happy, as this gave me the opportunity to identify opponents and potential supporters whom I can lobby to support the bill. With persistence, the use of the media, and changes in advocacy strategies, it was possible to win over some members of the women's committee who subsequently sponsored and introduce the bill in the House of Assembly. Interestingly, the only female legislator at that time was not present at the hearing.

Noteworthy is the position of the few women in the State and National Assembly. Many of them were even more gender insensitive than their male counterparts. Some were reluctant to sponsor bills on women's rights issues for fear of being labeled; others commented that women were not the only ones that voted them into power. In the case of the Domestic Violence Bill, some argued that the concept of domestic violence legislation is foreign, contrary to cultural norms and women should not have the ability to take husbands to court over a trivial matter like wife beating. In one of the states, the female legislator who heads the Women Committee could not understand why I was lobbying for a domestic violence bill in the state. In one of the meetings, she asked me, "What exactly do you gain risking your life to come to this state. You are not from this state; neither do you live here, what is your gain?" In another state, another female legislator whom I wanted to sponsor the bill said, "Are you saying that if my brother beats his wife she can take him to court because of that beating? Do you think she can come back to that house?" Still others gave stringent conditions for sponsoring the bill and bringing it before the legislature.¹⁸² One of the surprises during the advocacy campaign was the support from some of the male legislators who spoke strongly in favor of the Bill and the need for a law on domestic violence.

C. Lack of Effective Gender Policy

In July 2000, President Olusegun Obasanjo approved and signed the National

¹⁸¹ In 1999, some states in northern Nigeria expanded the Shari' a law applicable in their states to criminal matters. There are various arguments as to whether Shari' a law actually protects or violates the rights of women. Many people believe Shari' a law discriminates against women while others believe that the implementation of Shari' a law, and not Shari' a law per se that is discriminatory against women. Unfortunately, there have been more media reports of discriminatory practices against women. The famous cases of Safiya Hussaini Tungar Magajiyar Sani and Amina Lawal—both sentenced to die by stoning for adultery but set free on appeal—showed instances of discrimination against women.

¹⁸² In one of the project states, legislators led by two female members demanded compensation of different forms before the women's committee could sponsor the domestic violence bill.

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Policy on Women, marking a milestone in the women's rights movement in Nigeria.¹⁸³ The National Policy embraces the principles and provisions of equality in CEDAW and calls for enforcement of existing laws and enactment of new ones in consonance with the provisions of CEDAW.¹⁸⁴ However, there is no positive action from any branch of government to implement the principles of the policy. The Federal Government is not obligated to follow the guidelines; nor is it binding on any individual, group, or organization. As stated in its preamble, the Policy is "another expression of the government's commitment to the development of all sectors of the population and to the institutionalization of processes which will pilot the Nigerian society towards social equity, justice, and a much improved quality of life."¹⁸⁵ The approval of the Policy without giving it a force of law that enables women to challenge its lack of enforcement, will not improve the situation of women in Nigeria, especially domestic violence victims. There are also no clear guidelines on the implementation of the guidelines, no evaluation, monitoring, or enforcement of the guidelines.

In the opinion of the researcher, domestication of CEDAW will provide a better legal framework that will pave the way for gender equality in Nigeria. In its General Comments to the

Fourth and Fifth Country Report, the CEDAW Committee expressed concern that CEDAW is yet to be domesticated although Nigeria ratified the Convention in 1985.¹⁸⁶ Other principle areas of concern included: some provisions of the 1999 Constitution that discriminate against women in particular in the area of nationality and employment; the existence of a three pronged legal system, namely statutory, customary, and religious laws that result in a lack of compliance with international obligations and continued discrimination against women; the lack of comprehensive measures to address all forms of violence against women in the family and in society and to recognize that such violence constitutes a violation of human rights of women; the lack of evaluation of the impact of policies like the National Policy on Women and of effective monitoring mechanisms; and the dearth of data and information disaggregated by sex on the results achieved.¹⁸⁷

¹⁸³ After the foot-dragging by the previous military regimes, it is commendable that the Obasanjo finally signed and approved the National Policy in July 2000. The Policy is an outstanding initiative for bridging the gap between men and women in Nigeria.

¹⁸⁴ U.N. CEDAW, 30th Sess., 638th and 639th mtgs. at 3, U.N. Doc. c/2004/I/CRP.3/Add.2/Rev.1 (Jan. 12-30, 2004). Article 3 of the Policy, one of its goals is to eliminate all form of discrimination against women and in adopting CEDAW, Nigeria affirms its support for the alleviation of the numerous constraints to women's full integration into its development process. *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

IV. OBSTACLES TO REALIZING A BETTER LEGAL REGIME IN NIGERIA

A. Lack of Access to Justice

Access to justice requires that citizens are aware of their rights and have access to institutions that can remedy violations of such rights. It includes, among other things, awareness of legal rights and duties, and accessibility to the justice administration mechanisms and institutions that have the power to remedy injustice. Many women in Nigeria are not aware of their rights. For instance, a majority of the women interviewed in Kwara State stated that they were not aware of the laws protecting women's rights whether in Muslim or customary law.¹⁸⁸ A major reason for this lack of awareness is the high level of illiteracy among Nigerian women. The United Nations Education and Scientific Commission (UNESCO) rated Nigeria as one of the nine countries with the highest illiterate population in the world.¹⁸⁹ The National Demographic and Health Survey (NDHS) of 2003 stated that forty-six percent of women in Nigeria have never attended school.¹⁹⁰ This is not surprising as male preference in the Nigerian society has led to women being kept out of school. In many societies in northern Nigeria, the female child is usually given out in marriage at an early age while the boy child is sent to school.¹⁹¹ Generally, the female child is denied proper education because her future role is considered primarily one of caring for the family, which is not work worthy of formal education. Using the excuse of assisting the parents with housework and agricultural work, the female child is withdrawn from school, which results in a higher percentage of school dropouts among girls than boys.¹⁹² Lacking the ability to read and write, Nigerian women cannot articulate their demands in English, the official language of the justice system in Nigeria. Women hardly understand the elitist language of the court and often feel very uncomfortable on the court premises.

The formal legal system in Nigeria is very expensive and out of reach for the majority of Nigerians. Nigeria is rated as one of the six poorest countries in the world, with a GNP per capita income of about \$280 US Dollars and a population of about 133,000,000.¹⁹³ Women, the majority of the poor in Africa, are unable to

¹⁸⁸ BAOBAB FOR WOMEN'S HUMAN RIGHTS, *supra* note 126, at 15.

¹⁸⁹ WOMEN'S CONSORTIUM OF NIGERIA, REPORT OF THE DECADE OF REVIEW OF THE IMPLEMENTATION OF BEIJING PLATFORM FOR ACTION (BEIJING +10) 6, *available at* http://www.wildaf-ao.org/eng/IMG/doc/Nigeria_ENG-2.doc.

¹⁹⁰ NATIONAL POPULATION COMMISSION, FEDERAL REPUBLIC OF NIGERIA, NIGERIA DEMOGRAPHIC AND HEALTH SURVEY 2003 (2004), *available at*: <http://www.measuredhs.com/pubs/pdf/FR148/00FrontMatter.pdf>.

¹⁹¹ Many states in the northern part of the country have passed legislation prohibiting withdrawal of girls from school for marriage.

¹⁹² BACKGROUND PAPER, *supra* note 4.

¹⁹³ THE WORLD BANK, WORLD DEVELOPMENT REPORT 2004: MAKING SERVICES WORK FOR POOR PEOPLE 253, *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/10/07/000090341_2003100715

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afford the high cost of legal services. Although the Legal Aid Act obliges the state to provide legal aid services,¹⁹⁴ such legal aid services are limited to defendants in criminal charges that are unable to afford legal representation. A victim of domestic violence, not a defendant in a criminal matter, is not entitled to government funded legal aid services.¹⁹⁵ Moreover, the gross under funding of Legal Aid Commission in Nigeria renders legal aid services out of reach of many indigent Nigerians.¹⁹⁶ Even where they might be able to afford legal services, these courts are situated in urban areas with very few courthouses in the rural areas. The undue delay of cases in courts also constitutes an obstacles to women's access to justice. In many instances, civil and criminal matters last for upward of seven to ten years before judgment is rendered; the woman gets tired and frustrated and stops going to court. In many cases, the matter is discontinued by the court and the defendant set free for lack of diligent prosecution.

B. Law Enforcement

The Nigerian Police, the first point of contact with the formal judicial system for victims of domestic violence, often trivialize incidents of domestic violence and does not file reports of complaints made. In some cases, they are reluctant to investigate and prosecute the matter. An example is the case of one Ego Osadebe,¹⁹⁷ the first publicized case of acid bath in Nigeria. Ego died in the hospital on November 23, 1998, three weeks after her husband poured acid on her. The delay in prosecuting her husband (allegedly kept in protective custody rather than in detention) caused a protest by concerned women and women organizations against the Criminal Investigation Department of the Police in Lagos state.¹⁹⁸ The Lagos State Anti Robbery Squad disrupted the demonstrations, asking why women should protest over the death of a woman who wanted to run away with her

0121/Rendered/PDF/268950PAPER0WDR02004.pdf; See also SYNTHESIS REPORT, *supra* note 10.

¹⁹⁴ LEGAL AID COUNCIL OF NIGERIA, LEGAL AID MANUAL, *available at* <http://legalaidcouncil.org/manual.pdf>. Established by the Legal Aid Act, 1976, the scheme is aimed at helping indigent persons within certain economic bracket to have access to justice by providing them with defense lawyers. Only persons with no income or with income below 50,000.00 Naira are eligible. The court can also recommend that the Legal Aid Council provide a counsel which is usually limited to legal representation in court.

¹⁹⁵ Akinseye-George, *supra* note 122. The offences that merit legal aid are: murder of any degree (culpable homicide punishable with death), manslaughter (culpable homicide not punishable with death), malicious or willful wounding (grievous hurt inflicting grievous bodily harm), assault occasioning actual bodily harm (criminal force occasioning actual bodily hurt), affray, stealing, and rape. Others are aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforementioned offences. Legal aid is also available with respect to civil claims arising from accidents and civil claims with respect to human rights. In all cases, it is limited to the defendant/respondent. *Id.*

¹⁹⁶ Legal Resources Consortium, *Transforming the Provision of Legal Aid Services in Nigeria* 4 (Discussion Paper 2004).

¹⁹⁷ PROJECT ALERT ON VIOLENCE AGAINST WOMEN, BEYOND BOUNDARIES 45, *available at* http://www.projectalertnig.org/beyond_boundries.pdf.

¹⁹⁸ *Id.*

husband's wealth.¹⁹⁹

Due to the high level of corruption and inefficiency of the Nigerian police, the average Nigerian has no faith in the integrity and competence of the police. Wealthy perpetrators and people with relatives and friends in the police force are believed to influence the decisions the police make regarding whether to prosecute and, at times, whom to prosecute.²⁰⁰ In a case reported by Amnesty International,²⁰¹ a domestic worker was allegedly raped by her employer's husband. Her father took items of material evidence including her underwear to the local police station. He was told that the alleged perpetrator had already lodged a complaint of slander against the girl for accusing him of rape. A medical examination four days after the event showed evidence of penetration and bruising on her vagina and the examiner concluded that she had been sexually assaulted. However, the domestic worker was subsequently brought before the magistrate court and charged with slander. She was held in custody for seven days until her family could pay her bail. During her imprisonment, she had no access to medical attention and her father was informed that the evidence he handed over to the police had since disappeared. Lawyers with the women's human rights organizations who took up the case believed strongly that the alleged perpetrator had used his social and political influence in his community to exert pressure on investigating officials.²⁰²

In a survey conducted by Project Alert²⁰³ in 2001, law enforcement officials confirmed many of them had negative and discriminatory attitudes towards victims of family violence. When asked of their responses in cases of family violence, 51.9 percent thought they were doing enough to help victims of violence in the family; 46.8 percent thought they did not do enough; 63.3 percent said the police did not respond enough in such cases; and 41.8 percent said the lack of speedy or appropriate response was because such cases were of a private matter.²⁰⁴

With all the problems associated with the formal justice sector, women in Nigeria, especially victims of domestic violence, resort to the informal justice system in seeking redress for violations of their rights. Such informal justice system usually operates within the community including the extended family, the village head, and the community head. At each level of this informal sector, the woman is usually cautioned and at times castigated for making a domestic issue public. Moreover, this informal justice sector applies the discriminatory cultural

¹⁹⁹ *Id.*

²⁰⁰ NIGERIA: UNHEARD VOICES, *supra* note 5, at 11.

²⁰¹ *Id.*

²⁰² *Id.* (Interview with lawyers at Women Advocates Research and Documentation Center (WARD C).)

²⁰³ A non-governmental organization based in Lagos, Nigeria.

²⁰⁴ NIGERIA: UNHEARD VOICES, *supra* note 5, at 12. In an interview with Mr. Ighodalo, Public Relations Officer, Lagos State Police Command, the police spokesman said they did not take violence in the family seriously, "unless it is a case of the rape of a child or the husband kills his wife." *Id.* at 10.

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practices that enforce and condone the subjugation of women and further ensure the silence of the victims.

C. Tripartite Legal Systems

The Nigerian legal system is made up of three different systems of law: the statutory law, religious law, and customary law. Statutory laws include the Constitution, laws made by the government, and government policies. There are different types of religious groups in Nigeria with different laws for their members. The common ones are Christianity, Muslim/Islamic, and traditional religious laws. Customary laws include laws of diverse people of Nigeria, which govern personal matters like marriage, children, and inheritance. These three types of law are enforced by three types of courts namely the formal courts: customary courts in Southern Nigeria and Shari' a courts in Northern Nigeria.²⁰⁵

In principle, statutory law takes precedence over all other laws. In practice however, things are different. In the Northern part of the country, the predominant religion is Islam. Prior to 1999, Muslim laws governed only personal matters but have since been expanded to include criminal matters.²⁰⁶ In personal matters such as marriage, Muslims are free to choose between statutory marriage and marriage under Muslim laws.²⁰⁷ However, couples very rarely choose statutory laws, preferring instead the Muslim laws. In other parts of the country, especially in the South, which is predominantly Christian, it is common practice to marry under both the statutory laws and under customary laws. Even though it is often argued that statutory laws govern such relationships, it is usually customary laws that govern the personal matters of the couple.²⁰⁸ Therefore, where there is a dispute, it is not uncommon that both parties resort to customary laws and practices. For the majority of women in Nigeria, it is Muslim laws and customary practices/laws rather than statutory laws that govern their personal lives. These two systems of law are male dominated and have male focused interpretation.

Statutory laws are not necessarily more protective of women. The judicial system is male dominated and reflects the prejudices and stereotypes of the wider society, especially with regard to rules of procedure already discussed in this article.

²⁰⁵ BAOBAB FOR WOMEN'S HUMAN RIGHTS, *supra* note 126, at 2.

²⁰⁶ Prior to October 1999, only the Shari' a civil or personal law was applicable in the predominantly Muslim states of northern Nigeria but the government of Zamfara state promulgated the Shari' a Penal Code to introduce criminal Sharia law in the state. Since then, other states have followed suit and we now have Shari' a criminal law in almost all the northern states in Nigeria.

²⁰⁷ BAOBAB FOR WOMEN'S HUMAN RIGHTS, *supra* note 126, at 2.

²⁰⁸ *Id.*

V. PROSPECTS FOR A BETTER LEGAL REGIME FOR VICTIMS AND SURVIVORS OF
DOMESTIC VIOLENCE IN NIGERIA

The onset of civilian administration brought renewed hopes of a better legal regime for victims of domestic violence and other women's rights violations. As already noted in this paper, women's rights activists seized this opportunity to lobby for law and policy reforms in compliance with Nigeria's international treaty obligations and in line with international human rights standards.

With a strong desire to be accepted by the international community and attract much needed foreign investment, this civilian administration has sought to improve its human rights records. The first indication was the approval of the National Policy on Women in 2000, after its rejection by successive military regimes and the appointment of women as Minister of Finance and Deputy Minister of Finance.

In January 2004, Nigeria submitted its Fourth and Fifth Country Report to the CEDAW Committee, an action that was neglected by the previous military regime.²⁰⁹ Although the submission of the report was commendable, a laudable aspect of this process was the involvement of civil society organizations in the writing of the government country report. For the first time the government reached out to civil society for inputs in the process even though it was alleged that this was just window dressing as their inputs were not reflected in the report.²¹⁰ Additionally, civil society organizations were represented in the government delegation. This initiative was commented upon by the CEDAW Committee, which noted the high-level delegation of "officials from various branches of Government as well as representatives of NGOs, which enabled the members of the Committee to engage in a frank and constructive dialogue with the delegation."²¹¹ As a result of this collaborative effort, the report submitted by Nigeria was prepared according to the specified guidelines for report writing and the Committee commended the delegation for its comprehensive oral presentation.

Following the submission of the report, the government has tried to comply with the suggestions and recommendations of the CEDAW Committee. Indications of compliance include the ratification of the Optional Protocol to CEDAW; the ratification of the Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and the appointment of the first female

²⁰⁹ Press Release, *supra* note 9.

²¹⁰ There was a debate in the women's rights movement as to the status of women activists who were involved in the government report. Some argued that these women were hired in their individual capacity as consultants to give the report credibility and were not representatives of the women's rights movement in Nigeria. It was also alleged that their inputs were not reflected in the report submitted by the government even though their names were included as having participated in the process. This led to the writing of the shadow report by a coalition of civil society organizations which was submitted to the Committee.

²¹¹ Committee on the Elimination of Discrimination Against Women, Concluding Comments: Nigeria, CEDAW/C/2004/1/CRP.3/ADD.2/REV.1, Jan. 30, 2004.

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judge to the Supreme Court. For the first time also, a female police officer was appointed a state Commissioner of Police. The Ministry of Justice as well as the House of Representatives has set up different committees to look into existing laws with a view towards bringing them into compliance with Nigeria's international obligations. This has resulted in the enactment of different laws already listed in this paper.

While these efforts are commendable and worthy of recognition, there is need to proceed with caution in law and policy reforms in Nigeria. With regard to specific provisions of the law, there is a need to take into consideration the peculiar circumstances of women living under different economic, religious, and cultural backgrounds. Without such consideration, new laws and policies may not enhance access to justice and enforcement of rights of women. Two examples in connection with the violence against women bill and the domestic violence bill will be highlighted here.

A. Jurisdiction of the Court

The Violence Against Women Bill designates the High Court as the court of competent jurisdiction to hear cases of violence against women. A likely argument in favor of the High Court will be the application of statutory rules and procedures unlike lower courts, such as the customary and magistrate courts that apply customary law rules. The effect of having the High Court as the court of competent jurisdiction is that custom and traditions that discriminate against women and enforce subjugation of women common at the lower court levels are bypassed. Another advantage is that trained judges preside over proceedings at the High Court and legal representation is by trained legal practitioners. However, this argument falls short when compared with the issue of access to justice already discussed. High courts are not accessible to women, who are the majority of victims.²¹² Women are reluctant to approach formal court structures due to lack of understanding and fear of the institution. High courts are also located in urban areas, inaccessible to many women who would, in many circumstances, need urgent access to court to apply for the Protection Order.

Moreover, the language of the court is English, a language not understood by majority of the victims and survivors of domestic violence. This is more worrisome when one considers Section 6 of the proposed Violence Against women bill, which states that the court shall accept applications for Protection Order from the complainant, the police, relation of the victims and any person who witnessed the act of violence.²¹³ These categories of people are mostly uneducated and are automatically excluded from the protection of the proposed bill. In addition, the rules of procedure of the High Courts do not permit these classes of people to file

²¹² BAOBAB FOR WOMEN'S HUMAN RIGHTS, *supra* note 126.

²¹³ Violence Against Women (Prohibition) Bill 2003 (Nigeria)[Proposed] § 6.

documents in the High Courts; only certified legal practitioners have that right. Many judges before whom the *ex parte* application for Protection Order should be made are not accessible during or after court sittings, as many of them, except in a few states, live outside their jurisdiction.

The challenge therefore is balancing the advantages of the jurisdiction of the High Court with access to justice of the victims and survivors of gender based violence for which the bill was drafted. Without this, the bill, when passed into law, will not be implemented or enforced.

B. Penalty or Fine for Non-Compliance with the Protection Order

The Bill on Violence Against Women stipulates 10,000 Naira (approximately 72 US Dollars) as penalty for non-compliance with the order of the court. While this may appear a reasonable fine for the farmer in the rural area, who might never be brought before the court because the victim is inhibited as discussed above, this sum is a mere token to the rich perpetrator who in most cases has the police on his pay roll. When the issue of penalty was debated in the different states during the campaign for the domestic violence bill, the majority of the participants expressed the desire for a higher penalty arguing that the life of a woman might be equated with the penalty. Their reasoning was that rich perpetrators who would never receive imprisonment term would trivialize the whole issue, saying, “after all, it is only 10,000 Naira. I will pay it and still beat you up.” This issue of fine needs to be further analyzed in line with the misgivings of the women who are expected to benefit from the law.

C. Conclusion

Extending the idea of human development to encompass women’s empowerment and gender justice puts social transformation at the center of the agenda for human development and progress of women, choices for women, especially poor women, cannot be enlarged without a change in relations between women and men as well as in the ideologies and institutions that preserve and reproduce inequality. This does not mean reversing position, so that men become subordinate and women dominant. Rather, it means negotiating new kinds of relationship that are based not on power over others but on a mutual development of creative human energy.... It also means negotiating new kinds of institutions, incorporating new norms and rules that support egalitarian and just relations between women and men.²¹⁴

All over the world, the law remains a vital tool for promoting the rights of women either in the public, private, or domestic sphere. It serves the purpose of ensuring that abusers are held accountable for their actions and gives the victims a

²¹⁴ U.N. Dev. Fund for Women, UNIFEM Biennial Report, *Progress of the World’s Women*, 21 (2000).

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sense of safety and justice. The law also assists victims to protect themselves from further abuse and to move on with their lives.

In Nigeria, there is need for a complete overhaul of the legal system to protect women's rights and make it victims friendly. All discriminatory laws and practices as well as rules of procedures should be abolished and new ones put in place. The Domestic Violence Bill in the National Assembly, which provides for confidentiality of proceedings, third party proceedings, and Protection Order, should be passed by the National Assembly without further delay. There is need for training of law enforcement agents from the junior rank up to the higher levels on women's rights issues.

However, enactment of laws alone cannot effectively promote women's rights. The need for creating awareness on women's rights issues cannot be over emphasized. Cultural biases, beliefs, and ways of socialization affect the way laws are enforced which often violates the rights of women. Without a change of attitudes and beliefs, the law alone cannot effectively promote or protect the rights of women.