

**EXAMINING THE LAWS ON DOMESTIC VIOLENCE
IN NIGERIA VIS-A-VIS THE IMPACT ON THE CHILDREN OF THE MARRIAGE***

Abstract

Domestic violence is a topical issue because it cuts across nations of the world and affects people in no small measure throughout their lives. Women and children are the most vulnerable to domestic violence. The horrors of abuse are apparent in the primary victims, namely, children who witness the abuse of their mothers, fathers, or other family members, are impacted negatively. Witnessing violence, in general, has been associated with emotional, behavior, and learning problems in children, with children's susceptibility affected by developmental level, chronicity of exposure, physical closeness to the incident, and emotional closeness to the victim. The psychological and physical effects of a child's exposure to domestic violence cannot be over emphasized. To reduce the risk of these effects, it is also important to highlight ways that children can be protected from harm and consequent effect of domestic violence. The research methodology adopted in this work is doctrinal involving the analytic and comparative consideration of existing legal instruments on the issue within and outside the Nigerian legal system. The methods of data collection adopted in this work were from primary sources such as statutes and laws; and secondary sources such as books, journal articles and internet materials. It was founded that children are most affected in homes where domestic violence prevails and that the psychological effect outweighs its physical effect. In conclusion, domestic violence has a great impact on the children of the marriage, what happens in childhood and adolescence has profound implications for wellbeing in adult life. The prevalence of domestic violence as the most common factor cited in cases of children in need emphasizes the need for addressing this enduring problem through prevention, early intervention and education. Domestic violence must be addressed as a public health concern and not only as a privatized, individualized problem. The work recommends inter alia, that there should be an increased advocacy and public awareness in schools and places of worship to enable children to be aware that domestic violence is not a normal way of life. In this vein, parents are advised to avoid the practice of exposing their children to an environment where they witness domestic violence.

Keywords: Domestic Violence, Impact on the Children of the Marriage, Laws, Nigeria

1. Introduction

Violence in the home is a universal phenomenon that is calling the consciousness of individuals, communities, nations and international groups on daily basis.¹ It happens in all civilizations across the globe. The word violence has been defined as the use of physical force accompany by furry, vehemence or outrage, unlawfully exercised with the intent to harm.² Again, it is defined as a use of physical force so as to damage or injure, intense natural force or energy, an abusive use of force, passion, furry, disturbance and desecration.³ Domestic violence on the other hand can be defined as: Violence between members of a household usually spouses: an assault or other violent acts committed by one member of a household against another.⁴ Domestic Violence means the violence in the home where spouse is living. A dispute between the partners is not hurt only them, but their families are also affected by it. Domestic Violence directly or indirectly has leaved the impact upon the family members and especially upon the children. The children are needed too healthy or peacefully or securing or safe environment in the home. Homes are the heaven and secured place for children. But domestic violence spoiled the home environment.⁵ The effects of domestic abuse on children may be apparent within a short period of time, while other damages may be noticed in the long run. Some of the immediate effects that children experience after witnessing domestic violence are enormous to mention the least.

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¹ N Cantalupo, L V Martin, K Pak and S Shin, 'Domestic Violence in Ghana: The Open Secret' *Georgetown Journal of Gender and Law* (2006) 71 <<https://scholarship.law.georgetown.edu/facpub/433/> accessed 24 October, 2022

² B A Garner, *Black's Law Dictionary* (8th edn, Upperman Drive: West Publishing Company, 2004) p 1601

³ *New International Webster's Comprehensive Dictionary of the English Language*, Encyclopedic Edition (2010) edn :Typhonon media corporation, 2010) p 1402

⁴ B A Garner (n2) at p 1601

⁵K Mittal, 'Impact of Domestic Violence on the Children' ResearchGate 2020 (1) https://www.researchgate.net/publication/342734549_Impact_of_Domestic_Violence_on_Children accessed 9 July, 2023

2. Definition of Terms

Violence means the use of physical force, usually accompany by fury vehemence or outrage, especially physical force unlawfully exercised with the intent to harm. Some Courts have held that violence in labor disputes is not limited to physical contact or injury but may include picketing conducted with a misleading signs, false statement, erroneous publicity and veiled threats by words and acts⁶ Violence is defined by the World Health Organization in the WRVH as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation⁷. The term is often used specifically to designate physical assaults upon women by their male partners, but, though rarer, the victim may be a male abused by his female partner, and the term may also be used regarding abuse of both women and men by same-sex partners.⁸ The Oxford English dictionary gives two definitions of the word impact: ‘the action of one object coming forcibly into contact with another’ and ‘a marked effect or influence’. These alternate meanings describe fundamentally different views of causality and evoke very different images. This mirrors how the term is used in international development; the two most widely used definitions of impact show a similar divergence of perspectives.

3. National and International Legal Framework on Domestic Violence

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Prior to Nigerian’s independence, Human Right has already taken prominent positions in most countries in the world especially in the western world.⁹ In Nigeria, the Legislature is responsible for the law making and follows law making procedures as specified in the Constitution¹⁰. The Constitution is the *grundnorm* and to which all other laws in Nigeria kowtow.¹¹ The respect for fundamental human rights in Nigeria has been thriving recently as people all over the country usually respond to matters of right. The Constitution¹² in its numerous provisions recognizes human rights specifically in chapter IV. The Constitutional provisions clearly recognizes right to life,¹³ right to dignity of Human person,¹⁴ right to freedom and liberty¹⁵ and right not to be discriminated against¹⁶ The Constitution of the Federal Republic of Nigeria is the Supreme law of the country¹⁷. The same Constitution provides for fundamental right and these rights have been made justiciable by the Constitution, in other words, any person who alleges that any of his fundamental rights is being or is likely to be contravened by any person or authority, has a right to take every necessary and lawful action for redress and to check a prolonged infringement¹⁸. Domestic violence is not expressly provided in the Constitution of the Federal Republic of Nigeria but most of the provisions under chapter Iv are related to domestic violence and any abuse relating thereto will addressed accordingly. **Section 34**¹⁹ 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.

Violence against Persons (Prohibition) Act 2015

The Violence Against Persons (Prohibition) Act²⁰ is the most comprehensive and progressive law for addressing the silent pandemic of violence against persons in Nigeria especially women and children. The main thrust of the VAPPA is to ‘eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and for other related matters. It guarantees maximum protection to all citizens by prohibiting all forms of violence and harmful traditional practices against women or men, boys or girls occurring in private and /or public

⁶ B A Garmer, *Black’s Law Dictionary* (8th edn , United States of America, Thomas West, 2004) P.1601

⁷ E Krug, and others, *World report on violence and health*’ (Geneva: World Health Organization, 2002)

⁸<Domestic violence | social and legal concept | Britannica accessed 25 January, 2023

⁹ F Anyogu, *Access to Justice in Nigeria: a Gender Perspective* (Enugu Nigeria: Ebenezer Production Ltd, 2009) p.260

¹⁰ C Umeobika ‘Same Sex Prohibition Act, 2014: A Stitch in Time that Saves Nine’ (2014) 6 NAU, JLPJ, p. 250

¹¹ Constitution of the Federal Republic of Nigeria. S.1

¹² Of the Federal Republic of Nigeria as amended

¹³ *ibid*, s.33

¹⁴ *ibid*, s.34

¹⁵ *ibid*, s.35

¹⁶ *ibid*, s.42

¹⁷ *ibid*, s.1

¹⁸ *ibid* S. 46

¹⁹ *ibid*

²⁰ (VAPPA) 2015

spaces.²¹ The Violence against Persons (Prohibition) Act, 2015 was signed into law on the 25th day of May 2015 after over ten years in the legislative process. It is an amalgamation of different bills which sought to abolish all obsolete laws relating to matters such as rape, assault etc. It aims to improve upon similar provisions on violence as contained in Nigeria's Criminal and Penal Code²². The Violence against Persons (Prohibition) Act, 2015²³ is a national law and its provisions applicable throughout the country. This is a significant development because of the previously detached nature of law against violence, particularly gender-based violence.²⁴ For instance, only nine states have specifically legislated against domestic violence in Nigeria (Lagos, Ekiti, Cross River, Osun, Ondo, Edo, Baysa, Rivers, Anambra and Ebonyi). **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'**

Violence Against Persons Prohibition Law of Anambra State 2017

In 2015, the Federal Government signed the gender-neutral Violence Against Persons (Prohibition) Act, 2015²⁵ into law. But Section 27 of the VAPP Act limits its application to the Federal Capital Territory High Court. Therefore, each state must domesticate the Act before it becomes operational. In 2017, the then Governor of Anambra State, Willie Obiano, signed the (VAPP) Act into law, making the state one of the few Nigerian states to domesticate the Act. The VAPP law (of Anambra State), 2017 confers jurisdiction on the Magistrate and State High Courts. Section 3 of the VAPP law expands the criminal jurisprudence of rape. The offence of rape is no longer restricted to penile – vaginal penetrations. Rape is complete upon non-consensual penetration of the victim's orifices (mouth, vagina or anus) with the penis, or any of the perpetrator's body parts, or even with an object. Under the VAPP law, males and females can be victims as well as perpetrators of rape. Also, rape victims are entitled to compensation in Section 3.

Convention on the Elimination of all forms of Discrimination Against Women

Like the earlier human rights instruments, the main text of the Convention the Elimination of All Forms of Discrimination Against Women²⁶ is basically on women's right. Nigeria signed and ratified the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)²⁷ without any reservations. It also ratified the Optional Protocol to CEDAW²⁸. CEDAW provides the basis for ensuring equality between men and women. Convention on Elimination of all forms of Discrimination Against Women entered into force in 1981, did not explicitly include language on violence against women or domestic violence.²⁹ In 1999, the General Assembly adopted the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women.³⁰ The Optional Protocol created two procedures to monitor compliance with CEDAW. First, it established a communications procedure for individual women, or groups of women, to submit claims of violations of CEDAW after exhausting domestic remedies.³¹ Second, the Optional Protocol created an inquiry procedure which enables the Committee to investigate situations of 'grave or systematic violations' of women's rights.³² Currently 104 countries are parties to the Optional Protocol.³³ Sexual

²¹ <<https://www.wfd.org/what-we-do/resources/overcoming-challenges-effective-implementation-violence-against-persons>

²² C. Onyemelukwe & I. Okekeogbu, 'The Violence against Persons (Prohibition) Act: A CHELD Brief' (CHELD), 2015) <www.cheld.org accessed 15 May, 2022

²³VAPPA

²⁴ Omidoyin, 'Violence Against Persons (Prohibition) Act 2015: A Positive Step to the Eradication of Domestic Violence in Nigeria' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 2019 (9). 46

²⁵ (VAPP)

²⁶ CEDAW

²⁷ 13 June 1985

²⁸ on 22 November 2004

²⁹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981 <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

³⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 2131 U.N.T.S 83, UN Doc. A/RES/54/4, entered into force Dec. 22, 2000, <<http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>.

³¹ *ibid*, Art. 2,4

³² *ibid*, Art, 8

³³ Signatures and Ratifications, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en. Accessed on the 27th day of February, 2023 at about 07:21am

exploitation of women especially for prostitution and trafficking are addressed in Article 6.³⁴ Article 15 grants women equality before the law³⁵ while Article 16 obliges state parties to take all appropriate measure to eliminate discrimination against women in all matters relating to family relations.³⁶ The Nigerian government is yet to domesticate CEDAW in line with Section 12 of the Constitution.³⁷ This means that at best, the principles of CEDAW can only have persuasive influence on the domestic legal system in Nigeria.

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (the African Charter) entered into force on October 21 1986. It has been domesticated by Nigeria³⁸ and is now a part of the domestic law³⁹ The African Charter recognizes women's rights in three clear provisions but failed to expressly mention domestic violence. Article 18 (3) ensures the elimination of every discrimination against women and also ensure protection of women.⁴⁰ Article 2 contains a non-discrimination clause, providing that the rights enshrined in the Charter shall be enjoyed by all irrespective of race, ethnic group, color, sex, language, political or any other opinion, national or social origin, fortune, birth or other status.⁴¹ The equal protection clause in Article 3 provides for equality before the law and equal protection before the law. This Charter, however, was inadequate in protecting the rights of women in Africa. It did not take into consideration critical issues such as custom and marriage. Domestic violence was not expressly mentioned. Within the marital relationship, there was no provision on the age of marriage and equality of spouses. More importantly, the Charter promoted African traditional values and traditions without due consideration to the harmful effects of some traditional values on women

4. Impact of Domestic Violence on Young Children, Children, and Young People

Domestic violence occurs at all ages.⁴² It is point out that the duration of children's encounters with domestic abuse has a greater bearing on their stress levels than the severity of the abuse. Harm caused by domestic violence can be physical, emotional, behavioral, cognitive, and social, and effects are usually overlapping and interrelated. Although harm can be present across all age phases, the researcher will differentiate by three age groups, namely young children aged 1–4, children aged 5–10, and young people aged 11–16 since challenges and issues arising from domestic violence are different across these ages. It should be noted, however, these age groups are approximate and children's experiences and responses will be influenced by individual needs and context.⁴³

Impact on Young Children

The effects of domestic violence can be felt in early childhood. Research shows that psychosocial development is more problematical among toddlers exposed to intimate partner violence who additionally experience physical abuse⁴⁴ In some cases domestic violence during early childhood leads to emotional problems. Among pre-school children it can cause separation anxiety from the non-abusing parent, commonly their mother. Pre-school

³⁴Article 6 states, 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'

³⁵ Article 15 provides, 'States Parties shall accord to women equality with men before the law'

³⁶ Article 16 states, 'States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women'

³⁷ This Section provides that international treaties can only be enforced upon the enactment of a domestic law to that effect by the Parliament.

³⁸ S. 12 of the Constitution of the Federal Republic of Nigeria as amended 2011. The section provides thus 'no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly'

³⁹ Nigeria has recently domesticated the United Nations Convention Against Transnational Organized Crimes and its Supplementary Protocol and the Convention on the Rights of the Child

⁴⁰ Article 18(3) provides 'the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'

⁴¹ Article 2 states, 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status'

⁴² A Sterne & L Poole, 'Domestic Violence and Children', *A Handbook for Schools and Early Years Setting*. London: Routledge.

⁴³ M Lloyd, 'Domestic Violence and Education: Examining the Impact of Domestic Violence on young children, Children and young Persons and the Potential Role in Schools' *Gender, Sex and Sexualities* 2010

⁴⁴ B Harper, I N Ogbonnaya, & K C McCullough, 'The effect of intimate partner violence on the psychosocial development of toddlers' (Interpers. Violence 2018) (3)

children's restricted ability for coping due to their young age means that behavioral and psychological disengagement is one way they react to inter-parental violence⁴⁵. Pre-schoolers sensitized to the noise of family violence may cope by tuning out noise, consequently posing difficulties for those wishing to interact with them in the school setting. According to the authors, pre-school children will react to inter-parental conflict in a variety of ways including becoming withdrawn, anxious, engaging in repetitive play, regressive behavior, having inhibited independence, sleep problems, tantrums or impaired understanding. The signs and symptoms of domestic violence and inter-parental violence are not always easily detectable. Moreover, it is difficult for staff in pre-school to know whether children's conduct is associated with experience of domestic violence or regular behavior expected of this age group. If staff suspect abuse, and/or notice changes in pre-school children, background checks into the home environment will help inform their professional judgment. Staff can check if the child has a previous history of abuse and if a parent has a history of violence including toward adults or animals since they are likely to be violent toward children as well⁴⁶. It is important for pre-school staff to exchange information with other healthcare professionals such as health visitors who work with children from birth to five. Guidelines in the United Kingdom recommend health visitors undertake routine screening for domestic violence and share information with pre-schools and schools as appropriate. The quality of the parent-child relationship also needs to be considered by pre-school staff, for example is the child reluctant to go home or fearful in the presence of a parent. Early years teachers and support staff can develop strategies for supporting pre-school children displaying symptoms through giving positive feedback, focusing on desirable rather than undesirable behavior, validating the child's feelings, and preparing for transitions during the day.

Impact of Domestic Violence on Children

Separation anxiety due to domestic violence is not limited to preschoolers and young school-aged children experiencing such anxiety could be clingy, and feign illness or be disruptive at school in the hope of being sent home. In relation to the physical impact of domestic violence effects include, but are not limited to, injury, eating problems, and stress-related conditions such as asthma and bronchitis. Emotional effects, they note, are manifested in disruption to schooling including non-attendance, attention and concentration difficulties, sleep disturbance, withdrawal, insecurity, guilt, depression and low self-esteem. Behaviorally, the impact might be changes in conduct, unpredictable behavior, aggression, anger, and hyperactivity. Being the perpetrator or victim of bullying can also ensue. Some children facing trauma at home display hypervigilance and hyper arousal at school, constantly watchful and fearful of danger⁴⁷. Domestic violence can negatively affect cognitive skills, language development and educational attainment making the child to be absence minded.

Impact of Domestic Violence on Young People

In older children, potential indicators of domestic violence include self-blame, depression, self-harm, suicidal ideation, substance abuse, risk-taking behavior, criminal behavior, poor social networks, disaffection with education, and eating disorders. Research indicates that experiencing domestic violence has a differential impact along gender lines. Girls are more likely to internalize symptoms in the form of withdrawal, anxiety and depression, whereas boys, though still susceptible to anxiety and depression, are more prone to externalizing symptoms through violence against peers or antisocial behavior⁴⁸. Research with young people found that being listened to, taken seriously, and jointly involved in finding solutions were key means of helping them cope; in cases where no one listened, young people felt 'doubly disadvantaged'. The effects of domestic violence clearly have implications for student wellbeing and learning.

5. Conclusion and Recommendation

This paper shows that what happens in childhood and adolescence has profound implications for wellbeing in adult life. Domestic violence is the most common factor that impedes the growth of children psychologically and affects them in no small measures. There is need for addressing this enduring problem through prevention, early intervention and education. Domestic violence must be addressed as a public health concern and not only as a privatized, individualized problem. The ways in which gender violence is based on and reinforced through women's wider structural inequality and lack of power in relation to men needs to be recognized if violence within the domestic sphere is to be tackled effectively. Too frequently blame, shame and guilt cast a shadow over lives affected by domestic violence. Multi-agency working and in-school education and support can help prevent abuse and optimize outcomes for children, young people and their families living with the consequences

⁴⁵ L Baker & A Cunningham, 'Inter-parental violence: the preschooler's perspective and the educator's role' *Early Child. Education Journal* 2009

⁴⁶ C Beckett, *Child Protection, An Introduction* (2nd edn. London: Sage Publications. 2009)

⁴⁷ A Baldry, 'It does affect me, disruptive Behaviors in Preadolescents directly and indirectly Abused at Home', *European Psychology* 2007

⁴⁸ *ibid*

of domestic violence. The longer a child witness domestic violence, the more likely it is to have a negative impact. The work recommends inter alia, that there should be an increased advocacy and public awareness in schools and places of worship to enable children to be aware that domestic violence is not a normal way of life. In this vein, parents are advised to avoid the practice of exposing their children to an environment where they witness domestic violence. Government and its agencies, authorities should map out a measure to educate the children on the effect of domestic violence and also provide victims with medical facility and to discourage them not to be silent in a home where domestic violence prevails. This can be achieved by the Government through providing a hot line where children can get attention and be rescued earlier. Furthermore, there should be a shelter in the state where victims of domestic violence can be kept for the purposes of rehabilitation before they could be integrated back to the society.