

Unveiling the Impediments in the Implementation of the Law on Domestic Violence Against Women: Nigeria As Case Study.

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ABSTRACT

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol contain comprehensive and wide ranging provisions for promoting and protecting the Human Rights of Women. As a party to the UNCEDAW, Nigeria equally domesticated the convention and other Laws for the promotion and protection of the rights of women against domestic violence, despite these provisions, findings indicate that the rights of women against domestic violence are inadequately protected in Nigeria mainly due to ineffective implementation of the existing laws, legislation and convention as enshrined for the protection of women against violence, various impediments such as cultural practices, illiteracy, economic, Legal and political factors have been identified as fundamentally affecting the efficacy of the laws bothering on the rights of women and are found to have contributed to the violation of women against domestic violence. Domestic violence covers various aspects of violence and harassment to which women are subjected to in Nigeria. The aim of this article is to expose these impediments confronting effective implementation of these laws, therefore, to achieve this aim, review of some international and domestic instruments relevant to the subject undertaken with a highlight of the impact on women in Nigeria. The article concludes that while efforts have already been made to integrate the CEDAW into Nigeria law, there is still a wide gap between the provisions of the laws and practice and therefore, more needs to be done to mainstream it across all policy arrears and reflects the paradigm shift of women as human rights issues as reflected in the convention. It proposes among others that there is need to move from policy to implementation while steps are taken to improve the awareness about the UNCEDAW among the general public.

KEY WORDS: Domestic Violence, women, Impediments and implementation.

Date of Submission: 05-06-2021

Date of Acceptance: 19-06-2021

I. INTRODUCTION

Human beings by nature possess certain basic and inalienable rights which are commonly known as human rights¹. Certain groups of human beings, either by their nature or because of deep-rooted customs are weak and vulnerable. Women are found to be prominent in the categories of the vulnerable and their rights are frequently violated as a result with impunity by their male counterparts through domestic violence. Domestic violence is a global phenomenon and common place and has since assumed a new dimension.² Considering its rampancy and wide spread occurrence it becomes clear that the violence syndrome is prevalent in all societies and cultures no matter their levels of civilization.³ True to its fundamental ideals, the United Nations as a global body has contributed in no small measure in spreading the message of Human Rights. Several Conventions have been made under the auspices of the United Nations with the aim to protect the rights of women⁴. In

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¹ H O Agarwal, *International Law and Human Rights*.17thedn (Central Law Publishers2010)730.

²O OAzubike, "Personal Liberty and Domestic Violence: Any Legal Response in Nigeria," (University of Ilorin Law Journal, vol.6, No.2,2010).20.

³Coomaraswamy, R., "Preliminary report submitted by the special Rapporteur on Violence against Women, It's Causes and Consequences, In Accordance with Commission on Human Rights Resolution 1994/45; p.4-9 available at <www.undehr.ch/hurridoca.nastiest.frame.75.ccfdf7970712d08d25670b005c9c7d7 open document.> Accessed on November 15 2015.

⁴ see Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW) adopted in 1979, United Nations Convention on the Rights of Women,1986, Universal Declaration of Human Rights (1948),

addition to these Conventions, Conferences have been held under the aegis of the United Nations such as the International Women Conference in Mexico City,⁵ Copenhagen,⁶ Nairobi,⁷ and Beijing being the Fourth World Conference on women commonly known as *Beijing Conference*, 1995.⁸ These Conferences and Conventions have greatly enhanced international awareness on the concerns of women and have provided the link between the National Women Movements and the International Community. Furthermore, there are other human rights instruments which have been adopted under the auspices of the United Nations for the protection of vulnerable groups such as women.⁹ The United Nations affirmed in its Charter the promotion, protection and respect for human rights and fundamental freedoms for all persons without discrimination as to race, religion or sex. In December 1948 the Universal Declaration of Human Rights (“UDHR”) was adopted. It also affirmed the equality of all human beings and the equal enjoyment of all human rights by all with a clear statement on non-discrimination on the basis of sex¹⁰. Subsequent human rights instruments reaffirm this equality and the equal entitlement to enjoyment of human rights. It is therefore, crystal that all women are entitled to the enjoyment of these rights as entrenched in the instruments hence, gender, custom and law can no longer be used as tools to deny them these rights.¹¹ Similar provisions can be found in other regional human rights instruments. For instance, the European Human Rights System has put in place measures for the protection of the rights of vulnerable groups.¹² In the Inter- American System, similar measures are in place for the protection and promotion of human rights.¹³ Also the Africa Human Rights System has given particular attention to women, children and refugees; especially the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.¹⁴ Even before this Protocol, the African Charter¹⁵ itself had provided in articles 2, 3, 4 and 5 for the protection of the rights and dignity of all persons, women inclusive, and their right to equality before the law. It provides that every individual shall be entitled to the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind on ground of race, ethnic group, colour, sex or other statuses¹⁶.

In the same vein the Convention Governing the Specific Aspects of Refugees in Africa,¹⁷ as well as the African Charter on the Rights and Welfare of the Child have similar provisions on the protection of women rights. It is pertinent to note that since African countries are parties to different international human rights

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (1999), The Declaration on Elimination of Violence against Women (1993), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), the Convention against Torture and Other Cruelty, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Political Rights of Women (1952) and African Charter on Human and Peoples Rights/Protocol on the Rights of Women (2003)

⁵ 1975

⁶ 1980

⁷ 1985

⁸ 1995 (4th-15th September, 1995)

⁹ These instruments include Convention on the Elimination of all Forms of Discrimination Against Women adopted by the United Nations, G.A. Ass. Res 34/180 December 1979. (Came into force September 3, 1981); Optional Protocol to the convention on the Elimination of Discrimination Against Women, UN G. A. Ass, Res A. /54/A Oct, 1999, (came into force in December 22, 2000).

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¹⁰ UDHR, 1948 articles 22-27

¹¹ A Ibidapo-Obe *Policing Response to Vulnerable Group: A Review of Strategies for Tackling Crime against Women and Children*, O.Oluduro, et al, (eds) trends in Nigerian Law: Essays in Honor of Oba DVF Olaturu Olagbege 111, Olowo of Owo Kingdom, Ibadan, (Constellation Nig. Publishers 2007) 84.

¹² T F Yerima, “Human Rights Protection of Women in Africa: Journey so Far” *Akungba Law Journal* [2009] (1)(3)177. For example: Convention for the Protection of National Minorities signed by members of Council of Europe on Feb 1, 1995, at Strasbourg (came into force on Feb. 1996); Report on the Conference on Security and Co-operation in Europe (CSCE) meeting of Experts on National minority, Geneva (adopted on July 19, 1991) at Geneva.

¹³ For example, the Inter-American Convention on the protection, Punishment and Eradication of Violence Against Women, adopted at the 24 Res, session of the G. A. (came into force on March 5, 1995).

¹⁴ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted by the 2nd Sess of the ALL Maputo July 11, 2003

¹⁵ Article 2 and 5 of the African Charter 1981

¹⁶ Article 5

¹⁷ Convention Governing the specific Aspect of Refugees in Africa, adopted by the Heads of the African State and Government in Addis Ababa on September 10, 1969 entered into force on June 20, 1974.

instruments that seek to protect the rights of vulnerable groups, women inclusive, a high level of performance in this regard is expected from them.

Under Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁸ section 13 makes it obligatory for all organs of government and all authorities and persons exercising legislative, executive or judicial powers to conform, to observe and apply the provisions of Chapter II of the constitution. Section 15(2) prohibits discrimination by the State on grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties. The Constitution further provides¹⁹ for equal rights, equal obligations and equal opportunities for citizens before the Law as well as the sanctity of the human person and maintenance of human dignity. It also directs the States to protect, preserve and promote the Nigerian culture which enhances human dignity and is consistent with the fundamental objectives as provided in Chapter II of the Nigerian Constitution.²⁰

Chapter 1V of the Nigerian Constitution²¹ contains elaborate provisions guaranteeing the fundamental rights of citizens. Section 42(1)(a) makes specific provision to the effect 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 ... to disabilities or restrictions

II. CONCEPT OF DOMESTIC VIOLENCE

Domestic violence entails physical or emotional harm. It includes/extends to threat or indecent assault, undue curtailment of freedom, and personal or economic intimidation. In fact, the list includes any expression that demeans a person's dignity, any physical assaults, beating or strangulation, jabs with sharp or blunt objects, slaps, kicks and sexual abuse of any kind, including inordinate demand and/or refusal are manifestation of violence within the household or family.²² For better understanding of the term 'domestic violence' against women, the United Nations General Declaration on the Elimination of Violence against Women, via Resolution 48/1104 of December 20th 1993²³ defines violence against women broadly in its article 1 to mean:

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

Women rights activists advocate legal and social equality with men for the fact that women rights are human rights. These rights include the right to live free from violence and discrimination; to enjoy the highest attainable standard of physical and mental health; to be educated; to own property; to vote and to earn an equal wage among others.²⁴ There are however, a myriad of factors that hinder or impede the realisation or the enforcement or implementation of the instruments in place for the protection of women against domestic violence.²⁵

Lack of commitment to the realization of these rights is more or less a utopian especially in a society as Nigeria where disregard to Constitutional authority and disobedience to court orders even by government

¹⁸ Herein after referred to as the Constitution

¹⁹ Section 17(2)(a)(b)

²⁰ Section 21(a)

²¹ Section 33-44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the following rights and provisions: right to life, right to dignity of human persons, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression, right to peaceful assembly, and association, right to freedom of movement. more specifically, the Constitution provides that every individual is entitled to respect for the dignity of human person and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment.

²² R Howard, *Women's Right in English Speaking Sub-Saharan*, in C Welch, R Meltzer Jr (eds), *Human Rights and Development in Africa*, (Boston Pearson Education Inc.1984) 59. Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; UN General Assembly Resolution 48: 1/104, "Declaration on the Elimination of Violence against WOMEN", *December 20, 1993*.

²³ The United Nations in 1993 at the General Assembly adopted a Declaration on the Elimination of Violence against Women, Resolution 48/1104 of December 20th, 1993.

²⁴ H O Agarwar, n1 also O Aloy, "Domestic Violence and the Law, Nigeria Journal of Gender Studies" (2010) [1][1] p 8

²⁵ These include gender-based violence, Harmful traditional or cultural practices, exclusion of women from peace tables or state laws.

appears normal. This is worrisomely and compounded by the erroneous believe by men that discussion on women tantamount to slowing the development of the country.²⁶

As pointed out earlier, Nigeria is signatory to many international human rights instruments²⁷ and has laudable and inspiring constitutional provisions for their protection²⁸. Notwithstanding, there have been varying degrees of violation even by government, of these basic rights and fundamental freedoms.²⁹ Impediments to the full realization of the rights of women in Nigeria are multidimensional and include; constitutional provisions, cultural, political, legal, *etcetera* reasons. Some constitutional provisions on women rights are rather lame and lack the potency to really enliven and galvanise women rights. For instance, there are numerous derogation clauses which are not only too wide and wild, but ill-defined and nebulous. Similarly, the socio-political environment in Nigeria is in several ways not conducive to any meaningful human rights regime. Often, government exhibits autocratic tendencies and in the process have sadly erected a culture of impunity by regular disobedience of court judgments and orders. The result is that victims of domestic violence are left without commensurate legal remedy.

Impediments against the realization of women rights are multifaceted and intertwined. They however, differ among countries depending on their peculiarities. In Nigeria, domestic violence against women is encouraged, accentuated and sustained by several factors, such as culture, economic, legal, illiteracy and lack of political will on the part of government.

III. THE NIGERIAN CONSTITUTION AND HUMAN RIGHTS TREATIES

Section 12 of the 1999 Constitution of the Federal Republic of Nigeria relates to treaties and how they can be implemented. Since international human rights instruments are essentially multi-lateral treaties, a careful perusal of the provisions of section 12 becomes relevant. The section provides that

i. No treaty between the Federation and any other country shall have force of law except to the extent to which any such treaty has been enacted into by the National Assembly.

ii. The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

The implication of the provisions of section 12 of the Constitution is that human rights treaties entered into by Nigeria will not become binding until same have been legislated upon and passed into law by the National Assembly. In *General, Sanni Abacha v. GaniFawehinmi*³⁰, the Supreme Court after considering section 12(1) of the 1979 Constitution (now) section 12(1) of the 1999 Constitution held *inter alia*:

... an international treaty entered into by the government of Nigeria does not become *ipso facto* binding until enacted into law by the National Assembly and before its enactment, an international treaty has no force of law as to make its provisions actionable in Nigeria law courts³¹.

The apex Court further that, "unincorporated treaties cannot change any aspect of Nigerian law even though Nigeria is a party to those treaties" but that they may however indirectly affect the rightful expectation by the citizen that government acts affecting them would observe the terms of the unincorporated treaties.

IV. IMPEDIMENTS TO THE RIGHTS OF WOMEN AGAINST DOMESTIC VIOLENCE

²⁶ These were also expressed in G J Steiner and P Alston, *International Human Rights in Context, Politics, Morals* (Oxford: Clarendon Press, 1999) 887 where the problem of enforcement of laws against domestic violence was analyzed.

²⁷ Such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) the International Covenant on Economic, Social and Cultural Rights (1966), and the African Charter on Human and Peoples Rights (1981).

²⁸ Two chapters of the 1999 constitution (chapter 2 and 4) are exclusively dedicated to human rights. In addition, Nigeria has established ostensibly strong institutional infrastructure for the human rights promotion and protection. Apart from the judicial organ, Nigeria has extrajudicial bodies for human rights promotion and protection. These include the National Human Rights Commission and the Public Complaints Commission.

²⁹ For recent examples of human Rights violations in Nigeria, particularly domestic violence cases, see the latest Human Rights Report submitted by the U S. Department of the State to the U.S Congress, available at <http://www.state.gov/documents/organization/160138.pdf>. and also Adejuwon Olayinka, On Death Row, TELL MAGAZINE (Nigeria October 20, 2020) 22.

³⁰ (2000) [6] NWLR228 (Nigeria). The combined effect of the above provision also entails that international treaties can be enforced if the corresponding law has been enacted by the parliament.

³¹ The enactment of international treaties into domestic law is what is referred to as the concept of domestication or transformation of treaties.

Some of the impediments that hinders the enforcement of the right of women against domestic violence includes; gender-specific socialization, cultural definition of appropriate sex roles, expectation of roles within relationship, believe in the inherent superiority of males, values that give men proprietary rights over women and girls. Notion of the family as private affair and under the male control; customs of marriage (such as bride-price/dowry), and acceptability of violence as a means of resolving conflicts are also impediments. In the segment following these impediments have been identified as cultural, economic, legal, and illiteracy factors and discussed.

a. Culture

In the traditional Nigerian home, which is made up of patriarchal communities, superiority is so entrenched that even the land, is never referred to as “our motherland” but as our fatherland.³² The women have no right to land,³³ in cultures where the wife is more or less the property of the husband who has ‘paid’ a price and obtained all entitlements to “have and keep” her under his might.³⁴

Also, girls are socialized from birth to fetch and carry water or firewood and look to becoming humble brides and nothing more. Their male counterparts on the other hand are raised with the notion that women are made to serve them. The Nigerian psyche is further confused by the fact that Nigerians are deeply religious people. Typically, the main religions embraced by Nigerians are also products of a male-dominated history and have made the woman sheepish and unassertive.

The various Human Rights Conventions, to which Nigeria is signatory, as well as the Constitution of the Federal Republic of Nigeria, recognize equality of the sexes in their anti-discriminatory provisions³⁵ and abhor such gender-specific socialization that looks at the woman as a Second-Class citizen. A lot of violence inflicted in the domestic setting is justified as correction for disobedience or as a means of instructions for the desirable mode of conduct. It shows a society of men that take pleasure in unleashing violence on the women folk as a corrective measure. In the Bible,³⁶ women were not even counted in recounting the four to five thousand strong crowd fed by Jesus Christ with five loaves of bread and two fish.

The social context of violence against women in Nigeria is relatable to the traditional African patriarchal society that defines the gender power structure. For instance, upon marriage a woman surrenders to her husband exclusive sexual rights and obedience. This invariably gives her husband the liberty to violate and batter her if he feels that she has not adequately fulfilled her obligations or for any other reasons. Where the socio-cultural factor of domestic violence is largely dependent on the gender power relation, the men are always right, and always win in any case against their wives. Surprisingly, it is mostly the female relatives of the man that are usually the first to accuse the woman and find her guilty irrespective of obvious signs of physical violence.³⁷

Under cultural correctness, a deluge of violence is often shielded and overlooked. Report of NGOs³⁸ working on women rights are replete with incidences of rape, assault and sometimes deaths resulting from such violence. A lot of rape, incest and assault are glossed over as family secrets that should not be aired so as to protect family name and esteem. To worsen the situation, the assaulted women are treated as perpetrators rather than victims and are stigmatized for life. Usually, the community would rather apportion blames to the victim

³²See the Nigeria National Anthem which says “to serve our fatherland” with love and strength and faith... the lab us of our heroes past shall never be in Vain... By peradventure one raises the fact that there were also heroines in the past, one would quickly be referred to the interpretation Act which rectifies that “he” as used in our laws includes ‘she’ for all times.

³³It can be argued that neither has the man seeing as land right is vested in the Government to be held in trust for the people under the land use Act of 1978. Though, there are on-going reforms at the moment, which one hopes will be adequately engendered to give clear rights to women, especially regarding traditional ownership, and in circumstances of widowhood.

³⁴S C Ifemeje, “Gender Base Domestic Violence in Nigeria: A Socio-Legal Perspective” in *Indian Journal of Gender Studies*, 2012; (Sage Publication, New Delhi) 138-148.

³⁵See the African Charter on Human and Peoples Rights 1986, as well as its Protocols; see also chapter four of the constitution of the Federal Republic of Nigeria, section 42 of the constitution clearly states that no one is to suffer discrimination on account of sex, age ethnic group or religion.

³⁶The Gospel of Mathew Chapter 14 verse 21 and Mathew chapter 27 verse 55. Holy Bible, New Living translation (Tyndale House Publishers, Lnc. Caol Steam Illinois,2001).597

³⁷A K Oyediran, and U C Isiugo-Abanihi, ” Perspective of Nigeria Women on Domestic Violence: Evidence from 2003 Nigeria Demographic and Health Survey” (a Publication of Family Health and Action Research center 2005). [http://www.bioline.org.br/request? access 14/04 out 2016](http://www.bioline.org.br/request?access%2014/04%20out%202016)

³⁸S Mahdi., (ed) “Overview and Analysis of Gender Based Violence in Nigeria; January to June 2012”. A publication of Legislative Advocacy Coalition on Violence against Women (LACVAW)

citing modes of dressing, talkativeness or loose moral as exculpatory reasons for the crime.³⁹ Religion⁴⁰ has also become part of the cultural mix helping to justify female oppression. A plethora of verses of both the Holy Bible and the Holy Qur'an clearly portrays the woman as second thought in creation. This has sadly reconfigured the psyche of women and they are made to uphold this world view as correct though.

No doubt, "religion seems to still hold a firm grip on moral values relating to power relation between the wife and her husband"⁴¹. Consequently, women who are very religious are most likely to hold as strong, rigid and the fundamentalist type of belief that may encourage abuse.⁴² It is a known fact that certain culturally acceptable behaviours, though detrimental to women are championed by women themselves. Women activist are often time perceived wrongly and accused of being meddlesome, jobless and evil, even by the very women whose cause they champion. It would therefore be incongruous to expect any woman who believes that her husband was showing her love⁴³ by beating her up to support any activist who wants such a man to be punished.

Based on research on women's perception of domestic violence, experts⁴⁴ claim that it is evident that approval of wife abuse varies according to the personal attribute of those involved. For example, the high level of agreement for wife beating manifested among the Northern women could be a function of their socio-cultural and economic circumstances which is substantially different from those of southern Nigeria. Southern environment and cultures permit closer conjugal interaction that concedes more freedoms to women. The ethnic differences observed in women's agreement of wife abuse could be explained in terms of the social institution of gender and women's autonomy.

The above illustration supports the notion that an ethnic group that is more gender restrictive is more likely to condition women to agree or consent to wife beating. Generally, Nigerian ethnic groups have strong patriarchal structure, but the Hausa Fulani and Northern minority ethnic groups were more gender restrictive and women from these ethnic groups conceded to wife beating more than their Igbo and Yoruba counterparts, who are also better educated and had more egalitarian conjugal relationships.

b. Economic

Women's economic dependence on men as well as limited access to cash and credit; discriminatory laws regarding inheritance, property right, use of communal land and maintenance after divorce or widowhood; limited access to employment in formal and informal sectors; limited access to education and training of women among others constitute impediments to the effectuation of the rights of women against domestic violence.

World Bank reports has it that, "women are more likely than men to work as unpaid family labourers or in the informal sector. Women farmers tend to farm smaller plots and less profitable crops than men, women entrepreneurs operate in smaller farms and less profitable sectors." As a result, some women tend to earn less than men⁴⁵, therefore, gender gaps in productivity and earnings, for example, are persuasive and they are driven by deep-rooted gender differences in time past. In a speech at the launching of the World Bank report in Abuja,⁴⁶ the Former Governor of the Nigerian Central Bank, Mallam Sanusi Lamido Sanusi described how by rewarding long hours at work was depriving women of the opportunity to compete effectively. The Banking sector also perpetuates oppression of women in the progression of their banking careers. In addition, Women Rights Advocates notes with sadness the institutionalization of prostitution whereby young girls are encouraged to bring in businesses to the bank at all costs⁴⁷.

A portrait of the poor African girl was painted by an activist in the following words; "She is (18.5) eighteen and half years old. She lives in a rural area, she has dropped out of school, she is single, but is about to be married or be given in marriage to a man approximately twice her age. She will be the mother of six or seven

³⁹ O Izuora, "Dealing decisively with the issue of Rape"; A Publication in De Abengo; A FIDA Nigeria, (Abuja Magazine, 2013) 15

⁴⁰ Seen M Deutr., *Advanced Learners Dictionary 7th Edition* (2007) (Oxford University Press) P359

⁴¹ A K Oyediran., and O Cisiugo Abanihe., *Perspective of Nigeria Women in Domestic Violence*, a (publication of Family Health and Action Research Center, 2015) p25.

⁴² More work need to be done to re-educate women from the mindset that it is right to be abused.

⁴³ From focus group discussion leading to the British council sector report 2013

⁴⁴ AKolawole and Oisiugo Abenihe of women is Health and Action Research Center, 2015

⁴⁵ World Bank Development Report 2015, Gender Equality and Development, A Publication of the World Bank, 2015. Pp 24-27.

⁴⁶ May 21, 2012 at Sharaton Hotel and Towers Abuja

⁴⁷ O E Osatohaunwe, "Inequality in society and the Impact on women in *Law of Domestic violence in Nigeria*" E Azinge, and L Uche, (ed) (Nigeria Institute of Advanced Legal Studies, Lagos 2012) p.338

kids in another twenty years”.⁴⁸ The British Council Gender in Nigerian Report, 2012 situates women at sixty to seventy per cent of the rural work force. It goes further to enumerate other sobering indices of the economic realities that keep Nigerian women dependent and as such exposed to more violence from their stronger and more empowered male counterparts.

In some cases, women earn less than men with lower qualifications. Women occupy fewer than thirty per cent of all posts in the public sector and only seventeen per cent of senior positions.⁴⁹ Moreover, it has been observed that many women do not own bank accounts due to extensive requirements from financial institutions for identification. From these largely illiterate women, access to loan facilities is therefore lacking.

The issue of ownership of land is a problem to women in Nigeria. The Land Use Act of 1978 which is currently the Legislation in force in Nigeria vest all land in Nigeria on the State Governor to hold in trust for the citizens. A research conducted by the British Council reveals that, in practice access to land varies from place to place⁵⁰ but largely still subjected to traditional and Islamic Sharia practices. In reality, because of their “inferior” position in the traditional scheme, women’s ownership of land is subject to matrilineal considerations. Where an enterprising woman needs land as collateral for growing her business she will either have to dependent on her savings or the good will of members of the family and friends. Often times, these bring upon her humiliation and in extreme cases actual violence in the domestic arena.

Another study⁵¹ reported many incidences of property right violations (disinheritance in appropriation of estates) and lament that it appears many people are not aware that such economic violations are indeed violations that should be actionable. According to the study, “women and children who are the common victims of this violation form the crux of the vulnerable and the down trodden in our societies begging their way to survive”⁵² in the midst of their male counterparts. Law, being a means of social change can champion the cause of women through relevant reforms to reflect current realities. Where equal rights have been guaranteed by the ground norm of the land, the Judiciary must not shy away from its indispensable role in pronouncing against cultural and religious biases that tend to oppress the women. The Supreme Court’s decision in the case of *Ukeje v Ukeje*,⁵³ is a radical departure from cultural rites in favour of the women based on constitutional provisions. This is heart-warming and encouraging.

c. Legal

Legal factors impede the enforcement of the rights of women against domestic violence in the following ways;

- a. Lesser legal status of women either by written law or by practice.
- b. Laws regarding divorce, child custody, maintenance and inheritance.
- c. Legal definition of rape and domestic abuse
- d. Insensitive treatment and brutalization of women and girls respectively by the judiciary and the police.

Nigeria is yet to reform most of the laws inherited from her colonial past and therefore, the nearest provisions that could be called into aid for the victims of domestic violence would be those providing for assault.

Ifemeje asserts that, not only is Nigeria’s customary laws fraught with an army of discriminatory practices against women but her indigenous statutory laws also reveal an unfortunate gender bias⁵⁴ citing section 55 of the penal code which provides;

Nothing is an offence which does not amount to inflicting of grievous hurt upon any person which is done by a husband for the purpose of correcting his wife being subjected to native law or custom in which such correction is recognized as lawful.

By this provision, a man can flog his wife to correct her, so long as he does not inflict grievous hurt on her. She stated further that rather than condemn this provision which flagrantly dehumanizes women, unfortunately the Court of Appeal in *Akinbuwa v. Akinbuwa*,⁵⁵ upheld the notion that a man can chastise his wife whereas there is no corresponding provision that exists for similar ‘correction’ of the man by his wife. Other

⁴⁸O Ezekwesili, citing the annual World Bank Publication of 2012, in African Development Indicators (ADI), 2012 at http://web.worldbank.org/website/external/countries/Africa/content/mole_22182932-menu.pk;258657--2865106.p1pk;2865128.the.site;258644.html.

⁴⁹The British Council report on gender in Nigeria, 2012 23

⁵⁰Ibid p. 34

⁵¹S Mahdi, (ed), *Overview & Analysis of Gender Based Violence in Nigeria*, (2012). 25-29

⁵²*Ibid*. See also *Ukeje v Ukeje*, Supreme court decision dated April 22, 2014 which is a departure from cultural rights in favour of the Constitution

⁵³Supreme Court’s decision on April 22, 2014. Reported (2015) 5 NWLR [part 7]216.

⁵⁴S C Ifemeje, *Gender Based Domestic Violence in Indian Gag publication* (New Delhi, 2012) 143

⁵⁵(1998)7 NWLR (pt. 559) 661.

provisions of Nigerian law which further entrenched gender discrimination and inequality into the legal system are sections 353 and 360 of the Criminal Code.

Section 353 makes indecent assault against a male a felonious offence punishable with three years' imprisonment, while section 360 makes a similar offence of indecent assault on female a mere misdemeanor punishable with a maximum of two years' imprisonment. The discrimination in the terms of imprisonment is not unconnected with the sexes of the affected persons. Section 6 of the Criminal Code by implication expressly legalizes spousal rape when it provides that unlawful carnal knowledge means carnal connection which takes place otherwise than between husband and wife. Section 138 of the Evidence Act also lays the onus on the victims (of rape) to present proof beyond reasonable doubt.

To Okagbue, "the area of private moral is best left to the religious, social and educational influence; and that the state regulation of private morals can only be justified where there is utilitarian justification for intervention beyond the protection of the moral code."⁵⁶ This strict legal approach to law, with respect, creates room for manipulation within traditional/religious customs and practices which then become conveniently protected as private. It was the argument canvassed in his defense when civil society took up a case against Nigerian senator⁵⁷ whose excuse for marrying an under-aged girl was that it was his religious tenets that entitled him. It was not immediately realized by the general public that, the Nigerian senator's supported marriage to a 13 year old Egyptian girl, though contrary Nigerian law it was actually permissible by his Islamic faith. Unfortunately, this matter dragged on until it became a waste of precious time to inquire about. It is however, the primary function of law to proscribe harmful activities and with regards to sexual activity, the law should protect the following:

- a. The personal integrity of individuals against sexual violence.
- b. The young and other special groups who cannot fully appreciate the notion of sexual activity and may thus be exploited or corrupted.
- c. The society against acts which offend the public against community standard of morality.⁵⁸

The tripartite legal system, which entails the use of the statutory legal system, the Customary and Sharia legal systems further compound the legal status of women in Nigeria. The patriarchal Nigerian society readily adopts the legal system which favours the relegation of women. For instance, despite that gender equality is enshrined in the Nigerian Constitution, national and international instruments, the male dominated society still prefer those discriminatory aspects of the Customary laws and Sharia laws which adversely affect the status and position of women in the society.

Nigeria is signatory to many International Instruments such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), but has not domesticated the provisions of these instruments. Furthermore, the effect of the many years of military misrule has negatively affected the human rights treatments of the citizens of Nigeria and women are particularly worse hit. In addition, the economic downturn as a result of the mismanagement and corruption of the military governments has impoverished Nigeria, placing it as one of the poorest countries despite her enormous natural and human resources. Nigerian women bear the brunt of poverty and constitute the poorest of the poor in the society.⁵⁹

The problem of enforcement of laws is another obstacle. In the World Development Reports of 2012, the non-effective enforcement of rights of women was blamed on 'low capacity or bias in State institution'⁶⁰.

Political

Political factors impede the rights of women against domestic violence in the following ways;

- i. Under-representation of women in power, and politics.
- ii. Domestic violence not taken seriously and the notion of family being considered as private matter and beyond the control of the State.
- iii. Risk of challenges to status quo/religious laws.

⁵⁶I Okague., *The Reform of Sexual Offences in the Nigerian Criminal Law* (Lagos: Nigeria Institute of Advanced Legal Studies Publication 1991).2

⁵⁷A Usman. "Nigerian Human Rights Groups Claim Senator Ahmed Yerima's Child Bride undermines Protection for Legal Status of Children.", www.theguardian.com. July13, 2013 accessed on November20, 2020.

⁵⁸*Ibid*(n 24).3 <http://www.nials-nigeria.org/editedbook/covers/resouce.pdf>

⁵⁹B Olateru-Olagbegi, and B A Afolabi, "Actual Women Situation in Nigeria" cited in Adetayo., *Domestic violence against Women in Africa: A Critic on the Legal Framework of its control* ,(Nigeria Institute of Advance Legal Studies, Lagos,2012) p83

⁶⁰The World Development Report 2012, Gender Equality and Development, World Bank Publication. P667.

iv. Limited organization of women as a political force and limited participation of women in organized political system.

In a report by the British Council Gender 2015, women's participation in governance and politics in Nigeria, rather than improving to meet the goals set in the Nigerian gender policy (NAP) of 2006, is regressing. For instance, the 2015⁶¹ general elections saw a drastic reduction in the number of women in the national and state Assemblies and no woman emerged as governor of any State. Rather than the proposed 35% Affirmative Act⁶² Quota being pushed for, the number of women in the Senate dropped. The representation of women law makers in the various state Houses of Assembly is equally abysmal⁶³. What this implies is that at the highest level of political and professional decision making, men are dominant which influences decision making in their favor. The composition of executives of the Nigeria Bar Association through the years has nominal number of elected women.⁶⁴

d. Illiteracy

Illiteracy is another factor that affects the rights of women with respect to domestic violence. It has been contended that given the impossibility of a Government by all members of a modern complex society, comprising millions of people spread over a large territory, free speech and free press are means by which the society as a collection of individual can participate in Government. They are instruments through which the people get informed and educated about the affairs of Government thereby enabling them to form and express intelligent opinions on such matters. As a corollary to the above, free speech and free press helps in exposing corruption, abuse of office and other wrong doings of public servants such as infringement of human rights by government. The fact that their conducts and characters are open to public debate in Mass Media may be counted as the greatest check on official misconduct or corruption.⁶⁵ It however appears the above benefits are not maximally utilized due to the very strong reason that greater percentage of Nigerians and particularly women are illiterates. And because they participate less owing to illiteracy they are scarcely carried along when important decisions affecting their wellbeing are taken.

As rightly put by Ojo,

Democracy is not safe in a country where a large majority of the population is illiterate. Their inability to understand the problems of government is readily visible. Worse still, they become very strange bed fellows to politician who make extravagant promises.⁶⁶

The issue of illiteracy and its negative effects on the populace, particularly as it affects women had also been underpinned by Ake when he said. "Freedom of speech and freedom of the press do not mean much for largely illiterate rural community completely absorbed in the daily rigours of the struggle for survival".⁶⁷

Most Nigerian women are not even aware of their rights under the law as a result of illiteracy. So much need to be done on the education of women with respect to protection laws generally and the orientation about how they can seek redress whenever their rights are violated. Positive attitudinal disposition of women is equally key and imperative in this voyage of self-discovery, and the realization of the comeliness nature has bestowed on them, and how indispensable they are to any functional and progressive system.

V. CONCLUSSIONS

This article has been able to discuss, examine, evaluate and make important and far reaching observations that multifarious factors impede the realization of the rights of women against domestic violence. It concludes that major deficiency in the development of human rights is one of enforcement. Since the enforcement of human rights largely depends on domestic machinery of national government, regrettably, the various institutional mechanism is not strong enough, therefore, the writer makes the following recommendations.

⁶¹The British Council Gender Report of (2015).53-58

⁶²Principally by civil society, principal among them, the First Lady of Nigeria initiative, Women for Change and Development Initiative (WACDI). 100-groups consultative group (B-100) champion by the then Minister of Women Affairs and Social Development (Iyaron Josephine Anenieh)

⁶³*Ibid.*

⁶⁴Usually, it is not more than two or three. It is even worse in the branches where often time, one or two women end up with welfare portfolio to serve food and drinks to the more deserving gentlemen.

⁶⁵T Makinde ., The Problem of Policy Implementation in Developing Nations (The Nigeria Experience' Journal of Political Science "2013, 2No.1Lagos)p 68

⁶⁶J D Ojo ., *Development of the executives under the Nigerian constitution 1960-1981*, 1999(Lagos University Press) 169

⁶⁷ J N Aduba., "Impediment to the realization of fundamental Human Rights in Nigeria" in *Human Right Teaching in schools*, (Lagos Constitution Rights Project, 1999) 120

There is urgent need for Nigeria Law Reform Commission to review the Violence against Persons (Prohibition) and Other Related Matters Act, 2015 and law relating to domestic violence in various State of the Federation to meet the international standard. Customary practices that violates the rights of women against domestic violence need to be repealed as same is contrary to natural justice, equity and good consciences. There is also need to extend the jurisdiction of courts to include Magistrate court and Customary court to accommodates victims of domestic violence within the villages.

This research further recommends that rape cases must not be treated as private affairs or secret issues, violators must be made to face the wrath of the law, a specific jail term may be inadequate, review of the existing laws to incorporate outright castration of the rapist is desirable.

Law Enforcement Agencies particularly police force should be reoriented and trained on the best practices for responding to domestic violence especially in investigating, documentation and prosecuting.

There should be enlightenment campaign to overcome the issue of Baby Factory Syndrome, particularly those high class citizens that operate baby factory to sell out these children for ritual purposes or resell these children for trafficking purposes to other countries. Women also need to rethink their role as women, not as competitors but mutually complementary to men. The Civil Societies should intensify their efforts to campaign against domestic violence bearing in mind that domestic violence is not only against women but all members of the family. It is also essential for Nigeria to emulate other jurisdictions like United Kingdom, United States of America, India, South Africa and Turkey, which have domesticated domestic violence law against women and protect their women by imposing sanctions on violators. These country also need to adopted international best practices available by passing legislation on domestic violence against women. It is our belief that if the above recommendations are put into consideration, it will go a long way in reducing cases of domestic violence against women in Nigeria.

MARIAN OFUNU UJAH (Ph.D)*. “Unveiling the Impediments in the Implementation of the Lawon Domestic Violence Against Women: Nigeria As Case Study.” *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(06), 2021, pp. 56-65.