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## **PERSONAL LIBERTY AND DOMESTIC VIOLENCE: ANY LEGAL RESPITE IN NIGERIA?**

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### **Abstract**

*Domestic Violence is a major issue facing the attainment of equal rights and opportunities for women all over the world. Personal liberty and the dignity of human being are core human rights adequately protected in both municipal and international law regime. The paper examines the concept of personal liberty in Nigeria vis-a-vis domestic violence. A conceptual analysis of domestic violence high lights the forms, effects and causes. It is argued that though laws exist capable of protecting women from suffering domestic violence and discrimination. However, it is advocated that more needs to be done in fulfilling and protecting the right of personal liberty and dignity within the domestic arena in Nigeria.*

The consequences of domestic violence against women are integrally linked to longstanding gender inequalities that restrict women's full enjoyment of their human rights. Women are overwhelmingly subjected to domestic and sexual violence at the hands of male perpetrators. Violence against women impairs development and carries a heavy human and economic cost.<sup>1</sup>

### **1.1 Introduction**

Personal liberty is a human right enshrined in all known human rights instruments, internationally and municipally. The Universal Declaration on Human Rights (UDHR) provides that ‘every human being has the right to liberty’.<sup>2</sup> The International Covenant on Civil and Political Rights (ICCPR) provides that liberty of the human being shall not be

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<sup>1</sup> The Millennium Development Goals Report 2005, United Nations, New York 2005.

<sup>2</sup> Universal Declaration of Human Rights, Article 3.

violated in terms of tampering with the freedom and subjection to slavery, inhuman or degrading treatments.<sup>3</sup> The African Charter on Human and Peoples' Rights (ACHPR) provides in clear terms that 'Every individual shall have the right to liberty and to the security of his person'.<sup>4</sup> In Nigeria the right to liberty is enshrined in the Constitution of the Federal Republic of Nigeria (CFRN).<sup>5</sup> The Nigerian Constitution in providing for the limitation of the right to liberty does not make any mention of denial of liberty based on gender. While some limitation exist in the exercise of personal liberty, it is important to note that such limitation must be according to prescribed law. For instance the right to liberty may be limited only for reasons and conditions previously laid down by law.<sup>6</sup>

In addition, to the right to liberty, the CFRN further provides for the right to dignity. Every individual is entitled to respect for the dignity of his person.<sup>7</sup> In the same light the UDHR,<sup>8</sup> ACHPR,<sup>9</sup> and other International law instruments and Conventions prohibit the violation of the right to dignity. It is equally important to note that the right to dignity is not one that can be limited, restrained or violated.

Domestic violence is neither an occurrence only among the lowly placed women nor among non-elite homes. It is intriguing to note that the subordination of women knows no boundaries or barriers and is not dependent on the social, educational or economic status of the Nigerian women. Consequently one finds that an uneducated and poor woman in the rural community suffers as much subordination as an educated and rich woman in the urban centre.<sup>10</sup> Women and children in Nigeria suffer violence within the home and the battery of both wives and children are sanctioned culturally. It is seen in most cases as a form of discipline. Despite specific laws to protect women against domestic violence and wife battery, domestic violence against the woman is downplayed.<sup>11</sup>

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<sup>3</sup> International Covenant on Civil and Political Rights, Article 7.

<sup>4</sup> African Charter on Human and Peoples' Rights, Article 6

<sup>5</sup> Constitution of the Federal Republic of Nigeria, 1999, Section 35.

<sup>6</sup> ACHPR, Article 6

<sup>7</sup> CFRN 1999, Section 34.

<sup>8</sup> UDHR, Article 1

<sup>9</sup> ACHPR, Article 5

<sup>10</sup> Bisi Olateru-Olagbegi & Biola Akiyode Afolabi, Actual Women Situation In Nigeria, available <http://www.wildaf-ao.org/eng/spip.php?article46>, accessed October 23, 2011.

<sup>11</sup> Bisi Olateru-Olagbegi & Biola Akiyode Afolabi, Actual Women Situation In Nigeria, available <http://www.wildaf-ao.org/eng/spip.php?article46>, accessed August 2009.

Domestic violence is perpetuated primarily because of the patrilineal dominance existent in the Nigeria society.<sup>12</sup> The patriarchal system being operated and the gender insensitivity of not only the male folk but the entire society including the women who have been socialized to accept the inferior status also encourages domestic violence.<sup>13</sup> Conversely, among the Yoruba ethnic group in Nigeria it has been argued that the prevalence of gender is nonexistent.<sup>14</sup> The opposing views notwithstanding, the reality of domestic violence cannot be denied in Nigeria today.

Aside, domestic violence being a violation of the personal liberty of women, it is also a violation of the woman's right to personal dignity. The inferior status of women is entrenched in history, culture and tradition. Through the ages, national and religious institutions have been called upon to justify violations of women's rights to equality and enjoyment of fundamental human rights. Women are subject to discrimination in all stages of life; in income, education, health and participation in society and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sex discrimination.<sup>15</sup>

The elimination of violence against women remains the primary responsibility of States. In order to comply with their obligations under international law, States must encourage and support civil society efforts, particularly those of women's organizations. Efforts to end violence must be seen as inter-related with other aspects of a woman's life.<sup>16</sup> It is therefore most timely to interrogate comprehensively the menace of domestic violence against women in Nigeria with a view of highlighting legal respite available.

It is based on the above construct of the right to personal liberty that this paper interrogates the issue of domestic violence in Nigeria as a violation of the right to personal liberty and examines the possible legal respite available for violation in Nigeria. It further examines domestic violence from a right base perspective and analyses it as violation of the right to

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<sup>12</sup> Molokwu N, 'Living Condition and Development: A Global Responsibility- The Role of Home Economics' Paper presented at the XVIIIth congress on 21-26 July, 1996, Bangkok, Thailand.

<sup>13</sup> Bisi Olateru-Olagbegi and Biola Akiyode Afolabi . 'Actual women situation in Nigeria' available <http://www.wildaf-ao.org/eng/spip.php?article46>, accessed October 23, 2011.

<sup>14</sup> Oyewumi, O, 'Yorubas Don't do Gender'; A critical review: The invention of Women, making an African sense of Western Gender Discourses.

<sup>15</sup> Human Rights Concepts, Ideas and Fora: The Human Rights Protection of Vulnerable Groups: Women and Girls, A University of Peace publication.

<sup>16</sup> The Millennium Development Goals Report 2005, United Nations, New York 2005.

personal liberty and to dignity of person. Also analysed are the various legal regime that may avail any one whose rights are violated. The paper concludes by suggesting that the prevalence of domestic violence in Nigeria is clearly a violation of the right to dignity and liberty of the female gender with recommendations on how the government, NGO's and other stakeholders like the Nigeria Bar Association (NBA) can play a role in ensuring the elimination of the prevalence of domestic violence in Nigeria. The paper however is limited to conceptual analysis of the domestic violence, its form, effect and the legal regime available for remedies and not the various customary practices that affect women. A detailed analysis is not made of concepts like primogeniture, female genital circumcision, dowry etc.

## **2.0 Domestic Violence- A Conceptual Analysis**

United Nations commitments to the advancement of women began with the signing of the UN Charter in San Francisco in 1945. Of the 160 signatories, only four were women - Inerva Bernardino (Dominican Republic), Virginia Gildersleeve (United States), Bertha Lutz (Brazil) and Wu Yi-Fang (China) were involved. They succeeded in inscribing women's rights in the founding document of the United Nations, which reaffirms in its preamble "faith in fundamental human rights, in the dignity of the human person, in the equal rights of men and women and of Nations large and small".<sup>17</sup> The above notwithstanding, domestic violence is still entrenched by virtue of the discrimination against women. It is therefore important that a vivid understanding of domestic violence be adequately conceptualised.

Violence against women is a fundamental violation of human rights. Governments have acknowledged that it is their duty to work for its elimination in all spheres of life. Yet while there is considerable agreement on the goal of ending domestic violence, little progress has been made towards this end. In some cases, legislation is not commensurate with the seriousness of this crime, and in most cases, inadequate resources have been devoted to combat it.<sup>18</sup> Erroneously, many people assume domestic violence to be wife battering or maltreatment of women in homes. It is however not that simple a concept.<sup>19</sup> It is accepted however, that women are more vulnerable and thus the assumption is to some extent

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<sup>17</sup> The United Nations Blue Book Series on *The United Nations and the Advancement of Women, 1945-1996* and the United Nations CD-Rom *Women Go Global*, 2000.

<sup>18</sup> Galvanizing action to combat violence against women Consultative workshop concerning the UN Secretary-General's in-depth study on all forms of violence against women 6 – 7 September 2005.

<sup>19</sup> Tamale S, Lecture notes delivered to the LLM (Human Rights and Democratisation in Africa), Centre for Human Rights University of Pretoria, 2008.

applicable. This assumption is trite as most domestic violence is gender violence, which means it is violence by men directed at women or girls, due to the fact that they are female.

Despite the adoption of this assumption by the author, domestic violence encompasses more. The Declaration on the Elimination of Violence Against Women (DEVAW)<sup>20</sup> defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, whether occurring in public or private life, in the family, in the community, or perpetuated or condoned by the State." Furthermore, it describes violence as the illegal use of unjustified force, extreme, destructive to harm someone.

Domestic is defined as 'something used within the home'.<sup>21</sup> It is also safe to define domestic violence as illegal use of force within the home setting. However, the best definition of domestic violence is captured as a purposeful pattern of assaultive and coercive behaviours that adults or adolescents use against their intimate partner causing physical, economic, or psychological harm.<sup>22</sup> This definition captures the fact that domestic violence is against intimate partners and could either be male or female.

From the forgoing definitions, it is deducible that the scope of definitions has since evolved through policy and practice, as reflected in resolutions of intergovernmental bodies and outcomes of global conferences, the work of human rights treaty bodies, special procedures of the Commission on human rights, and regional bodies.<sup>23</sup> It is inferable from this definition that domestic violence can be either against the man or the woman.<sup>24</sup> This paper, however, restricts domestic violence to its effect on the feminine gender.

## **2.1 Forms of Domestic Violence**

Domestic violence can take several shapes and forms. It can be physical, sexual, emotional, economic or psychological.<sup>25</sup> Despite the above forms of violence, the cycle of domestic

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<sup>20</sup> General Assembly resolution 48/104 of 20 December 1993, Article 1.

<sup>21</sup> Microsoft Encarta Encyclopaedia 2009.

<sup>22</sup> Domestic Violence Training Manual, developed by Cornerstone Foundation.

<sup>23</sup> General Assembly resolution 48/104 of 20 December 1993, article 1; and General Assembly resolution 58/185 of 18 March 2004).

<sup>24</sup> [http://en.wikipedia.org/wiki/Epidemiology\\_of\\_domestic\\_violence](http://en.wikipedia.org/wiki/Epidemiology_of_domestic_violence) accessed 20 October, 2011.

<sup>25</sup> <http://www.photographersdirect.com/buyers/search.asp?search=domesticviolence&maximages=40&sz=0&l=on&p=on&s=on&w=on&catid=0&imagenumber=40> (assessed last of December 20, 2009).

violence is similar.<sup>26</sup> Below is a detailed discussion of the different forms of domestic violence prevalent in Nigeria.

i. The physical violence form entails the actual use of force to inflict serious bodily injuries on the victim. Physical violence comes in the form of punching; slapping; hitting; throwing objects; biting; pinching; kicking; pulling hair out; pushing; shoving; burning; strangling; raping; beating - often leading to permanent injuries and sometimes death. In addition, physical violence also entails denying food, warmth or sleep; keeping someone locked up or locked out of the house; refusing to help someone when they are sick, injured or pregnant; holding a person to keep them from leaving; abandoning someone in a dangerous place.

ii. Economic violence occurs where it culminates on the financially more buoyant partner denying the other any form of financial support. Furthermore, economic violence finds expression where the more powerful partner keeps the other from working, controlling someone's money or the household/family money; withholding money; spending money on himself (often on alcohol or drugs) or/and on other women.

iii. Emotional violence attacks the dignity of a person. It involves among other things putting a person down: calling them "ugly," "stupid," "fat," "worthless," ; constant criticism; putting a person down in front of others; mocking; shouting; being excessively jealous; frequently accusing a person of flirting when they are not; controlling what a person wears; not listening or responding; when someone is talking; refusing to accept a person's decisions, saying they have no choice in any decisions; lying to friends and relatives about someone; humiliating a person in public.

iv. Sexual violence takes several shapes. Rape is the most common occurrence of sexual violence. It involves using force, threats or intimidation to make someone perform sexual acts; having sex with a person who doesn't want to have sex; forcing sex after beating a person; forcing sex when someone is sick or when it is a danger to their health;<sup>27</sup> forcing a person to have sex in front of others. In addition, it includes sexual degradation, using

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<sup>26</sup> It starts from the initial tension period, serious violence and then a honey moon phase.

<sup>27</sup> Platform of Action of the Fourth World Conference on Women, FWCW Platform for Action Women and Health.

abusive insults such as “whore” and “frigid”; sexual criticism; making demeaning gender based comments; insisting on unwanted and uncomfortable touching; forcing a person to strip; publicly showing sexual interest in other people; withholding sex and physical affection; minimizing someone’s feelings about sex.

v. Psychological violence deal with emotional needs of the partners. Psychological violence involves isolation from friends and relatives; monitoring or blocking a person’s telephone calls or disconnecting the telephone; telling someone where they can and cannot go; making someone a prisoner in the home; harassment;; checking up on them; opening their mail; making angry gestures; using physical size to intimidate; wielding a knife or a gun; threatening to kill or harm someone, their children, their friends and family. It also involves punishing or depriving the children when he is angry with their mother; manipulating a person with lies and contradictions.

Whatever form domestic violence assumes, it is certain that it constitutes a violation of right to personal liberty as already spelt out above. In the following section, the effects of domestic violence are considered.

## **2.2 Effects of Domestic Violence**

The effects of Gender-based violence can be devastating and long lasting. They pose danger to a woman’s reproductive health and can scar a survivor psychologically, cognitively and interpersonally. A woman who experiences domestic violence and lives in an abusive relationship with her partner may be forced to become pregnant or have an abortion against her will, or her partner may knowingly expose her to a sexually transmitted infection.<sup>28</sup>

Domestic violence apparently thrives on gender inequality.<sup>29</sup> Gender inequality is experienced by the girl child and women and is manifested in almost all aspects of human endeavour in Nigeria. Cultural and religious beliefs tend to contribute largely to Nigerian women’s gender discrimination and low status. Some of these beliefs have been practiced for so long that they are embedded in the societal perception almost as legal norms such that the

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<sup>28</sup> JEKAYINF, A, A. ‘Types, Causes And Effects Of Gender-Based Violence: Challenges for Social Studies Education in Nigeria available at <http://www.unilorin.edu.ng/publications/jekayinoluwa/12.%20Types%20and%20Causes%20Original.htm> accessed 23 October, 2011.

<sup>29</sup> Onaji k, ‘Desparity against the Nigeria woman available at <http://www.onlinenigeria.com/articles/ad.asp?blurb=476> (accessed 2 May 2010).

laws of the Land and International instruments, which protect the rights of women, are flagrantly infringed in the guise of these age-long cultural or religious beliefs.<sup>30</sup> Violence against women is the most direct expression of systemic discrimination and is a critical obstacle to development. The impacts of domestic violence are numerous. However, prime among its impact discussed in this paper include child marriage, physical injury, emotional break down and sexual transmitted infections.

A substantial proportion of women are actively disempowered by discriminatory, violent, unsupportive and disabling environments, beginning at home and extending to national and international levels. The very duty bearers charged with protecting and supporting the rights of girls - such as parents, siblings, guardians, teachers or law enforcement officers - have often been implicated in various forms of violence against girls and women, as well as in the neglect of their responsibility to protect them. Consequently, domestic violence ensures that societies more generally continue to accept and at times even foster, discriminatory attitudes that lay the groundwork for impunity for crimes against women.<sup>31</sup>

Another effect of domestic violence is shown in high social expectations; intense pressure on girls to marry and begin bearing children before they are emotionally, socially and physically ready. Young girls are forced into early marriage by their families and communities, often justified by tradition and/or religion.<sup>32</sup> Economic pressure is also often used as an explanation for early marriages, with parents and communities treating girls as commodities through bride price and dowries paid by their prospective husbands. Child marriage jeopardizes girls' health and limits their opportunities, usually disrupting their education and often violating their rights in a number of ways.

Child marriage with significantly older husbands tends to preclude the establishment of an equal, consensual relationship—child brides have limited or no capacity to negotiate sexual relations, contraception, and other reproductive decisions, including the terms of

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30 Bisi Olateru-Olagbegi & Biola Akiyode Afolabi, Actual Women Situation In Nigeria, available <http://www.wildaf-ao.org/eng/spip.php?article46> , accessed October 23, 2011.

31 University of Peace, Human Rights Concepts, Ideas and Fora: The Human Rights Protection of Vulnerable Groups: Women and Girls

32 The Child Rights Act provide for the protection of the rights of the child through the prohibition of: - child marriage, child betrothal, etc. Sections 21-40.

childbearing, as well as other aspects of their life.<sup>33</sup> Child marriage typically transits girls from sexual abstinence to high levels of unprotected sexual relations, often with older partners.

The problem of child marriage is conveniently located within the ambit of the violation of personal liberties. It is indeed the liberty of an individual to choose a marriage partner. No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.<sup>34</sup>

It is not contested that child marriage is a serious problem in Nigeria. In most part of the country, there is no legally defined minimum age of marriage. The Marriage Act defines a person under the age of 21 years as a minor but allows minors to marry with parental consent.<sup>35</sup> Child marriages are justified by parents on the ground that it prevents promiscuity, which a girl child is prone to at puberty. At times, the reasons are religious, economic and often times the low appreciation of the need for the girl child to go to school. The 1991 Census shows that 2% of Nigeria's married women entered into marriage by the age of 10, 8% at 12, 25% married at 13-15, and 40% at the age of 15, while 64% by the age of 18. The average age of marriage for females was found to be 16.5 years.<sup>36</sup>

Constitutionally,<sup>37</sup> any person is an adult in so far as that person is married. This limb of the provision further strengthens the violence against girl children contrary to Article 16 of the Convention on the Elimination of All Discrimination Against Women (CEDAW), which prohibits the betrothal, and marriage of a girl child. The effect of child marriage is gruesome and includes higher maternal mortality and greater prevalence of conditions such as VesfcoVirginal Fistula (VVF). There are positive developments in Nigeria on the issue, for instance, some States; in Nigeria have enacted laws to protect against discriminatory and

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<sup>33</sup> Odimegwu C. O., 'Couple formation and domestic violence among the Tiv of Benue State, Nigeria'. Paper presented at the International Colloquium Gender, Population and Development in Africa organised by UAPS, INED, ENSEA, IFORD, Abidjan 16-21 July 2001.

<sup>34</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1.

<sup>35</sup> Section 18

<sup>36</sup> 1992 provisional population census report issued by the federal government of Nigeria office of Statistics.

<sup>37</sup> CFRN, 1999, Section 29(4).

violent actions against children especially the more vulnerable girl child.<sup>38</sup> It is hoped that some other States would follow suit.

In the context of sexual transmitted infections, the HIV/AIDS epidemic is significantly increased. The risk of HIV/AIDS, and indeed prevalence rates among married women are often strikingly higher even compared to sexually active age mates. Married girls who have been abandoned, divorced or widowed may be at a particular risk of HIV/AIDS as a result of their vulnerability post-marriage.<sup>39</sup> In some quarters it is a taboo for a married woman to suggest the use of condoms to her husband. Wayward men subject their wives to physical abuse and forceful rape within their matrimonial domains or even outside same.

Physical injuries remain the highest effect of domestic violence. Wife beating and battering in most circumstances leave the woman with bloody eyes and bleeding nose. Complaints from her are majorly met with criticisms that she nags or is not obedient to the husband. An analysis of the effect of domestic violence was captured in a study as follows: physical injury (31.81%) constant headache 27.27%. Psychological effects: sleep disturbances 18.18%; excessive fear and anxiety (9.09%); suicidal ideation (9.09%) and hatred for men (4.55%).<sup>40</sup> For instance a certain Mrs toyin Fatokimi currently receiving treatment in a hospital in Odode-Idanre recounts her experience thus:

I have never refused him sex before, though he has not been behaving like a responsible husband in the home. That night when I returned home, I told him I was very tired but he insisted that he would sleep with me. When I refused he started throwing punches at me.<sup>41</sup>

## **2.4 Factors Responsible for Domestic Violence**

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<sup>38</sup> Ebonyi State Law No. 010 (2001) on the Abolition of Harmful Traditional Practices Against Children and Women; Edo State Female Genital Mutilation (Prohibition) Law 2002; Bauchi State Hawking by Children (Prohibition) Edict of 1985 CAP 58; Cross River State Girl Child Marriages and Female Circumcision (Prohibition) Law 2000;

<sup>39</sup> Heise L.L, Raikes A, Watts CH and Zwi AB,. 'Violence against women: a neglected public health issue in less developed countries'. *Soc Sci Med* 1994; 39(9): 1165-79.

<sup>40</sup> Mary O. Esere, Adeyemi I. Idowu, Irene A. Durosaro and Joshua A. Omotosho, 'Causes and consequences of intimate partner rape and violence: Experiences of victims in Lagos, Nigeria'. Available at <http://www.iredurosaro.com/publications/Causes-and-consequences-of-intimate-partner-rape-%20and-violence-Experiences-of-victims-in-Lagos-Nigeria.pdf> accessed 23 October 2011.

<sup>41</sup> The Globe Newspaper October 24-30, 2011.

The world we live in is characterized with violence against women. This is universally present in many forms like wife battering, sexual assault and abuse, female genital mutilation and rape, in war and peacetime. Gender-based violence is the fate of millions of women all over the world and these are affecting their productivity both in the homes, communities and places of work.<sup>42</sup>

Harmful customary laws, often derived from traditional beliefs, result in persistent discriminatory and violent practices. In some cases, because of attacks on feminine gender, physical and mental integrity are sanctified as elements of ‘culture,’ laying a powerful foundation for the denial of girls’ rights. Pervasive patriarchal gender biases and stereotypes and narrowly defined gender roles place women on the lowest rung of the social and family hierarchies, rendering them socially invisible and marginalized. As a result of discrimination, indifference, ignorance, and the hidden nature of the widespread abuses against them, women continue to suffer serious rights violations, often outside the public consciousness, and are left behind in human development. It is therefore imperative that factors that continue to perpetuate domestic violence be examined.

Several factors affect and influence the occurrence of domestic violence in homes. It is apparent that the human mind thrives on external influence that patterns our behavioural pattern. Discussed below are factors identified in the Domestic Violence Handbook to be major catalysts of domestic violence.<sup>43</sup>

- i. Media/Entertainment: films and television programs provide male role models who use physical strength or weapons to solve problems or achieve goals. The media presents violence as exciting. Overwhelmingly the victims of such violence are women, especially in pornographic films.
- ii. Societal/Cultural: the long-held concept of the ideal man has been the strong, silent type who fights his way to the top. Men are expected to be strong, aggressive, and in

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<sup>42</sup> JEKAYINF, A, A. ‘Types, Causes And Effects Of Gender-Based Violence: Challenges for Social Studies Education in Nigeria available at <http://www.unilorin.edu.ng/publications/jekayinoluwa/12.%20Types%20and%20Causes%20Original.htm> accessed 23 October, 2011.

<sup>43</sup> Liana, E., ‘Domestic Violence Training Manual’, developed by Cornerstone Foundation.

control, so boys learn at an early age to use force if necessary to gain and maintain control.

- iii. Historical/Religious: violence against women is also deeply rooted in our social institutions. Women have long been regarded as inferior to men; indeed for centuries they were considered the property of their husbands. Some religions continue to assert these beliefs today.
- iv. Physical/Genetic: Men are genetically predisposed to be bigger and more muscular than women. Thus, it is often easy for a man to force his wishes on a woman without fear of being physically injured himself.
- v. Economic/Financial: men are traditionally better-educated and better paid than women. It is easy to dominate someone who is financially dependent and incapable of being self-sufficient.
- vi. Legal/Judicial: because virtually all domestic violence and many sexual assaults take place within the home, officials have traditionally been reluctant to enforce laws prohibiting male violence against women. While much progress has been made, far too many prosecutors and law enforcement officers continue to believe that “a man’s home is his castle,” that if only the women were better wives their husbands would not have to hit them. Likewise, criminal justice officials often ask a rape victim what she did to provoke her assailant, and marital rape has usually been seen as justifiable rather than assaultive.

With an analysis of the concept of domestic violence, its nature and factors responsible already examined, the next section shall discuss the current situation of domestic violence within the Nigeria clime.

### **3.1 The Nigerian and Domestic Violence**

Most domestic violence in Nigeria is not documented because of widespread tolerance of violence against women: "once a woman is married, she is expected to endure whatever she meets in her matrimonial home,"<sup>44</sup> According to Amnesty International Report in 2007, there was said to be little awareness of psychological abuse in marriage, and 20 percent of the

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<sup>44</sup> Itoro Eze-Anaba, *Domestic Violence and Reforms in Nigeria: Prospects and Challenges*.

urban women interviewed and 29 percent of the rural women did simply not know if they had been subjected to abuse or not.

The worst hit numbers of domestic violence in Nigeria had been disclosed in a 2001 survey by Project Alert on Violence against Women. Here, interviews were conducted with women working in markets, women in other work places, and with girls and young women in secondary school and at university in Lagos State. They were asked about physical abuse in the family, rape and reporting incidents of violence. In Lagos State, 64.4 percent of the 45 interviewed women in work places said they had been beaten by a partner, boyfriend or husband. 56.2 percent of 48 interviewed market women had experienced the same type of violence.

Domestic violence cuts across all communities in Nigeria and most times are excused by woman's actions or inaction. When a woman suffers violence due to failure to meet some socially accepted standards of behaviour, such failure is usually an accepted excuse for the violence she suffers especially within the family context. A woman could suffer violence for refusing sex, nagging or challenging the man's behaviour, for example if her husband takes a second wife or is alcoholic. She could be subjected to violence for not preparing meals on time, having or under suspicion of having sexual relationship outside the marriage and being accused of witchcraft.

It is against the above background that this section will examine the various local and international legal instruments aimed at protecting Nigerian women against the menace of domestic violence. In addition, a critique of these legal instruments as it relates to their effectiveness and adequacy in eliminating and/or reducing the malady of domestic violence in our society.

### **3.2 Municipal and International Legal Protection for Nigerian Women Against Domestic violence**

The Nigerian Legal System (NLS) comprises of both municipal laws and various international law conventions and treaties that has been ratified and domesticated. Sadly, the criminal justice system in Nigeria provides almost no protection for women from violence.<sup>45</sup> General provisions are meant to protect individuals from violence. The tripartite legal system

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<sup>45</sup> Onuora-Oguno A, 'Legal Regime of Gender inequality in Nigeria- A case study of Anambra State of Nigeria'. Unpublished LLB thesis, University of Ilorin 2005.

which entails the use of the statutory / common law system, the customary and Sharia legal system further compounds the legal status of women in Nigeria.<sup>46</sup>

### **i. The Nigerian Constitution 1999**

The CFRN does not have any specific provision on domestic violence, it however prohibits discrimination on the grounds of gender,<sup>47</sup> but customary and religious beliefs continue to restrict women's rights. As Nigeria is a federal republic, each state has the authority to draft its own legislation. The combination of federation and a tripartite system of civil, customary and religious law makes it very difficult to harmonise legislation and remove discriminatory measures.<sup>48</sup> It is opined that if a specific provision is made in the CFRN it would then subject whatever law made by any other State of the Federation subject to it.<sup>49</sup>

The fundamental human rights provisions, which are enforceable in court, (though with some draw backs), are provided for in the CFRN,<sup>50</sup> these provisions guarantee a wide range of civil rights as contained in the International Bills of Rights. It contains the most basic safeguards for civil and political rights of individual citizens. Unfortunately the constitutional framework in Nigeria is defective.<sup>51</sup> In effect when the state fails to protect its citizens by either preventing or punishing various kinds of human rights abuses, it can be said to be perpetrating or condoning those forms of violence.<sup>52</sup>

### **ii. The Penal Code**

The provision of the Penal Code (PC)<sup>53</sup> specifically on domestic violence encourages violence against women. It allows for the beating of a wife for the purpose of correction. The Penal Code stipulates, "Nothing is an offence, which does not amount to the infliction of grievous harm upon any person and which is done by a husband for the purpose of correcting his wife such husband and wife being subject to any natural law or custom in which such

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<sup>46</sup> Abiola- Akiyode-Afolabi, 'Brief overview of the legal status of women in Nigeria'.

<sup>47</sup> CFRN, section 15 (2).

<sup>48</sup> Gender Equality and Social Institutions in Nigeria, available at <http://genderindex.org/country/nigeria> accessed 24 October, 2011.

<sup>49</sup> CFRN, Section 1.

<sup>50</sup> CFRN, Chapter IV, Sections 33 - 44

<sup>51</sup> The Nigeria Constitution is currently undergoing review and it is hoped that the lacuna's therein will be effectively handled by the law makers especially as it pertains to the protection of women and the girl child.

<sup>52</sup> <http://www.wildaf-ao.org/eng/spip.php?article46> (accessed May 2, 2010).

<sup>53</sup> Criminal law applicable in the Northern part of Nigeria.

correction is recognized as lawful”.<sup>54</sup> It is suggested that the PC should specifically ensure that equal treatment is given to offenders without any form of discrimination.

### **iii. The Criminal Code**

The Criminal Code which covers the same offence (unlawful and indecent assault) as in the PC provides for a lesser punishment where the victim of assault is female (2 years imprisonment), when the victim is male it is 3 years imprisonment.<sup>55</sup> Indecent assault on males is a felony, which attracts 3 years imprisonment, and on females is a misdemeanour, for which the punishment is a statutory maximum of two years.<sup>56</sup> In addition, it protects girls less than 13 years old, from sexual assault whether there is consent or not.<sup>57</sup> However this has not helped the girl child because Section 6 of the same CC excludes wives of the same age from this protection.<sup>58</sup> It is important that the law be interpreted with a positive effect for the girl child and not otherwise, whether married or not.

### **iv. The Domestic Violence Bill in Nigeria<sup>59</sup>**

Interestingly, there is a strong movement to turn the table around and bring a reduction in the Menace of domestic violence in Nigeria. Some provisions of the domestic violence bill are analysed below.

The Bill provides that 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 applicable.<sup>60</sup> In addition, the Police officer may arrest the respondent at the scene of an incident of domestic violence whom he or she

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<sup>54</sup> Penal Code, Section 55 (1) (d)

<sup>55</sup> Criminal Code, Sec 353.

<sup>56</sup> Criminal Code, 360.

<sup>57</sup> Criminal Code, Sections 218-357

<sup>58</sup> The age of consent for a girl under the Penal Code is 14 and 13 under the CC.

<sup>59</sup> The Domestic Violence Bill is yet to be passed into law by the National Assembly. It is the author's opinion that there is the utmost need for the Bill to be passed into law with necessary amendments. For further call on the passing of the Bill into law see The Nigeria CEDAW NGO coalition shadow report submitted to the 41st session of the United Nations committee on the Elimination of all Forms of Discrimination against Women holding at the United Nations plaza New York between June 30 – July 18, 2008.

<sup>60</sup> Domestic Violence Bill, Section 2.

reasonably suspects of having committed an offence containing an element of violence against the complainant.<sup>61</sup>

The Bill further provides that 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.<sup>62</sup>

It is envisaged that if the Bill is finally passed into law that it will provide a good basis for litigation and increase protection of domestic violence matter.

### **3.3 International Law Instruments**

#### **i. African Charter on Human and Peoples' Rights (ACHPR)**

The ACHPR is the basic legal instrument that seeks to provide for the protection of the fundamental human rights of African's. With its domestication in Nigeria the provisions of article 18(3) of the ACHPR avails the Nigerian woman. Primarily, the Charter inputs an obligation on the State to ensure that all harmful practices that perpetuate violence against women be eradicated. The provision reads thus:

‘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’.

However, with the identification of the need to have specific provisions addressing the vulnerability of the female gender, the need for a Protocol to the ACHPR led to the advent of the Protocol to the African Charter on the Rights of Women, which is discussed below.

#### **ii. Protocol to the African Charter on Rights of Women**

The advent of the Protocol to the African Charter is hinged on a number of considerations. In the first instance, considering that Article 2 of the ACHPR enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political

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<sup>61</sup> Domestic Violence Bill, Section 3

<sup>62</sup> Domestic Violence Bill, Section 4.

or any other opinion, national and social origin, fortune, birth or other status; and that despite the ratification of the ACHPR and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices.<sup>63</sup>

The Protocol 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 conflicts or of war.<sup>64</sup> This definition includes the girl child subjected to child marriage as "Women" means persons of female gender, including girls in the Protocol.<sup>65</sup>

Consequently, protection is also available by reliance on the provisions of the Protocol on the African Charter on Rights of Women. The applicability of International Law in the protection of Domestic Violence victims is more achievable by virtue of engaging the Federal High Court Fundamental Rights (Enforcement Procedure) Rules 2009.<sup>66</sup> The rules while encouraging public interest litigation also provides for direct application of the provisions of the African Charter on Human and Peoples' Rights.

Furthermore, it is no longer acceptable to hide under customary basis for the intimidation of the women folk. Before now, it was a myth to assume that women are meant to be heard and not only to be seen.<sup>67</sup> Today the dignity of women is no longer challengeable as their personal liberty finds solace in the right to dignity. 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; also the right to respect as a person and to the free development of her personality.<sup>68</sup>

Further protection is provided by imploring States Parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage and are required to enact

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<sup>63</sup> Preamble to the Protocol of the African Charter on the Rights of Women.

<sup>64</sup> Protocol of the African Charter on the Rights of Women Article 1(j).

<sup>65</sup> Protocol of the African Charter on the Rights of Women Article 1(k).

<sup>66</sup> Government Notice No 293, 17 November 2009,

<sup>67</sup> Onuora-Oguno A, 'Legal Regime of Gender inequality in Nigeria- A case study of Anambra State of Nigeria'. Unpublished LLB thesis, University of Ilorin 2005..

<sup>68</sup> Protocol to the African Charter on the Rights of Women, Article 3.

appropriate national legislative measures to guarantee that no marriage takes place without the free and full consent of both parties and that the minimum age of marriage for women shall be 18 years.<sup>69</sup> Other protection available in the Protocol includes the protection of women from harmful practices,<sup>70</sup> Widows Rights,<sup>71</sup>etc.

## **ii. Convention on Elimination of all forms of Discrimination against Women (CEDAW)**

CEDAW provides that States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>72</sup> Nigeria being a party to CEDAW can therefore employ the provisions of the instrument to ensure that the liberties of the feminine gender are well protected. It is further provided that States must ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. It has been understood that the interest of the children is the primordial consideration in all cases.<sup>73</sup>

From the foregoing legal instruments analysed, it is imperative that despite the fact that municipally the Nigeria Legal system does not have a comprehensive protection and provision for ensuring the liberty of the feminine gender in the domestic circle, reliance can be placed on the provision of some of the stated international law instruments to ensure the grounding of the right to liberty and curbing of domestic violence against women.

## **4.0 Recommendation**

From the forgoing it is recommended that a comprehensive review of the CFRN to further the promotion and protection of women's rights be embarked upon. The basis for singling out the CFRN is hinged on its superiority. It is noted that any law which is inconsistent with the CFRN 1999 is void to the extent of its inconsistency. In addition, Nigeria should incorporate the principle of equality of women and men into the Nigerian legal system. This is achievable

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<sup>69</sup> Protocol to the African Charter on the Rights of Women ,Article 6.

<sup>70</sup> Protocol to the African Charter on the Rights of Women Article 5.

<sup>71</sup> Protocol to the African Charter on the Rights of Women Article 20.

<sup>72</sup> CEDAW, Article 5 (a).

<sup>73</sup> CEDAW, Article 5 (b).

by ensuring that both the PC and the CC be reviewed to ensure that both genders receive equal punishments for any violation of the law.

It is also recommended that machinery should be put in place to ensure effective elimination of all acts of discrimination against women by persons, organization and enterprises. To this end there is an urgent need for NGO's to strengthen their efforts to increase awareness in local communities, working with traditional authorities and community leaders to educate and reach the people.<sup>74</sup> In achieving these goals NGO's are encouraged to embark on sensitisation and awareness campaigns majorly in rural communities. The use of advocacy materials tailor made to the need of specific communities is encouraged; this will ensure that proper understanding of information intended is achieved.

The Judicial has an important role to play in the quest to reduce domestic violence. Commendably, the Nigeria judiciary has aided the attempt to dissuade the minds of Nigerian's from domestic violence. In the case of *Ezeaduka and Maduka*<sup>75</sup> it was held that every individual is entitled to respect for the dignity of his person. It must be upheld without recourse to gender. Certainly, several cases that have followed thereafter affirm the right to women. In the case of *Mojekwu v. Mojekwu*,<sup>76</sup> the courts reaffirmed the rights of women to own property over turning the decision in *Nwanya v. Nwanya*,<sup>77</sup> the later which seemingly entrenched inimical customary practices.

There is also the need for the Nigeria Bar Association (NBA) to educate its members on the operations of the various treaty bodies. The need to educate lawyers on the procedure for filing of individual complaints to UN Treaty Monitoring Bodies (TMB) and also the submission of complaints before the African Commission on Human and Peoples' Rights. Interestingly, optional protocols to major human rights treaties have established additional recourse for victims of human rights violations who are unable to secure appropriate remedies from national courts.<sup>78</sup> TMBs such as the Human Rights Committee and CEDAW

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<sup>74</sup> Report of research on trafficking in women and children conducted by Women's Consortium of Nigeria (WOCON).

<sup>75</sup> (1997) 8 NWLR pt 518@518

<sup>76</sup> (1997) 7 NWLR (pt. 512) 283

<sup>77</sup> (1987) 3 NWLR (pt. 62) 697

<sup>78</sup> On 26 January 2005, the Committee on the Elimination of Discrimination against Women assessed a claim brought by a Hungarian woman and victim of domestic violence. Committee agreed with the woman that Hungary had failed to live up to its obligations to provide the woman with the required degree of protection under the CEDAW. To remedy the situation, it recommended that the Hungarian Government take immediate and effective measures to secure the protection of the woman and her children by providing her with appropriate

are being approached by women who have experienced gender-based violence in a variety of different circumstances without getting remedies from their governments.

The government in line with meeting its obligation especially as provided in article 18 (3) of the Protocol to the African Charter on the Rights of Women must enter into collaboration with NGO's and embark on public education campaigns to promote awareness of the law and to discourage gender-based violence. Governments must work closely with civil society organisations, employers in the public and private sectors, educational institutions and communities to monitor violence against women and to develop strategies to address violence against women in its different forms.

In addition, launch programs to sensitize and train health care providers to recognize indications of physical and sexual violence against women once they enter the health system. Strengthen health systems to respond to the needs of survivors of violence including the need for counselling, support, and emergency contraception and voluntary testing for HIV/AIDS and other STIs for survivors of rape. Sensitize and strengthen the capacity of existing law enforcement mechanisms and courts to handle cases involving violence against women. Improve investigation procedures and address gender bias within the judiciary and in law enforcement. Remove burdensome evidentiary and procedural requirements for reporting and prosecuting crimes involving violence against women. Make legal aid and counselling widely available.

Finally, in consultation with women's rights groups, the Nigeria government must enact and rigorously enforce legislation that defines and criminalizes violence against women, prescribes penalties for perpetrators of violence and establishes mechanisms for redress. Allocate appropriate funding to ensure the successful implementation of such legislation and create an oversight mechanism to ensure that funds are properly utilized. Ensure the proper implementation of laws that have already been introduced and legal provisions contained in broader criminal and civil codes that may offer some relief in such cases. Impose sanctions against law enforcement officials that fail to uphold such laws. Establish complaint mechanisms for reporting errant law enforcement officials and ensure the confidentiality of those filing reports.

## **5.0 Conclusion**

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child support and legal aid as well as reparations for physical and mental harm she suffered. It also recommended that the Government take the necessary steps to protect Hungarian women in general against domestic violence.

As already stated above, violations experienced by girls and young women are often severe and long-lasting and encompass a number of psychological, emotional, physical, social, economic and cultural elements. Among these elements are forced pregnancy, child-bearing and the raising of children born of rape in societies where those children are often rejected and physically abused by members of the extended family and community members.

In Nigeria, among the Igbos, Yorubas, Hausas, Fulanis, Nupes, Ijaws, and other ethnic communities; gender preference culturally favours the boy child to continue the family name, entitles him to land and property ownership, to visit and talk with the elders where older women only cook and serve the men at family or community meetings. Women observe these proceedings from a distance and have little input in decisions that affect their lives.

Some cultural practices such as dowry for brides have changed over the years but the concept and negative connotation with regards to status of women in marriage relationships, is that of subordination. After all, she is “paid” for. It is worth noting that the essence of dowry in parts of Igbo land is currently more symbolic in the monies paid but unfortunately the cultural significance persists. The practice of female circumcision or genital mutilation in its brutality and purpose, is for the sexual pleasure of the man, who in the marital relationship, controls the “when and how” of sexual activities. The woman does not have the “luxury” of saying “no”.

Most women have little if any sexual negotiating power in the marital relationship. Female genital mutilation epitomizes cultural sexual violence against Women and male sexual right entitlements. Other violence related cultural practices include where the girl child is married off at a very young age without economic skills or viable education necessary for independent living. Men are privileged to a harem of women– thanks to the culturally accepted polygamous practice in some communities and religions.<sup>79</sup>

It is also concluded that hinged on domestic violence, despite the existence of an internationally agreed legal framework, women suffer psychological violence which perpetuates isolation from friends and relatives. Isolation in turn leads to depression, for the

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<sup>79</sup> <http://www.usafricaonline.com/2010/08/06/violence-against-nigerian-women-by-uche-nworah/>

girl child they could turn to vices like prostitution or even fall prey to traffickers and sexual exploiters. The Nigeria State has also not fully ensured that economic and legal policies are non-discriminatory and empower women. Representation of women's interests at the highest levels of government is needed and is commended but more affirmative action is needed.

The violation of the right to personal liberty in the domestic circle is an issue that is currently attaining a dismal situation in Nigeria. The recent marriage of a 13 year old girl by a former governor in Nigeria attests to this. Sharp criticism has however trailed this action. Based on statistics also analysed herein, it is safe to conclude that domestic violence in Nigeria is currently receiving little attention and protection under the Nigerian Legal system.

Nigeria is a party to the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter for Human and People's Rights. It is therefore imperative that Nigeria gives full effect to the provisions of the above international law treatise to ensure that the menace of domestic violence is curtailed. It is the author's submission that enactment and domestication of laws and treaties does not represent effectiveness. It is advocated that the State must ensure promotion and fulfilment of such laws. It is concluded that the reluctance of the government in this regard to a large extent hamper the full enjoyment of women and girls of their internationally recognized rights.

Finally, it is concluded that "Nigeria, as opposed to what many believe, has laws capable of ensuring the protection personal liberties by curtailing domestic violence. However, respect for the law is what is questionable. One of such laws is the Child Rights Act of 2003 (CRA),<sup>80</sup> which recognize 18 years as the legal age for marriage. "No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever".<sup>81</sup> Consequently, the political will is needed to ensure that Nigeria fulfils its responsibility to protect, promote and fulfil the respect of the right to liberty mostly in the domestic setting.

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<sup>80</sup> Over 20 states have also enacted their Child Rights Law.

<sup>81</sup> CRA, Section 2.