

ISSUE OF LEGAL PROTECTIONS AVAILABLE TO VICTIMS OF GENDER-BASED VIOLENCE IN NIGERIA*

Abstract

Domestic violence is a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner which could be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This research focuses on filling in certain gaps in knowledge which includes the reality of Inadequate Implementation and Enforcement of these Laws and protections which exist on paper as well as the limited Awareness and Accessibility of Victims who are unaware of their rights and the available legal protections. For the purpose of this work, the term gender-based violence is used interchangeably with violence against women, GBV is a human rights violation that has far reaching effects on both the physical and mental health of women. The aim and objective of this research is to identify the various Legal Protections available to Victims of Gender-Based Violence in Nigeria and the effort of the authority in the application of these legal protections. The researcher adopted the doctrinal of research methodology. This research gathered that despite these copious provisions in our municipal laws and international instruments, there appears to be a gap between law and practice and gender-based violence seem to be on the increase. Women and girls still suffer unimaginable forms of abuse and violence in Nigeria. The role of society, cultural influence, and parental guidance cannot be over-emphasized in the curbing of domestic violence in our nation.

Keywords: domestic violence, human right, abuse, protection.

1. Introduction

Both males and females could be victims of Gender-Based Violence but studies have shown that the number of female victims is far greater than male victims,¹ so each time the term is used, what readily comes to mind is violence against women and girls. The term gender-based violence is used interchangeably with violence against women². This is more so as available data shows that one in three women have been physically or sexually abused in their lifetime.³

Domestic violence, also called "domestic abuse" or "intimate partner violence", can be defined as a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviour that frightens, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone.⁴ Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels.

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¹ PJ Isley, 'Sexual assault of men in the Community', *Journal of Community Psychology* (1997), 25(2) 159-166 www.scholar.google.com accessed on 12 December, 2022.

² G Krantz, 'Violence Against Women' *Journal of Epidemiology and Community Health* (2005)59 (10) 818-821 available on <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1732916/>, accessed on 12 December, 2022.

³ World Health Organization (WHO),: 'Global and regional estimates of violence against women' (2013). Available on <https://www.unfpa.org/>. Accessed on 13 December, 2022.

⁴ W Delanie (2017). 'The Abuse of Technology in Domestic Violence and Stalking'. *Violence Against Women*. 23 (5): 584–602. 26463963.

Gender violence refers to the harm inflicted on a person due to stereotypes and roles attributed or expected of them according to their sex or gender identity. This violates the law of basic human rights.⁵ Gender dynamics adds a layer to vulnerability. Gender violence can be suffered by anyone regardless of their geographical location, socio-economic background, race, religion, sexuality, or gender identity. While women and girls are the most at risk and the most affected by gender violence, boys and men also experience gender violence. Domestic violence is that which is directed at an individual based on his or her biological sex or gender identity. It is violence meted out on a woman. It includes physical, sexual, verbal, emotional and psychological abuse, threats, coercion and economic or educational deprivation, whether occurring in public or private life. Violence disproportionately affects girls and women, particularly through certain forms of violence such as child marriage, intimate partner violence, female genital mutilation, ‘honour’ killing or trafficking.⁶

The World Bank’s Inter Agency Standing Committee defines Gender-based Violence as an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (gender) differences between males and females.⁷

The United Nations also defines GBV as

Any act of gender based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.⁸

Domestic violence is perpetuated by women and girls in the hands of their husbands who are in positions of trust. Domestic violence is often defined in varied and broad terms depending on the country and calling of the person wanting to enforce the law. What constitutes domestic violence in Nigeria, may vary a little from America and Britain. In Nigeria, Section 18 of the Lagos state protection against domestic violence law⁹ defines domestic violence to

Mean acts listed below against any person, physical abuse; sexual abuse exploitation including but not limited to rape, incest and sexual assault; starvation; emotional, verbal and psychological abuse; economic abuse and exploitation; denial of basic education; intimidation; harassment; stalking; hazardous attack including acid both with offensive or Poisonous substance; damage to property; entry into the complainant’s residence without consent where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant; deprivation.

⁵ NA Ose, ‘Prevalence of Domestic Violence in Nigeria: Implication for Counselling’. *Edo Journal of Counselling*, (2009)1.

⁶ UNODC, (2018), ‘Global Report on Trafficking in persons’. Available on <http://www.unodc.org> accessed 3rd January, 2023.

⁷ J Klugman, ‘Voice & Agency: Empowering Women and Girls for Share Prosperity’. Washington, DC: The World Bank (2014). Available on <https://openknowledge.worldbank.org/handle/10986/19036> accessed 13 December, 2022.

⁸ United Nations General Assembly (UNGA), Declaration on the elimination of violence against women. (Proceedings of the 85th plenary meeting, Geneva, 20 December 1993). Available on <https://www.unfpa.org/>. Accessed on 16 December, 2022.

⁹ Lagos State Protection Against Domestic Violence Law 2007

In *Opuz v. Turkey*¹⁰ In this case, the ECHR addressed the issue of domestic violence and its impact on women's rights. Likewise, in the case of *Rumour v Italy*¹¹ The Court held that

the authorities should put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that the framework should be effective in punishing the perpetrator of the crime of which the applicant is a victim and prevent the recurrence of violence.

Violence affects women in Nigeria irrespective of age, class, educational level and place of residence. Nigerian law and custom categorises a woman as an object who is not quite human.

2. The Legal Protections Available to Victims of Domestic Violence under the Statutory Law and International Instruments.

2.1 1999 Constitution of the Federal Republic of Nigeria (as Amended).

Laws against domestic abuse are essential in the effort to protect battered men and women from abuse. Despite the alarming rate of domestic violence in Nigeria, domestic violence does not fall within the exclusive legislative list of the National Assembly under the 1999 Constitution as amended. However, it comes within the confines of the legislative competence of states. The Judicial ineffectiveness when dealing with individual cases of violence against women encourages an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted as part of daily life.

Section 34 provides

That every individual is entitled to respect for the dignity of his/her person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment.

According to Section 34 of the Constitution, every individual is entitled to respect for the dignity of his person and accordingly no person shall be subject to torture or to inhuman or degrading treatment and no person shall be held in slavery or servitude. Section 35¹² also guarantees the right to personal liberty. Nigeria is a heterogeneous society. It consists of multi-religious and multi-ethnic groups. As a result, this study cuts across the various legal systems that have direct impact on the rights of women in Nigeria. The Constitution of the Federal Republic of Nigeria 1999 forms the basis of the rights inherent in every citizen. Sections 33 to 44 of that constitution grants inherent fundamental human rights such as the right to life,¹³ fair hearing,¹⁴ personal dignity, personal liberty, freedom of thought, conscience and religion, freedom from discrimination¹⁵ and the right to compulsory acquisition of property among others.

Importantly, Section 19 (d) of the Nigerian Constitution declares respect for international law and treaty obligations. In applying international laws and treaties relating to the human rights of women in Nigeria, the Constitution is the primary source of law. The Constitution as the supreme law of

¹⁰ (2009) ECHR 870

¹¹ (2014) ECHR Application no. 72964/10

¹² The 1999 Constitution of the Federal Republic of Nigeria as (Amended)

¹³ Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁴ Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁵ Section 42 of the 1999 Constitution of the LFN (as Amended).

the land¹⁶ allows a system whereby international laws and treaties ratified and adopted into law by the parliament becomes part of the accepted law of the land. Problems occur however because many of the Nigerian states have not adopted and passed into law most of the treaties and covenants ratified by the country. Domestic violence in any form is an act against the personal dignity and honour of any person (victim). It is torture and contrary to the provisions of the constitution. It is inhuman and degrading and has led to the death or psychological trauma for victims.¹⁷ Basically, domestic violence in whatever form is an infringement of a fundamental right of the victims.

2.2 Criminal Code Act 2004

The Nigerian Criminal Code Act¹⁸ is an act of the National Assembly (the federal legislature under Nigeria's federal system of government). All 36 states in Nigeria have a state version of the Criminal Code Act promulgated as a Criminal Code Law (for states comprising the old Western Region and Eastern Region of Nigeria). The Criminal Code did not make express provision for domestic violence rather it made provisions for Assault occasioning harm, Battery and Grievous Harm.

Section 355 provides thus;

Any Person who unlawfully assaults another and thereby does him harm, is guilty of a felony and is liable to imprisonment for three years.”

Section 360 provides for indecent assault on women and stated thus;

“Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment for two years.

Assault and Battery are constantly used by laymen to mean the same thing but they are actually two different things. In *Ndibe v. Ndibe*¹⁹

The word “battery” in common law is a crime or a tort involving the actual (or negligent) use of unlawful physical force on a person without his consent. It includes even the slightest force; no actual harm need result. Consent, self defence, lawful and reasonable chastisement may be defences. In common usage “Assault” is often a synonym for battery, in law they are distinct.

Section 335²⁰ Defined Grievous Harm

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years.

Grievous hurt is also defined as

(a) emasculation; (b) permanent deprivation of the sight of an eye, of the hearing of an ear or the power of speech; (c) deprivation of any member or joint; (d) destruction or permanent impairing of the powers of any member or joint; (e) permanent disfiguration of the head or face; (f) fracture or dislocation of a bone or tooth; (g) any

¹⁶ Section 1 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) .

¹⁷ TU Akpoghome, ‘Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria’ *Journal of Law and Criminal Justice*, (2016) (4)(2) 17-30.

¹⁸ The Criminal Code Act Cap C 18 LFN, 2004.

¹⁹ (1998) 5 NWLR (Pt. 551) 632

²⁰ Criminal Code Act Cap C 18 LFN, 2004.

hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.²¹

The most commonly used provision of criminal law in dealing with cases of violence against women is Section 355 of the Criminal Code of Nigeria. The provision prescribes a maximum punishment of three years imprisonment on conviction for assault occasioning harm. The first limitation of this provision is that it does not protect women from violence in relationships e.g. marriage. It deals with assault generally. The second limitation inherent in criminal law is that it does not provide reliefs such as maintenance, shelter, custody etc. Thirdly, criminal law provisions, being State driven, have little space to consider the victim's needs. Assault occasioning harm being a non-compoundable offence, that section does not allow a woman any scope for entering into settlements once the case reaches the court. Fourthly, there is a higher standard of proof required in criminal law, which is proof beyond reasonable doubt. In many cases this high burden is difficult to discharge as women find it difficult to recall incidents of violence. Finally, there are many instances where the police refuse to file complaints by victims under this provision and send them away to seek reconciliation instead. The general perception is that such cases are private and should never be put in the public realm.

2.3 Sharia Penal Code Act 2004

The Penal Code Law²², the provisions of these state laws and the federal Criminal Code Act are very similar, The penal code did not make express provision for domestic violence. However, Section 55 (1) (d) of the Penal Code of Northern Nigeria provides that an assault by a man on a woman is not an offense if they are married, if native law or custom recognizes such "correction" as lawful, and if there is no grievous hurt. and Section 55(2) goes on to state that the correction must be reasonable in kind or degree with regards to the age, physical, and mental conditions of the person being corrected. Therefore, the purport of this provision of the penal code is that use of force by a man on his wife is not an offense if native law or custom recognizes such correction as lawful, and if there is no grievous hurt. By so doing, the Penal code has legalized marital assault which invariably means assault on wives (women) provided that it does not cause grievous hurt or if it is recognized as a form of correction under native or customary law. This is ultimately inconsistent with the Provisions of Chapter 4 of the Constitution.²³

Section 34 (1) of the Constitution,²⁴ provides unequivocally that: "Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subject to torture or to inhuman or degrading treatment", and It must be noted that it is inhuman and degrading to assault anyone, including women. In furtherance to this, Section 42 (1) of the constitution provides that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject.

²¹ Section 251 of the Penal Code Act

²² For states comprising the old Northern Region of Nigeria

²³ The 1999 Constitution of the Federal Republic of Nigeria (As Amended)

²⁴ *ibid*

Shall a married woman then, by reason only that she is a married woman, be subjected to assault? In order to successfully eradicate gender-based violence, the proportion of hurt caused on women must be rendered immaterial. Use of force, no matter how less painful, must be condemned in the strongest terms for constituting assault and violation of fundamental human rights.²⁵ Likewise, any form of native law or custom that recognizes assault as a form of correction must be expunged for being inconsistent with the provisions of the constitution in line with Section 1 (3) of the Constitution, and the said native law or custom must be declared invalid in line with Section 315 (b) of the constitution. Laudably, the invalidity of such barbaric native laws or customs that backs discrimination against women (including marital assault) have received judicial baptism by the court in a plethora of decided cases, including *Mojekwu v. Mojekwu*²⁶ and *Ukeje v. Ukeje*²⁷

2.4 Violence Against Persons (Prohibition) Act, 2015

The first law passed in Nigeria specific to the protection of persons including women and girls against violence is the Violence against Persons (Prohibition) Act (VAPP), 2015, which was signed into law on 23rd May 2015, after 10 years of the life span of the bill in the National Assembly. The VAPP Act provides for 26 offences and incorporates the rights guaranteed under the Constitution. With regards to violence against women and girls, VAPP prohibits female circumcision or female genital mutilation;²⁸ forceful ejection from home;²⁹ harmful widowhood practices;³⁰ abandonment of spouses, children and other dependants without sustenance;³¹ battery;³² and other harmful traditional practices. The Act was enacted to prohibit all forms of violence in private and public life and provides the maximum protection and effective remedies for victims and punishment of offenders and for other matters thereto.

This Act is only applicable in FCT Abuja, however, some States which includes Anambra, Bauchi, Enugu, Kaduna and Oyo states have also passed it into their law.

Section 19 (1) of the Act provides that

a person who batters his or her spouse commits offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding ₦200,000.00 or both”

Also, subsection 2 provides that

“a person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦100,000.00 or both.

Furthermore, a person who incites, aids, abets, or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on

²⁵ O Bamsile, ‘Marital Assault and the Rights of a Nigerian Woman: A Concise Critique of the Penal Code’, Dnlegalandstyle available on <https://lawpavilion.com/blog/marital-assault-and-the-rights-of-a-nigerian-woman-a-concise-critique-of-the-penal-code/> accessed 20th February, 2023.

²⁶ (2000) 5 NWLR PT 657 402

²⁷ (2014) SC LPELR 22724

²⁸ Section 6 (1) Violence against Persons (Prohibition) Act (VAPP), 2015

²⁹ Section 9 Violence against Persons (Prohibition) Act (VAPP), 2015

³⁰ Section 15(1) Violence against Persons (Prohibition) Act (VAPP), 2015

³¹ Section 16(1) Violence against Persons (Prohibition) Act (VAPP), 2015

³² Section 19(1) Violence against Persons (Prohibition) Act (VAPP), 2015

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conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding ₦200,000.00 or both.

The VAPPA 2015 is an improvement on the Penal and Criminal codes in relation to violence. The Act was passed into law in a bid to eliminate violence in private and public life; prohibit all forms of violence, including physical, sexual, psychological, domestic, harmful traditional practices; discrimination against persons and to provide maximum protection and effective remedies for victims and punishment of offenders.³³The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) is named as the service provider.³⁴ The Agency is mandated to administer the Provisions of this Act and collaborate with the relevant stakeholders including faith based organizations. Under the VAPPA 2015, rape³⁵, spousal battery, forceful ejection from home, forced financial dependence or economic abuse, harmful widowhood practices, female circumcision or genital mutilation, abandonment of children, harmful traditional practices, harmful substance attacks such as acid baths, political violence, forced isolation and separation from family and friends, depriving persons of their liberty, incest, and indecent exposure are punishable offences. It is germane to state at this point that women and females in general are mostly the victims of these offences. The VAPPA would provide succour for women and girls who have been victims of all forms of violence. It should be noted that the VAPPA provides protection for every person including women from a broad range of violent acts and harmful behaviour.

Though the Act is not specifically targeted at women, it guarantees protection of women from a broad range of dangerous acts. Some forms of domestic violence criminalized by the VAPPA include Rape,³⁶ Inflicting Physical Injury on a person,³⁷ willfully placing a person in fear of Physical Injury,³⁸ female circumcision or genital mutilation,³⁹ and incest⁴⁰ The VAPPA 2015 has taken a giant stride to expand the meaning and scope of rape. The provisions of the Act have also taken a progressive stance by recognizing that sex now goes beyond the use of the primary sexual organs and extends the scope to anus and mouth. Another interesting point is that penetration here need not only by the sex organ (penis) of the offender but by any part of his body or anything else.⁴¹ The prohibition of Female circumcision is a welcome development in the face of the prevalence of female genital mutilation within various cultures in Nigeria. However, it would remain a paper tiger if States do not domesticate this law. Thankfully, several states in Nigeria, have taken steps to enact laws prohibiting female circumcision.⁴² It is hoped that these laws would be effectively enforced and perpetrators brought to book. The major drawback in relation to this law is its limited application to the Federal Capital Territory, Abuja⁴³ and only the High Court of the Federal Capital Territory Abuja empowered by an Act of Parliament has the jurisdiction to hear and grant any

³³ VAPP 2015

³⁴ Violence Against Person (Prohibition) Act (VAPP)2015, Section 44

³⁵ Violence Against Person (Prohibition) Act (VAPP)2015, Part 1

³⁶ Violence Against Person (Prohibition) Act (VAPP)2015, Section

³⁷ *ibid* Section 2

³⁸ *ibid* Section 4

³⁹ *ibid* Section 6

⁴⁰ *ibid* Section 25

⁴¹ *ibid*

⁴² Edo State Female Genital Mutilation (FGM) Prohibition Law 2006, Cross Rivers Girl-Child marriage and Female Circumcision (Prohibiting) Law 2000

⁴³ *ibid* 47

application brought under the Act⁴⁴. However, only a few states like Lagos, Ogun, Ekiti, Anambra, Ebonyi, and Oyo have domesticated the Act. Other states are hereby encouraged to borrow a leaf from these states.

2.5 Lagos State Protection Against Domestic Violence Law, 2007

The Law of Lagos State is more detailed and encompassing because it addresses any victim of domestic violence be it women, men, or children, and also it caters to both married couples and unmarried. Section 1 of the Law provides that:

As from the commencement of the act no person shall commit any act of domestic violence against any person.

The Law also extensively in section 18(1),(j)⁴⁵ provides an elaborate definition of domestic violence to include: Abuse, sexual abuse, exploitation not limited to rape, incest, sexual assault, starvation, emotional, verbal, physiological abuse, repeated insults, ridicule, name-calling, repeat threat to cause emotional pain, or repeated exhibition of jealousy, which constitute a serious invasion of complainant privacy, liberty or security.

It also empowers a victim of abuse to seek for a protection order in the High Court or Magistrate Court. This can be filed by the complainant or any person with his consent who has an interest in the well-being of the complainant including a counsellor, health services provider, member of the Nigerian Police force, social worker, organization, or teacher.

Section 2 of the law also provides that:

Other person may apply without the complainant's consent where the complainant is a minor, mentally retarded, unconscious, incapable to consent for fear of refusal or a person whom the court is satisfied is unable to provide the required consent.

By the provision of section 2 (5)

“Application for domestic violence will be filed along with an affidavit and be submitted to a court registrar who must within 72 hours submit the same to the court. However, where the complainant may suffer hardship if the application is not dealt with immediately, it has to be brought to a judge in the chamber.

After the application has been lodged to the court registrar, the court will issue an interim order of protection against the respondent pending when he will show cause on the next adjourned date.

The law also provides a duty to assist victims at the scene of Domestic violence Section 3 provides thus:

Notwithstanding the provision of any other law, the application may be brought on behalf of the complainant by any other person; including a counsellor, health service provider, member of the Nigeria police force, social worker, organization, or teacher, who has an interest in the well-being of the complainant except in circumstances where the complainant is a minor, mentally retarded, unconscious, incapable to consent for fear of refusal or a person; whom the court is satisfied unable to provide the required consent.

⁴⁴ *ibid* 27

⁴⁵ Lagos State Protection Against Domestic Violence Law, 2017.

2.6 Ekiti State Gender-Based Violence (Prohibition) Law 2019

The law is a hybrid between the laws of Lagos State and the Violence against Persons Prohibition Act 2015 applicable to the Federal Capital Territory. It extensively covers violence against all genders. Gender-based violence was defined as violence that affects a person or group of persons disproportionately because of their sex; any act that inflicts physical, mental, and sexual harm or suffering; threats of such acts, coercion, and other deprivation of liberty; all acts of violence with impair or nullify the enjoyment of human rights and fundamental freedoms under general international law or human rights convention as discrimination⁴⁶.

Section 1(1) of the law⁴⁷ provided thus;

“Gender-based Violence means:

- (a) Violence that affects a person or group of persons disproportionately because of their sex.
- (b) Any act that inflicts physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.
- (c) All acts of violence whether those that occur in the public sphere or in the private sphere.
- (d) All acts of violence which impair or nullify the enjoyment of human rights and fundamental freedoms stated under general international Laws or under Human Rights conventions as discrimination. These rights and freedoms include:
 - (i) The right to life;
 - (ii) The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
 - (iii) The right to equal protection according to humanitarian norms in times of international or internal armed conflict;
 - (iv) The right to liberty and security of person;
 - (v) The right to equal protection under the Law;
 - (vi) The right to equality in the family;
 - (vii) The right to the highest standard attainable of physical and mental health;
 - (viii) The right to just and favourable conditions of work

Section 2(1-vii)⁴⁸ of the law provides for the types and forms of Gender-Based violence to include;

- (i) Threats to commit, or acts liable to result in Physical abuse,
- (ii) Sexual abuse
- (iii) Psychological abuse which includes any behaviour that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, or depressed or to feel inadequate or worthless;
- (iv) Economic abuse;
- (v) Any act which attempts or results in degrading people physically, psychologically, economically or emotionally; and

⁴⁶ D Adu & E Randle(2022), ‘Laws on Domestic Violence in Nigeria’. available on <https://www.mondaq.com/nigeria/human-rights/1221230/laws-on-domestic-violence-in-nigeria#> and accessed on 20th Febuary,2023.

⁴⁷ Ekiti State Gender-Based Violence (Prohibition) Law, 2007. No 18

⁴⁸ *ibid*

- (vi) Behaviour or conduct that in any way: a) harms or may harm another person; b) endangers the safety, health or well-being of another person; c) undermines another person's privacy, integrity or security; or d) detracts or is likely to detract another person's dignity and worth as a human being
- (vii) All acts of domestic violence perpetrated by intimate partners and family members. These include: a) all acts of violence occurring within the family and interpersonal relationship; b) dating relationship and relationships akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and respondent.

Section 4(2) of the law provides thus,

Any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation or liberty, whether occurring in public or private life.

Furthermore, Section 27(1) of the Ekiti State Law provides for the protection of violence Victims and it stated thus;

An application for a protection order shall be made before the Gender Court following a complaint of violence by the complainant and such order, if granted, shall be effective throughout the State and no time limit or prescription shall apply in relation to a person seeking to apply for such protection order.

Sub Section (4) provided:

“Notwithstanding the provisions of any other law, the application may be brought on behalf of the complainant by any other person, including a police officer, a protection officer, an accredited service provider, a counsellor, health service provider, social worker or teacher who has interest in the well-being of the complainant. Provided that the application shall be brought with the written consent of the complainant, except in circumstances where the complainant is – (a) a minor; (b) mentally retarded; (c) unconscious; or (d) a person who the Court is satisfied that is unable to provide the required consent.

Subsection (5)

Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the Court for a protection order without the assistance of a parent, guardian or any other person and such application shall be supported by an affidavit sworn to by the person who has knowledge of the matter concerned.

The law also extensively provide that the Attorney general and commissioner for justice on the advice of the commissioner for woman's affairs and social development, may make regulation to provide funds necessary for the law; prescribed the training of the police and court officials on Gender-based violence in consolidation with relevant institutions; provide for education and counselling of the victims and perpetrator of Gender-based violence; provide for education and counselling in a domestic relationship; prescribe shelter for victims in consolation with relevant institutions; provide for the enhancement of social welfare service for the victims, provide the

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modalities for the provision of free medical treatment for the victims; provide financial assistance to the victim Gender-based violence in case of the imprisonment of a spouse and provide effective implementation of the law.

The law also goes further for the provision of a Gender-based violence support fund, the proceed of which shall be applied towards basic materials support of victims of gender-based violence and for caring for affected dependents of Gender-Based Violence.

2.7 Ebonyi State Protection Against Domestic Violence Law, 2007.

The Ebonyi State also adopted the same approach criminalizing domestic violence as Cross River State⁴⁹ the male victims of abuse were also left out, and however.

Section 5(A)(i) provided:

- (i) A person who wilfully causes or inflicts Physical injury on another person by means of any weapon, substance or object, commits, an offence and is liable on conviction to a term of imprisonment of 5 years or a fine not exceeding N100,000.00 and not less than N50,000.00 or both;
- (ii) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction, to a term of imprisonment of 3 years or to a fine not exceeding N200,000.00 and not less than N100,000.00 or both.

Just like Section 27 of the Ekiti State Gender-Based Law⁵⁰, the Ebonyi State violence against persons (Prohibition) law also provides for the protection of victims stating that;

An application for a protection order may be made before the High Court following a complaint of violence by the complainant and such order, if granted, shall be effective throughout the Ebonyi State and no time limit or prescription shall apply in relation to a person seeking to apply for such protection order.⁵¹

Subsection (4) went further to provide the procedure;

Notwithstanding the provisions of any other Law, the application may be brought on behalf of the complainant by any other person, including a police officer, a protection officer, an accredited service provider, a counsel or health service provider, social worker or teacher who has interest in the well-being of the complainant. Provided that the application shall be brought with the written consent of the complainant, except in circumstances where the complainant: - (a) a minor; (b) mentally retarded; (c) unconscious; or (d) a person who the court is satisfied is unable to provide the required consent.

Notwithstanding the provisions of any other Law, any minor, or any person on behalf of a minor, may apply to the Court for a protection order without the assistance of a parent, guardian or any

⁴⁹ Violence Against Persons (Prohibition) Law 2018. No. 002

⁵⁰ Ekiti Sate Gender-Based Violence (Prohibition) Law,2019. No18

⁵¹ Section 34 of the the Ebonyi State Violence against Person (Prohibition) Law,2018. No.002

other person and supporting affidavit by persons who have knowledge of the matter concerned may accompany the application.⁵²

The Court shall as soon as reasonably possible, consider an application submitted to it under section 33 of this Law and may, for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings. If the Court is satisfied that there is prima facie evidence that the respondent is committing, has committed or that there is imminent likelihood that he may commit an act of domestic violence, the Court shall, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated, issue an interim protection order against the respondent, in the prescribed manner. The appropriate Government Ministry shall Protection Officers appoint such number of protection officers in each Local Government Area as it may consider necessary, to assist this Law to co-ordinate the activities of the police and the accredited service providers in his or her Local Government Area, to ensure that the victims or survivors of violence: (a) have easy access to accredited service providers; (b) have easy access to transportation to an alternative residence or a safe shelter, the nearest hospital or medical facility for treatment, if the complainant so requires; (c) are able to collect their belongings or properties from a shared household or her residence, if complainant so requires (d) are able to access the court for orders under this Law; or (e) have access to every possible assistance in the service of interim protection order on the respondent, and the enforcement of any order that may have been made by the Court under this Law.⁵³

The protection officer may, upon the failure of the respondent to make payment ordered by the Court under this Law, direct an employer or a debtor of the respondent operates any account, to directly pay to the complainant or deposit with Court a portion order on the respondent, and the enforcement of any order that may have been made by the court of this Law.

3. International Instruments.

3.1 Protocol to the African Charter on Human & People Rights on Rights to Women in Africa.

The Protocol recognizes and guarantees a wide range of women's civil and political rights as well as economic, social and cultural rights, thus reaffirming the universality, indivisibility and interdependency of all internationally recognized human rights of women. These rights include the right to life, integrity and security of person; protection from harmful traditional practices; prohibition of discrimination; and the protection of women in armed conflict.⁵⁴ Furthermore, the Protocol guarantees to every woman the right to respect as a person and to the full development of her personality; prohibition of exploitation or degradation; access to justice and equal protection before the law; participation in the political and decision making process

⁵² Section 34(5) of Ekiti State Gender-Based Violence (Prohibition) Law, 2007. No 18

⁵³ Section 47(1) (a-e) Ekiti State Gender-Based Violence (Prohibition) Law, 2007. No 18

⁵⁴ Protocol to the African Charter on Human & People Rights on Rights to women in Africa (2003), 'Strengthening the promotion and protection of women's human rights in Africa'. Amnesty International. Available on <https://www.amnesty.org/en/wp-content/uploads/2021/09/ior630052004en.pdf>. accessed on 3rd March, 2023.

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Article 3(4) of the Charter⁵⁵ provides for the right to the dignity of a woman, stating that 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.

The states parties to this protocol, considering the Article 66 of the African Charter on human and people's rights provides for special protocol or agreements if necessary,⁵⁶ to supplement the provisions of the African Charter and the Assembly of heads of state and government of the organization of African unity meeting in its thirty-first ordinary session. The African Charter on Human and Peoples Rights which has been transformed into law in Nigeria in the form of the African Charter on Human and Peoples Rights (Enforcement and Domestication) Act Cap 10, 1990,⁵⁷ forbids every form of discrimination against everyone, including women. Article 2 of the Charter provides as follows:

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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. The provisions of Article 3 are to the effect that "Every individual shall be equal before the law and every individual shall be entitled to equal protection of the law.

The Regional Regime has also been very proactive in terms of making specific provisions for women under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.⁵⁸ Article 1 to Article 24 of the Charter,⁵⁹ discussed on the rights of the women, live rights to dignity,⁶⁰ the rights to life, integrity and security of the person,⁶¹ elimination of harmful practices,⁶² marriage,⁶³ separation, divorce and annulment of marriage,⁶⁴ access to justice and equal protection before the law,⁶⁵ right to participate in political and decision making process,⁶⁶ rights to peace,⁶⁷ protection of women in armed conflict,⁶⁸ health and reproductive rights,⁶⁹ Education and training,⁷⁰ right to positive cultural context,⁷¹ right of inheritance.⁷²

⁵⁵ Protocol to the African Charter on Human & People Rights on Rights to Women in Africa, available on <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>. accessed 3rd March, 2023.

⁵⁶ European Convention on Human Rights Council of Europe, available on www.hri.org/docs/ECHR50.html.

⁵⁷ Domesticated in 1982

⁵⁸ This Protocol, otherwise known as the Maputo Protocol was ratified by Nigeria on 18 February, 2005

⁵⁹ *ibid*

⁶⁰ Article 3

⁶¹ Article 4

⁶² Article 5

⁶³ Article 6

⁶⁴ Article 7

⁶⁵ Article 8

⁶⁶ Article 9

⁶⁷ Article 10

⁶⁸ Article 11

⁶⁹ Article 14

⁷⁰ Article 12

⁷¹ Article 17.

⁷² Article 21

3.2 Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) 2017

In its general recommendation No 19⁷³ on violence against women, the CEDAW confirmed that, under general international law and specific human right covenant. States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.⁷⁴ But on 14th July, 2017, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) adopted its General Recommendation No. 35 on gender-based violence against women..⁷⁵

Now, 25 years after the adoption of General Recommendation No. 19, the CEDAW Committee has issued a further General Recommendation on violence against women, in the form of General Recommendation No. 35. While the title of General Recommendation No. 19 referred simply to ‘violence against women’, interestingly the title of General Recommendation No. 35 instead uses the phrase ‘gender-based violence against women’. According to the CEDAW Committee, this more specific term is used as it ‘makes explicit the gendered causes and impacts of the violence.’ It seems that the CEDAW Committee decided to use this term from the outset in order to counter arguments which advocate a gender neutral approach to addressing violence. It is true that there has been a move towards gender neutrality by some jurisdictions, for example England and Wales, to issues such as domestic violence. Notably such gender neutral approaches have received strong criticism from former UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. In 2015, Manjoo commented that:

The distortion of understanding of equality and gendered responses, is leading to gender-neutral responses and an abandonment of a focus on women’s empowerment. ... The goal of substantive equality will be difficult to attain in a context of growing gender neutrality in laws, policies and practices.⁷⁶

With the use of the phrase ‘gender based violence against women’, the CEDAW Committee emphasises that the issue in question is essentially violence directed at women because they are women, thus making this type of violence different from violence more generally and thereby justifying and indeed necessitating a gendered response. As the Committee states,

Gender-Based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.⁷⁷

Indeed, General Recommendation No. 35 proceeds to state that:

The Committee regards gender-based violence against women to be rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce

⁷³ General Recommendation No 19 (1992)

⁷⁴ BH Izaa ‘Domestic Violence and Women’s Rights in Nigeria’ Societies without Borders (2009) 4 (2).

⁷⁵ R. J. A McQuigg, ‘The CEDAW Committee and Gender-Based Violence against Women’. *International Human Right Review*. (2017) Available on https://brill.com/view/journals/hrlr/6/2/article-p263_263.xml?language=en&ebody=full%20html-copy1 and accessed 3rd March,2023.

⁷⁶R Manjoo and D Nadj, ‘Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence Against Women’. 23 *Feminist Legal Studies* (2015) 329–347 at 338–339.

⁷⁷ For example, the current cross-governmental definition of domestic violence which was adopted by the Home Office in March 2013 is entirely gender neutral.

gender roles, or prevent, discourage or punish what is considered to be unacceptable female behaviour. These factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered as a private matter, and to the widespread impunity for it⁷⁸

However General Recommendation No.35 goes considerably further and states that, ‘Gender-based violence against women constitutes discrimination against women...and therefore engages all of the obligations in the Convention.’ While a large part of General Recommendation No. 19 is devoted to a section entitled ‘Comments on specific articles of the Convention’, which explains how a selection of CEDAW provisions relate to violence against women, this is not the approach adopted in General Recommendation No. 35. Although specific provisions of CEDAW are referred to in the new document, overall there appears to be less of an emphasis on explaining how precisely the specific provisions of CEDAW mandate the obligations and recommendations put forward by the CEDAW Committee. This broader approach may be problematic.

3.3 Vienna Declaration and Program of Action 1993

The VDPA draws attention to the importance of women's rights and the rights of the "girl-child", Part I, para 18 stating:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.⁷⁹

The VDPA also explicitly recognises gender-based violence, sexual harassment and exploitation, with Part I, para 18 going on to state:

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The VDPA concludes by proclaiming women's rights and gender-based exploitation as legitimate issues for the international community. Part I, para 19 concluding that:

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women. The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

The VDPA, at Part II, para 38, also calls upon the General Assembly to adopt the draft Declaration on the Elimination of Violence Against Women and urges States to combat violence against

⁷⁸ R Manjoo and D Nadj, ‘Bridging the Divide: An Interview with Professor Rashida Manjoo, UN Special Rapporteur on Violence Against Women’ 23 *Feminist Legal Studies* (2015) 329–347 at 338–339.

⁷⁹ Vienna Declaration and Program of Action 1993.

women in accordance with its provisions, and that "violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particular effective response."

Paragraph 224 takes up the issue of violence against women again and states that "violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms" and continues "governments should take urgent action to combat and eliminate all forms of violence against women in private and in public life, whether perpetrated or tolerated by the State or private persons". The VDPA also establishes that women may be vulnerable to violence perpetrated by persons in position of authority in both conflict and non-conflict situations and continues training of all officials in humanitarian and human rights law and the punishment of perpetrators of violent acts against women would help to ensure that such violence does not take place at the hands of public officials in whom women should be able to place trust, including police and prison officials and security forces.⁸⁰

Paragraph 124 contains 19 sub-paragraphs detailing steps that governments should take to end violence against women. Among other steps, governments should address impunity for violence against women, adopt, implement and review national legislation, ratify or accede to and implement international human rights norms and instruments and strengthen international mechanisms. Governments committed themselves to take immediate action against violence against women by: "condemning violence against women⁸¹ and refrain from engaging in violence against women."⁸² Governments committed themselves to adopt, strengthen, implement and review national legislation, policies and practices to end violence against women, adopt, implement or periodically review national legislation to ensure its effectiveness in eliminating violence against women and emphasizing the prosecution of offenders,⁸³ adopt or strengthen laws to punish state agents who use violence against women and take effective action against such perpetrators; prohibit female genital mutilation wherever it exists and give vigorous support to efforts among non-governmental and community organizations and religious institutions to eliminate such practices,⁸⁴ enact and enforce legislation against the perpetrators of practices and acts of violence, including female genital mutilation and provide women with access to the mechanisms of justice for effective remedies.

3.4 International Conference on Population and Development (ICPD), Cairo. (Program for Action) 1994.

Countries should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children. This implies both preventive actions and rehabilitation of victims. Countries should prohibit degrading practices, such as trafficking in women, adolescents and children and exploitation through prostitution, and pay special attention to protecting the rights and safety of those who suffer from these crimes and those in potentially exploitable situations, such as migrant women, women in domestic service and schoolgirls. In this

⁸⁰ Paragraph 121 Vienna Declaration and Program of Action 1993.

⁸¹ Paragraph 124(a) Vienna Declaration and Program of Action 1993.

⁸² Paragraph 124(b) Vienna Declaration and Program of Action 1993.

⁸³ Paragraph 124(d) Vienna Declaration and Program of Action 1993.

⁸⁴ Paragraph 232(h) Vienna Declaration and Program of Action 1993.

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regard, international safeguards and mechanisms for cooperation should be put in place to ensure that these measures are implemented.

Active and open discussion of the need to protect women, youth and children from any abuse, including sexual abuse, exploitation, trafficking and violence, must be encouraged and supported by educational programs at both national and community levels. Governments should set the necessary conditions and procedures to encourage victims to report violations of their rights. Laws addressing those concerns should be enacted where they do not exist, made explicit, strengthened and enforced, and appropriate rehabilitation services provided.

3.5 Fourth World Conference on Women (ICPD), Beijing. (Beijing Declaration and Platform for Action) 1995.

The Beijing Declaration and Platform for Action was adopted by the Fourth World Conference on Women in 1995. The Platform for Action reaffirms the fundamental principle that the rights of women and girls are an “inalienable, integral and indivisible part of universal human rights.” The Platform for Action also calls upon governments to take action to address several critical areas of concern, among them violence against women. The Platform for Action states,

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. . . . In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

The definition of violence, contained in the Platform for Action, is broad, including

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

The Beijing Platform for Action also requires all governments to develop strategies or national plans of action to implement the Platform locally.⁸⁵ The National Plans of Action for each country outline specific activities that the national governments will undertake to improve the situation of women, including addressing violence against women. Sexual and gender-based Violence includes physical and psychological abuse, trafficking in women and girls, other forms of abuse and sexual exploitation place girls and women at high risk of physical & mental trauma, disease and unwanted pregnancy. Such situations often deter women from using health and other services.⁸⁶

Paragraph 112 states,

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs

⁸⁵ United Nations Documents that Protects Women’s Rights. Available on <http://hrlibrary.umn.edu/svaw/law/un/undocs.htm> accessed on the 3rd of March,2023.

⁸⁶ Paragraph 99 of Beijing Platform for Action, 1995

or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

4. Prospects

Laws against domestic abuse are essential in the effort to protect battered women from abuse. Despite the alarming rate of domestic violence in Nigeria, domestic violence does not fall within the exclusive legislative list of the National Assembly under the 1999 Constitution as amended. However, it comes within the confines of the legislative competence of states.

The prospects for the legal protection available to the victims of domestic violence would be summarized in line with the key provisions of some of the laws on domestic violence as follows:

4.1 Protection of personal liberty, damage to property and appointment of appropriate protection officers.

Violence Against Persons Prohibition Law (applicable in Abuja).⁸⁷ The Law covers domestic violence ranging from depriving a person of his or her liberty, damage to property with the intention to cause distress, forced financial economic abuse, forced isolation or separation from family and friends, verbal and psychological abuse, abandonment of spouse, children, and other dependents without sustenance, stalking and attack with a harmful substance⁸⁸.

Section 41(1) of the Law also provides thus:

the appropriate government ministry to appoint appropriate such number of protection officers in each area council as it may be necessary to assist the court in the discharge of his duties and to coordinate the activities of the police⁸⁹.

Section 44 of the law also provides thus

The law empowers the National Agency for the Prohibition of Trafficking in Persons and other related matters (NAPTIP) as a regulatory body mandated to administer the provision of the law and collaborate with the appropriate stakeholders including faith-based organizations

⁸⁷ Some states which include Anambra, Bauchi, Enugu, Kaduna, and Oyo states have also domesticated the Violence Against Persons Prohibition Law, 2015 into their state law.

⁸⁸Violence Against Persons Prohibition Law (VAPP) Act, 2015.

⁸⁹ibid s 41

Section 45 (2) also went further to say that:

The provision of the law shall supersede any other provision on similar offenses in criminal code and penal code, criminal procedure code, and any other law or regulation⁹⁰.

4.2 Giving broader definition of domestic violence to cover every aspect of domestic violence and empowers a victim of abuse to seek for a protection order in the High Court or Magistrate Court.

The Law of Lagos State (Lagos State Protection against Domestic Violence Law) is more detailed and encompassing because it addresses all victim of domestic violence be it women, men, or children, it also captures caters to both married couples and unmarried. Section 1 of the Law provides that, ‘As from the commencement of the act no person shall commit any act of domestic violence against any person’⁹¹.

The Law also extensively in section 18(1), (j) provides an elaborate definition of domestic violence to include:

Abuse, sexual abuse, exploitation not limited to rape, incest, sexual assault, starvation, emotional, verbal, physiological abuse, repeated insults, ridicule, name-calling, repeat threat to cause emotional pain, or repeated exhibition of jealousy, which constitute a serious invasion of complainant privacy, liberty or security⁹².

It also empowers a victim of abuse to seek for a protection order in the High Court or Magistrate Court. This can be filed by the complainant or any person with his consent who has an interest in the well-being of the complainant including a counsellor, health services provider, member of the Nigerian Police force, social worker, organization, or teacher.

Section 2 of the law also provides that

Other person may apply without the complainant's consent where the complainant is a minor, mentally retarded, unconscious, incapable to consent for fear of refusal or a person whom the court is satisfied is unable to provide the required consent.

By the provision of section 2 (5);

Application for domestic violence will be filed along with an affidavit and be submitted to a court registrar who must within 72 hours submit the same to the court. However, where the complainant may suffer hardship if the application is not dealt with immediately, it has to be brought to a judge in the chamber⁹³.

After the application has been lodged to the court registrar, the court will issue an interim order of protection against the respondent pending when he will show cause on the next adjourned date. The law also provides a duty to assist victims at the scene of Domestic violence Section 3 provides thus,

Notwithstanding the provision of any other law, the application may be brought on behalf of the complainant by any other person; including a counselor, health service provider, member of the Nigeria police force, social worker, organization, or teacher, who has an

⁹⁰ibid s 45(2)

⁹¹Lagos State Protection against Domestic Violence Law 2007 s 1

⁹²ibid s 18(1)(j)

⁹³ibid s 2(5)

interest in the well-being of the complainant except in circumstances where the complainant is a minor, mentally retarded, unconscious, incapable to consent for fear of refusal or a person; whom the court is satisfied unable to provide the required consent⁹⁴.

4.3 Incorporating Domestic Violence to Human Rights and Fundamental Freedoms under General International Law or Human Rights Convention; Establishment of Punishments to the Perpetrators and Providing Free Medical Assistance to the Victims:

Ekiti State Gender-Based Violence (Prohibition) Law which is a hybrid between the laws of Lagos State and the Violence against Persons Prohibition Act 2015 applicable to the Federal Capital Territory. It extensively covers violence against all genders. Gender-based violence was defined as violence that affects a person or group of persons disproportionately because of their sex; any act that inflicts physical, mental, and sexual harm or suffering; threats of such acts, coercion, and other deprivation of liberty; all acts of violence with impair or nullify the enjoyment of human rights and fundamental freedoms under general international law or human rights convention as discrimination. *Section 2(b)* provides a list of acts regarded as gender-based violence ranging from physical abuse to rape, sexual assault, and violence against women⁹⁵.

Section 3(1) of the law provides that,

A person who wilfully causes or inflicts physical injury on another person using any weapon, substance, or object, commits an offense and is liable on conviction to a minimum of two years imprisonment or a fine not less than ₦200,000(Two Hundred thousand Naira) or both⁹⁶.

Section 3 (2) of the law also provides:

A person who attempts to commit an act of violence provided in subsection 1 of this section commits an offense and he is liable on conviction to a minimum of one-year imprisonment and a fine not less than 100,00 or both⁹⁷.

Section 3 (3) also goes further to state,

A person who incites, aides, abates or counsels another person to commit the act of violence provided in section 1(1) commit an offense and is liable to a conviction to a minimum of one year imprison or to a fine not less than #100,000 (One Hundred Thousand Naira) or both.

Section 4 also provides thus,

A person who coerces another to engage in any act to the detriment of that other person's physical or psychological well-being commit an offense and he is liable on conviction to a term of imprisonment of three years⁹⁸.

⁹⁴ibid s 3

⁹⁵Ekiti State Gender-Based Violence (Prohibition) Law, 2019 s 2(b)

⁹⁶ ibid s 3(1)

⁹⁷ ibid s 3(2)

⁹⁸ibid s 4

Section 10 also prohibits any person who ejects their spouse from their matrimonial home.

‘A person who forcefully evict his or her spouse from his or her own or refuse him or her access commit an offense and is liable on conviction to a term of imprisonment for three months or to a fine of 100,000 in the first instance or a term of six months imprisonment or a fine of 200,000 or both in other instance ⁹⁹.

The law provides for the establishment of a specialized court known as the Gender court in at least 3 Senatorial Districts of the state to hear cases of Gender-Based violence. The law also provides the rights of victims in addition to the guarantee of the right under chapter iv of the 1999 constitution as amended and other international human rights.

There was a welcome development in the law where a person who has been convicted of a sexual offense shall have his or her name registered in the sexual offenders Register kept at the office of the Attorney General and Commissioner for Justice of the States. The law also extensively provide that the Attorney general and commissioner for justice on the advice of the commissioner for women affairs and social development, may make regulation to provide funds necessary for the law; prescribed the training of the police and court officials on Gender-based violence in consolidation with relevant institutions; provide for education and counseling of the victims and perpetrator of Gender-based violence; provide for education and counseling in a domestic relationship; prescribe shelter for victims in consolation with relevant institutions; provide for the enhancement of social welfare service for the victims, provide the modalities for the provision of free medical treatment for the victims; provide financial assistance to the victim Gender-based violence in case of the imprisonment of a spouse and provide effective implementation of the law.

The law also goes further for the provision of a Gender-based violence support fund, the proceed of which shall be applied towards basic materials support of victims of gender-based violence and for caring for affected dependents of Gender-Based Violence.

4.4 Placing Obligation on the Police Officers to Protect the Victims and also Mandating the Court to Issue Protection order to the Victims:

The Ebonyi State (Ebonyi State Domestic Violence and Related Matters Law) also adopted the same approach criminalizing domestic violence as Cross River State, the male victims of abuse were also left out, and however, Section 4(2) of the law allows victims of domestic abuse to apply to Magistrate court for a protection order¹⁰⁰.

Also, Section 5 of the law provides;

Any police officer or social worker who is at the scene of the violence or learn about the incident is obliged to assist the victim by using reasonable force to rescue the victim, making arrangement for the victim to find suitable accommodation, directing the victim to obtain Medical treatment and arresting the offender¹⁰¹.

⁹⁹ibid s 10

¹⁰⁰Ebonyi State Domestic Violence and Related Matters Law, 2018 s 4 (2)

¹⁰¹ibid s 5

Section 7 also goes further to state that,

‘In cases of a repeated incident of domestic violence against a particular victim or if unduly hardship may be suffered by the victim if a protection order is not made the court will on the application by the victim, notwithstanding that the respondent is not served notice of proceedings, issue protection against the respondent on such term and conditions as deems appropriate’¹⁰².

5. Recommendation and Conclusion

The Human Rights provisions of the 1999 Constitution and the provisions of other international and regional instruments especially the Convention on the Elimination of All Forms of Violence against Women (CEDAW), the Convention on Rights of the Child 1989, the Child Rights Act 2003 and the Violence against Persons (Prohibition) Act 2015, have rich provisions for the protection of women and girls from violence. However, despite these copious provisions in our municipal laws and international instruments, there appears to be a gap between law and practice and gender-based violence seem to be on the increase. The law is an instrument of change. There is need for intensive advocacy to ensure that discriminatory legal provisions are expunged and relevant legislation protecting the rights of women in Nigeria are adopted by all states of the federation. For instance, under *Section 55* of the Penal Code,¹⁰³ husbands are permitted to chastise their wives. This provision should be annulled. A cultural reorientation that encourages mutual respect and preservation of human rights of all ages and genders will go a long way in curbing domestic violence. The establishment of Sexual Assault Referral Centres also known as Safe Houses is recommended. Cultural marital institutions should promote respect and dignity in marital settings and judicial conflict resolution that satisfies all.

¹⁰²Ibid s 7

¹⁰³ Penal Code Act Cap P3 (Federal Provisions Act), LFN 2004 S 282