

**DOMESTIC VIOLENCE AND LEGAL REFORMS IN NIGERIA: PROSPECTS AND CHALLENGES**

**BY**

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## Introduction

Women in Africa, like their counterparts the world over, suffer domestic violence irrespective of class, age, religion or social status. Incidents of domestic violence include wife battery, beatings, torture, acid bath, rape and even death through honor killing. It is estimated that one in every four women suffers domestic violence from the hands of those who claim to love and protect them.<sup>1</sup> Many of the victims do not speak out about violations of their rights due to lack of positive response from the society. Domestic violence is so entrenched in the society that even the victims condone such violations of their rights, some claiming it is a sign of love.<sup>2</sup> Due to poverty and economic dependence on the man, many victims suffer in silence for fear of losing the economic support of the male perpetrator. Where a victim summons the courage to report to law enforcement agents, the issue is trivialized and termed a “private matter.”<sup>3</sup>

Many African countries do not have specific laws prohibiting domestic violence and punishing perpetrators of domestic violence. Current laws do not adequately protect victims of domestic violence. In fact, some existing laws encourage and condone domestic violence.<sup>4</sup> Rules of procedures in courts are not friendly to victims of domestic violence especially, when it is in the form of sexual assault. Judicial officers and law enforcement officers, like officials of other institutions, are not sensitized to issues of domestic violence or trained on how to respond to this issue.<sup>5</sup> Many of them also operate from the prejudices and stereotypes of the male dominated society. The combined factors of economic vulnerability and financial dependence of the woman on the man, social and cultural practices<sup>6</sup> that condone domestic violence, and lack of prosecution or punishment of perpetrators discourage victims from speaking out and seeking redress. The

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<sup>1</sup> [www.hri.ca/tribune/viewArticle.asp?ID](http://www.hri.ca/tribune/viewArticle.asp?ID)

<sup>2</sup> Background Paper and Domestic Violence Bill, published by Legal Defense and Assistance Project, a non governmental organization based in Lagos, Nigeria, p. 13

<sup>3</sup> In “Nigeria: Unheard Voices – Violence against women in the family” p. 12, published by Amnesty International, a police spokesperson in Lagos is reported as saying that the police do not take violence in the family seriously, “unless it is a case of the rape of a child or the husband kills his wife.”

<sup>4</sup> Examples include Section 55 of the Penal Code that governs criminal justice system in northern Nigeria discussed in details in this article.

<sup>5</sup> In “Nigeria: Unheard Voices – Violence against women in the family” p. 12, Amnesty International reports that “police officers, prosecutors and judges lack sensitization and training on issues of violence against women in general and violence in the family in particular”.

<sup>6</sup> In Nigeria’s combined 4<sup>th</sup> and 5<sup>th</sup> Country Report submitted to CEDAW Committee and deliberated upon in January 2004, it was reported that numerous customary laws and practices such as widowhood rites, women’s inheritance and succession to property impede the promotion of women’s rights. (document CEDAW/C/NGA/405) also in <http://www.un.org/News/Press/docs/2004/wom1427.doc.htm>

widespread poverty and the political, cultural and religious marginalization of women in Africa make the African woman more vulnerable to domestic violence.<sup>7</sup>

In recent years, there have been increased efforts to enhance the protection and promotion of women's rights through the enactment of laws and policies internationally, regionally and nationally. Such efforts have resulted in standard setting documents like the Convention on the Elimination of all forms of Discrimination against Women, (CEDAW) the Beijing Platform for Action, etc at the international level. Some countries have passed laws and policies incorporating such international standards into their domestic laws.<sup>8</sup> For example Nigeria has incorporated into domestic law the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Convention Against Transnational Organized Crime and the Convention on the Rights of the Child. The African Charter on Human and Peoples' Rights has also been domesticated.

In many other countries, however, women are faced with various and diverse obstacles enforcing international human rights standards and therefore suffer from lack of protective laws that meet recent international standards. Such obstacles include lack of political will by the government to domesticate ratified international instruments as required by their constitutions, discriminatory cultural and traditional practices, religion, and poverty.<sup>9</sup> Others include lack of participation in politics and decision making processes, denial of access to education and inheritance, huge cost of legal services and prejudices against women in all the communities. In these societies, women are accorded inferior status in relation to men, despite the huge contribution made by women to the development of the community.<sup>10</sup>

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<sup>7</sup> [www.uneca.org/beijingplus10/Rapport%20Ade%20l'Ouest-Beijing+10.pdf](http://www.uneca.org/beijingplus10/Rapport%20Ade%20l'Ouest-Beijing+10.pdf) , par. 13, where participants at the sub regional meeting on the Review of Beijing Platform for Action West Africa, observed that despite the multiplicity of poverty eradication policies and strategies to date, women still represent the highest proportion of the poor.

<sup>8</sup> This is the dualist system or framework under which ratified treaties are not enforceable or justiciable until the Parliament enacts a law to incorporate them into domestic laws.

<sup>9</sup> Agina, Ada, "Gender and Elections in Nigeria", published in Gender Issues, a publication of Legal Defense and Assistance Project, a non governmental organization based in Lagos, Nigeria, p. 7, 11

<sup>10</sup> [www.uneca.org/beijingplus10/Rapport%20Ade%20l'Ouest-Beijing+10.pdf](http://www.uneca.org/beijingplus10/Rapport%20Ade%20l'Ouest-Beijing+10.pdf), par.18, where participants noted that the concept of equality of men and women does not always find acceptance, in the society and among very many leaders.

Nigeria, the focus of this research, is one such country where international human rights instruments are yet to be incorporated into domestic laws. The long military regime in Nigeria resulted in gender insensitive laws and policies passed by military leadership. The advent of a civilian administration brought with it renewed hopes and aspirations that this situation will be changed and gender sensitive laws passed and anti gender laws and policies repealed by the civilian government. Despite increased awareness of democracy and the need to sustain democratic rule in the country, women's rights issues are still not properly articulated in terms of policies and are yet to be given their proper place in the priority scale of the government.<sup>11</sup> Majority of women's rights activists, as well as other human rights activists, are not experienced in the art of lobby and advocacy in a democratic regime, having spent most their time working under a military dictatorship.<sup>12</sup>

However, there have been initiatives to domesticate international instruments and protect victims and survivors of domestic violence. Current initiatives include an advocacy campaign for the passage of a law on violence against women, which would provide rehabilitation services for victims and survivors such as shelters and skills acquisition programs.<sup>13</sup> Other initiatives include the Domestic Violence Bill Advocacy project, a campaign project that involves raising awareness about domestic violence and campaigning for the enactment of a domestic violence law in twelve states in Nigeria.<sup>14</sup> These initiatives have met with different obstacles and challenges at different stages of the law reform process.

The objective of this article is to examine the prospects and challenges of legal reform regarding domestic violence in Nigeria. It will focus on efforts by activists in Nigeria to provide a better legal regime for victims of domestic violence and the peculiar challenges faced by them in dealing with this issue. It is the desire of the writer to provide a resource material on the issue of domestic violence for activists, policy makers,

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<sup>11</sup> [www.uneca.org/beijingplus10/Rapport%20Ade%20'Ouest-Beijing+10.pdf](http://www.uneca.org/beijingplus10/Rapport%20Ade%20'Ouest-Beijing+10.pdf), par. 21- participants agreed that gender issues are not systematically addressed in government or parliamentary discussions on political or institutional reform. It is also difficult for gender issues to be included in national budgets because the requisite technical expertise is lacking and disaggregated gender based data are unavailable.

<sup>12</sup> Nigeria gained independence from Britain on October 1, 1960. Out of the 46 years of independence (1960 – 2006), Nigerians have spent only 15 years, including the present 7 years old civilian government under civilian administration. The remaining years were spent under successive military regimes. Human rights activists were greatly involved in the struggle to enthrone democracy and to take political power away from the military.

<sup>13</sup> This is an advocacy campaign for a national law on violence against women by a coalition of over 100 non governmental organizations working on women's rights in Nigeria

<sup>14</sup> The Domestic Violence Bill Advocacy Project is an advocacy project of the Legal Defense and Assistance Project (LEDAP), a non governmental organization of lawyers and law related professionals engaged in law reform advocacy for the protection and promotion of human rights and the rule of law in Nigeria.

legislators and law reformers who are engaged in providing a better legal framework for the protection and promotion of women's rights in her country, Nigeria. Having worked extensively on this issue, the author will also rely on her experience on law reform advocacy in Nigeria.<sup>15</sup>

Part 1 addresses the issue of domestic violence in Nigeria and highlights the prevalence of the problem. It provides sample cases of domestic violence and discusses the cultural attitudes and beliefs that excuse domestic violence in Nigerian society.

It analyzes the international instruments ratified by Nigeria which affect women's rights in Nigeria as well as national laws and policies in Nigeria, that affect women's equality with men, particularly the failure of the current criminal justice system.

Part 11 discusses current initiatives for legal reform, including the campaign for the Violence Against Women Bill at the National Assembly and the Domestic Violence Bill Advocacy Project, an ongoing project initiated by the author in 12 states in Nigeria.<sup>16</sup> The challenges of legislative advocacy faced by women activists engaged in law reform under the present civilian administration will also be documented.

Part 111 highlights the obstacles to the realization of a better legal regime for victims of domestic violence in particular and women's rights generally in Nigeria. This chapter will focus on areas such as law enforcement, access to justice, rights awareness and tripartite legal systems.

Part IV is devoted to a discussion of the prospects, if any, of a better legal regime in Nigeria. This will be followed by recommendations and conclusion.

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<sup>15</sup> The author has over eight years experience working on various women's rights issues in Nigeria, including trafficking, domestic violence, women and the media and women in decision making. Specifically, she designed and led the campaign for the passage into law of the domestic violence bill in 12 states in Nigeria. Components of the project included drafting the domestic violence bill, media advocacy, organizing training programs, several advocacy visits to each of the 12 states and parliamentary hearings on the domestic violence bill, etc. She has also written articles and collaborated with many organizations within and outside Nigeria on legislative advocacy on women's rights. The bill was passed into law in 2 states and is at various stages in other state houses of assembly.

<sup>16</sup> Nigeria is divided into 36 states and the Federal Capital City. These 36 states are grouped into six geo political zones of six states each. For the purpose of implementing this project, two states were selected from each of the geo political zone.

## **Part 1: DOMESTIC VIOLENCE IN NIGERIA**

### **a. Forms and Prevalence of Domestic Violence**

According to Amnesty International report on Nigeria, “on a daily basis women are beaten and ill-treated for supposed transgressions, raped and even murdered by members of their family. In some cases, vicious acid attacks leave them with horrific disfigurements. Such violence is too frequently excused and tolerated in communities, and not denounced. Husbands, partners and fathers are responsible for most of the violence against women”.<sup>17</sup>

In Nigeria, women and girls are subjected to multiple forms of violence in the homes. However, the most common form of violence is wife battery ranging from slapping, kicking, verbal abuse, denial of financial resources, rape and death.<sup>18</sup> Due to dearth of official statistics, it is difficult to establish the prevalence of domestic violence. However, it is believed that gender based violence is of “epidemic proportions”<sup>19</sup> and is “seldom reported because of fear of reprisal and lack of response from law enforcement officials. Statistics relating to this problem would not be available until women are motivated to report domestic and other forms of violence.”<sup>20</sup>

Non governmental organizations rely on media reports and the number of victims who come to them for assistance for statistics. For example, “No Safe Haven: An Annual Report of Attacks on Women in Nigeria”<sup>21</sup> reports a total of 170 cases based on media reports covering a period of December 2004 – November 2005.<sup>22</sup>

These do not include incidents reported to the police or to civil society organizations. Obviously, this is just a tip of the iceberg as hundreds of cases go unreported and undocumented.

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<sup>17</sup> “Nigeria: Unheard Voices – violence against women in the family” a report published by Amnesty International. <http://web.amnesty.org/library/index/engaf440042005>.

<sup>18</sup> Based on the report published in “No Safe Haven: An Annual Report of Attacks on Women in Nigeria”, by Project Alert on Violence Against Women, a non governmental organization based in Lagos, Nigeria. Out of six murder cases, two of the alleged perpetrators were from the extended family, one a former employee and three were husband or partner.

<sup>19</sup> CEDAW/C/NGA/2-3, 26 February 1997, P.23

<sup>20</sup> CEDAW/C/NGA/2-3, 26 February 1997, P.23

<sup>21</sup> Published by Project Alert, a non governmental organization based in Lagos, Nigeria. The statistics contained in the report are from media reports on the issue.

<sup>22</sup> A breakdown of these cases showed as follows: Domestic Violence – 43, Rape/Incest – 46, Assault on women – 12, Murder of women – 40, Acid bath – 10, Kidnap/Abduction – 19.

Domestic violence cuts across all communities in Nigeria and at times is excused by woman's actions or inaction. When a woman suffers violence due to failure to meet some socially accepted standards of behavior, such failure is usually an accepted excuse for the violence she suffers especially within the family context. A woman could suffer violence for refusing sex, nagging or challenging the man's behavior, for example if her takes a second wife or is alcoholic. She could be subjected to violence for not preparing meals on time, having or under suspicion of having sexual relationship outside the marriage and being accused of witchcraft.<sup>23</sup>

Interestingly, more women tend to justify the infliction of violence. In a survey carried out in 1999,<sup>24</sup> a higher proportion of female than male respondents justified "wife beating", and this proportion was found to be higher in the northern central zone and lowest in the south western zone.<sup>25</sup>

In another survey carried out by Project Alert<sup>26</sup> in 2001, women and girls in Nigeria were asked about abuses within the family unit. Participants in the survey were picked randomly and included women working in the market,<sup>27</sup> women in other work places, students at the university. In a particular state, Lagos state, more than half of the participants confirmed they had been beaten by their partners, boyfriend or husband.<sup>28</sup> Some of the reasons why they were beaten included drunkenness, financial problems and refusing to have sex with the perpetrator.<sup>29</sup> Many of the participants had reported physical injuries and threats to their family, the

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<sup>23</sup> Effah, J., Mbachu D., Onyegbula S., "Unequal Rights: Discriminatory Laws and Practices Against Women in Nigeria," Constitutional Rights Project, Lagos, 1995, pp 54 – 55; also Omonubi – McDonnell, "Gender Inequality in Nigeria", Ibadan, 2003, p.39

<sup>24</sup> "Nigeria: Unheard Voices – violence against women in the family" a report published by Amnesty International. <http://web.amnesty.org/library/index/engaf440042005>, p. 6. This is the only known official survey of public opinion on violence against women.

<sup>25</sup> 36.3 percent of women and 21.3 percent of men justified wife beating if the wife goes out without telling her husband; 39.3 percent of women and 25.4 percent of men justified it if the wife neglects the children; 52.5 percent of women and 31.0 percent if the husband thinks the wife is unfaithful; 23.7 percent of women and 13.0 percent of men if meals are not ready on time; 33.3 percent of women and 18.3 percent of men if the wife argues wither husband; 34.4 percent of women and 19.1 percent justified it if the wife refuses to have sex with her husband.

<sup>26</sup> Project Alert, "Beyond Boundaries: Violence Against Women in Nigeria, Lagos, 2001, p.28, p.38

<sup>27</sup> Market women is a general term for women traders in the local markets.

<sup>28</sup> 64.4 percent of 45 women in offices, 56.2 percent of 48 market women, 7 percent of 57 girls and young women

<sup>29</sup> 8 percent said the man was drunk, 8 percent said it was due to financial problems and 15 percent because the woman refused to have sex. Among the market women, 16.6 percent said they were beaten for financial problems, 25 percent for returning home late, and 18.7 percent for refusing sex.

perpetrator's family and to their religious leaders while some just endured the abuse.<sup>30</sup> None of the respondents was reported as having gone to the police to file a complaint or seek redress in court.

A recent form of violence against women in Nigeria is the use of acids, corrosive chemicals usually used in laboratories and factories, which cause permanent disfigurement of the victims.<sup>31</sup> The most commonly available acid which can be bought on the streets includes sulphuric acid, hydrochloric acid, hydrofluoric acid and phosphoric acid.<sup>32</sup> Acid bath first gained public attention when in 1990 a former beauty queen was permanently disfigured by her boyfriend when she refused to renew their relationship.<sup>33</sup> Many of the cases of acid bath are as a result of the refusal of the woman to renew or at times submit to a relationship with the perpetrator. Despite repeated calls for a ban on the sale of acids, the government and law enforcement agents have turned a blind eye to this form of violation of human rights.<sup>34</sup> The police consider acid bath a bailable offence not worthy of prosecution as long as the victim is alive irrespective of the extent of disfigurement or deformity the victim suffers.<sup>35</sup> According to "Liquid Hate: Acid Bathes of Women in Nigeria", published by Project Alert, there are no exceptions to the victims as young and old, irrespective of social status, are victims of acid bath.<sup>36</sup>

Another aspect of domestic violence which is often ignored is abuse of domestic servants, especially female domestic servants. Some of these domestic servants are as young as twelve to thirteen years and are expected to serve as nannies and carry out general cleaning in the house. They are exploited and abused and in many

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<sup>30</sup> 13.3 percent of the women in the work place had reported the abuse to the perpetrator's family and 6.6 percent to the church or religious leader. 18.7 percent of the women in the market place had reported violence, 10 percent to their own family and 8 percent to the perpetrator's family. 6.6 percent of women in the work place had endured the violence for years before reporting. Of the 7 percent of girls and young women in the university and colleges who reported being raped, only 1 percent had reported the abuse.

<sup>31</sup> "No Safe Haven: An Annual Report of Attacks on Women in Nigeria, 2005 reported 10 incidents of acid bathes in 2005 based on media reports for the year.

<sup>32</sup> "Liquid Hate: Acid Bathes of Women in Nigeria", p. 10, published by Project Alert on Violence Against Women.

<sup>33</sup> "Liquid Hate: Acid Bathes of Women in Nigeria", p. vi

<sup>34</sup> Liquid Hate., p. 8

<sup>35</sup> Liquid Hate., p. 8

<sup>36</sup> An 18 year old girl was bathed with acid for refusing the love advances of a man (p.12), a middle aged woman and a one year old baby boy were bathed with acid by unknown men (p.14), a six months old baby was fed acid by his parents' neighbor (p.22) a 69 year old retired public servant (p.25) and a female politician in her 60s was attacked with acid by men who claimed they had a gift for her from the Governor (p.27). Many of the assailants, if not all, have not been arrested or prosecuted.

instances work on the streets as street vendors or beggars.<sup>37</sup> They are usually the last to go to bed and the first to wake up in the morning, taking care of kids who may be their age mates or just a few years younger than them. They are denied access to education and are physically abused.<sup>38</sup> In many instances, the police are reluctant to act and protect the domestic servant. For example, The Daily Sun Newspaper<sup>39</sup> reported the case of a young girl known as Oluchi who was allegedly burnt with a hot iron by her guardian as punishment for stealing. The neighbors claimed that they often had to feed the girl, as she was denied of food. The neighbors reported to the police and her guardian was arrested. She was later released because according to the police, if the case was charged to court, it will further make the girl to suffer and moreover, it is a family matter.

Many female domestic servants are also sexually abused by the male members of the house, especially their employer's husbands. The Daily Sun Newspaper<sup>40</sup> reported the case of 13 year old Hannah, who was living with her aunty. According to Hannah, her aunt's husband frequently abused her sexually at night as her aunt was on permanent night duty. When her mum visited, she reported to her mum, asking to be taken away from the house. Her mum promised to return for her but when she waited for a long time without seeing her mum, she decided to leave the house. With no place to go, she roamed the streets until she was picked up and taken to the Juvenile Center. Many of these young women become pregnant as a result of which they are thrown out of the house on to the streets. Some are sent back to their parents who in many instances also drive them out for dishonoring the family name.<sup>41</sup>

## **b. Cultural and Societal Excuses for Domestic Violence**

### **Culture**

Culture can be defined as norms and values of a particular group that has developed over time in the community.<sup>42</sup> The UNESCO Universal Declaration on Cultural Diversity regards culture as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and it

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<sup>37</sup> The Daily Sun Newspaper of April 10, 2005 reported the case of a nine year old girl who was allegedly raped by a 50 year old man. On that day, the girl had reportedly gone out begging for alms on her guardian's instruction when the alleged rape occurred.

<sup>38</sup> "Fatima", a domestic worker aged 12 years old, was reported to have been doused with kerosene and set on fire after she was accused of stealing meat from her employer. Nigeria: Unheard Voices – Violence Against Women in the Family, p. 4

<sup>39</sup> The Daily Sun, July 14, 2004

<sup>40</sup> The Daily Sun, October 18, 2005

<sup>41</sup> "Gender Issues", p. 5, published by the Legal Defense and Assistance Project, a non governmental organization based in Lagos, Nigeria.

<sup>42</sup> [http://en.wikipedia.org/wiki/Culture#Culture\\_as\\_values.2C\\_norms.2C\\_and\\_artifacts](http://en.wikipedia.org/wiki/Culture#Culture_as_values.2C_norms.2C_and_artifacts)

encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.<sup>43</sup> Culture therefore includes beliefs and norms which basically regulate power relations and decision making within the community at large and the family. Based on these norms and beliefs, the society assigns to the boy or girl the characteristics it is expected to manifest. Mothers bring up their girl child with specific instructions on what a girl is expected to do in the society and how she is expected to behave. The boy child is expected to be strong and fearless and the girl child is expected to be weak and submissive.<sup>44</sup> In school, young children are taught the construction of gender through both formal and informal curriculum e.g. most fairy tales teach girls the importance of their looks and boys are taught that their actions are important. In elementary school, girls are taught needle work and gardening to prepare them for their roles as wives. During this period, boys are out in the field playing football and learning boxing and wrestling.<sup>45</sup> This culture of masculine violence transcends to domestic violence tendencies due to the societal portrayal of women as inferior to men and the emphasis on men's physical strength.

### **Cultural practices in Nigeria**

Customary practices (customs and religion) across Nigeria generally hold that the man is the head of the house and has the greatest control and decision-making powers. On marriage, the man is generally expected to pay the bride price to the family of the bride. This payment of bride price has led to idea of ownership of the woman, the exchange of bride price being evidence of a commercial transaction. According to Akande, "the institution of bride price in traditional times was not conceived as a sale of the girl but was a proof of the girl's importance to both families. Her family must be compensated for her loss and it ensures that the husband's intentions are serious and not just a desire for frivolous association."<sup>46</sup> In modern times, however, the bride price symbolizes sale of the girl and ownership by her husband and his family.<sup>47</sup>

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<sup>43</sup> [http://www.unesco.org/education/imld\\_2002/universal\\_decla.shtml](http://www.unesco.org/education/imld_2002/universal_decla.shtml)

<sup>44</sup> I still recall my aunt telling me that a good girl is expected to know three things which are hair braiding, sewing and cooking. These, she said, would make a girl more appealing to a man.

<sup>45</sup> Different sets of rules are made for boys and girls. Growing up around boys, it was very easy for me to follow their lead and want to do what boys do. At an early age, I developed the love for football (soccer) and often sneaked out with the boys to the stadium to watch football. I still recall the looks of horror and condemnation I got from men and women for attempting to join the "boys' club".

<sup>46</sup> Akande, Jadesola, 1993, "*Women and the Law*", in Obilade, Akintunde O. (ed). **Women in Law**, a Democracy in Africa Publication.

<sup>47</sup> A former chief Judge of a state quoted from a cartoon in a Nigerian daily to exemplify this point. The wife said, "you always remind me how exorbitant my bride price was. Can you prove it?" The husband retorted, "as a degree holder in marketing, you think I won't have a receipt for everything I buy?" (Ojiako, 1995:2)

Due to this misinterpretation of customary law, the woman is regarded as the property of the man who is entitled to discipline her as he thinks fit. The notion of subjugation of women is so entrenched that all in the society tend to accept violence against a woman as justified. The victim herself condones the violence and tries to enforce it on others. For example, the *umuadas*<sup>48</sup> in the eastern part of the country have become notorious for their role in enforcing degrading and inhuman treatment on women married into their families. Any woman who tries to challenge or defy such cultural norm is usually punished and ostracized by the community. Where a victim is courageous enough to report incidents of domestic violence to law enforcement agencies, it is trivialized and termed a “private matter”. The victim is usually blamed for the incident and asked to “go home and be a good wife”. Among the educated elites, domestic violence is accepted as a way of life and efforts to combat it as western and foreign.<sup>49</sup>

#### ▪ **Poverty**

The worsening economic situation in Nigeria is often an excuse given for domestic violence. As a man becomes unable to provide for the family, the woman is left to support the family economically. In order to compensate for their own feelings of weakness or insecurity, many men resort to hitting the woman, become abusive, unnecessarily possessive and suspicious of the woman.<sup>50</sup> The man resorts to domestic violence in order to stamp his mark of authority over the woman and members of his family. He sees this kind of power as the guarantee of his manhood. In most case, abuse is perpetrated after excessive amounts of alcohol have been consumed, the abuser’s drunkenness being a smokescreen for his intentions. In a case reported by Amnesty International,<sup>51</sup> envy of a woman’s financial ability appeared to be the reason for the beating of a teacher by her medical doctor husband.

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<sup>48</sup> These are daughters of the family who act as custodians of culture of the community.

<sup>49</sup> During the advocacy campaign for the domestic violence bill in several states in Nigeria, the author was informed on several occasions that the idea of getting a court order against an abusive spouse is foreign, as domestic violence is just part of matrimonial life.

<sup>50</sup> “Background Paper and Domestic Violence Bill”, p.12, published by the Legal Defence and Assistance Project

<sup>51</sup> “Nigeria: Unheard Voices – Violence Against Women in the family”. According to this report, a middle aged woman with a university degree collapsed after the last set of battery by her husband who just left her on the floor. She was advised to go to the police but she wanted to go home to her children and did not want to press charges. She had to undergo surgery to remove a blood clot and the beating continued.

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

### **c. Nigeria's obligation under regional and international legal instruments**

#### **1) Regional Instruments**

The African Charter on Human and Peoples' Rights (the African Charter) entered into force on October 21 1986. It has been domesticated by Nigeria<sup>52</sup> and is now a part of the domestic law.<sup>53</sup> The African Charter recognizes women's rights in three clear provisions.

Article 18 (3) ensures the elimination of every discrimination against women and also ensure protection of women.<sup>54</sup>

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.<sup>55</sup>

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. 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

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<sup>52</sup> Section 12 of the Nigerian constitution provides that "no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly"

<sup>53</sup> 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

<sup>54</sup> 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".

<sup>55</sup> 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".

on women.<sup>56</sup> As a result of these and other issues, there was a heightened agitation by women's rights advocates for a regional instrument on women's human rights which resulted in the African Women Protocol discussed below.

Violence against women was first highlighted within the African context in the Dakar Declaration of 1994<sup>57</sup> (African Platform for Action and the Dakar Declaration of 1994) as widespread in most African countries. The Dakar Declaration acknowledged that violence deprives women of their ability to achieve their full potential and threatens their safety, freedom and autonomy. It also acknowledged that violence is often unreported, as the majority of women do not speak out or report to the court but keep silent out of fear, shame or misplaced feeling that they are somehow responsible.<sup>58</sup>

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

Most recently the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (which was ratified by the required 15 member states, including Nigeria, and came into force on 26 November 2005), places an obligation on state parties to take measures to address not only violence against women but also other aspects of women's rights. Article 1 defines violence against women as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life, in peace time and during situations of armed conflict or of war." Interestingly, this definition of violence against women widens the scope of sexual violence to include marital rape, unlike many Constitutions and laws of African states. Prohibition of marital rape is further emphasized in Article 4, which requires states parties to prohibit, prevent and punish all forms

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<sup>56</sup> Article 17 (3) states "The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State."

<sup>57</sup> African Platform for Action, adopted at the 5<sup>th</sup> Regional Conference on Women, Dakar, 16 – 23 November 2004. UN Doc. E/CN.6/1995/add.2, par. 67, [www.un.org/documents/ecosoc/cn6/1995/ecn61995-5add2.htm](http://www.un.org/documents/ecosoc/cn6/1995/ecn61995-5add2.htm)

<sup>58</sup> African Platform for Action, adopted at the 5<sup>th</sup> Regional Conference on Women, Dakar, 16 – 23 November 2004. UN Doc. E/CN.6/1995/add.2, par. 67, [www.un.org/documents/ecosoc/cn6/1995/ecn61995-5add2.htm](http://www.un.org/documents/ecosoc/cn6/1995/ecn61995-5add2.htm)

of violence against women including unwanted or forced sex whether the violence takes place in private or public.<sup>59</sup>

Other key provisions of the Protocol include Article 1(f) which guarantees the enjoyment of women's rights regardless of marital status in all spheres of life.<sup>60</sup> This provision implies that national laws and constitutions which discriminate against married women (an example is Section 26 of the 1999 Nigerian Constitution)<sup>61</sup> are in conflicts with the Protocol and violate its non discrimination principles.

Article 1(g) defines harmful practices as practices that “negatively affect the fundamental rights of women and girls such as their rights to life, health, dignity, education and physical integrity.”<sup>62</sup>

Article 3 imposes an obligation on states parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures and should among other things include in their constitutions and other legislative instruments the principle of equality between men and women and ensure its effective implementation.<sup>63</sup> Article 3 reaffirms women's rights to dignity inherent in a human being and the recognition and protection of her human and legal rights. It obliges state parties to adopt and implement appropriate measures to ensure the protection of every woman's right and protection from all forms of violence, particularly sexual and verbal violence. Having already defined harmful traditional practices,<sup>64</sup> Article 5 focuses on measures to be taken by the government to eliminate them such as public awareness, legislative measures, provision of necessary support to victims, etc.<sup>65</sup>

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<sup>59</sup> Article 4(2) states, “States parties shall take appropriate and effective measures to (a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public”

<sup>60</sup> In its definition clause, the Protocol defines discrimination against women as “any distinction, exclusion, or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”

<sup>61</sup> Section 26 of the Constitution enables Nigerian men to confer citizenship by registration to their foreign wives but does not extend the same rights to foreign men married to Nigerian women.

<sup>62</sup> According to Article 1(g) harmful traditional practices means “all behavior, attitude and/or practices which negatively affect the fundamental rights of women and girls, such as their rights to life, health, dignity, education and physical integrity.”

<sup>63</sup> Article 3 (1) Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights; (2.) Every woman shall have the right to respect as a person and to the free development of her personality; (3). States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women; (4). States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

<sup>64</sup> Article 1(g)

<sup>65</sup> Article 5 provides, “States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes; b) prohibition,

Importantly, Article 6 establishes the minimum age for marriage as 18, thereby abolishing child marriages.<sup>66</sup> It also gives women the right to acquire, own and freely manage their property. In the case of divorce, Article 7 provides the right to an equitable sharing of the joint property deriving from the marriage.<sup>67</sup> Under Article 8, state parties have an obligation to reform existing discriminatory laws and practices in order to promote and protect the rights of women.<sup>68</sup>

For the first time in an international instrument, women have the right to medical abortion in cases of rape, sexual assault, incest and where the pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child.<sup>69</sup> Widows' rights are provided for under Article 20, and state parties are urged to take appropriate legal measures to ensure that widows are not subjected to inhuman, humiliating or degrading treatment.<sup>70</sup> A widow automatically becomes the guardian and custodian of her children unless this is contrary to the best interest and welfare of the children. A widow also has the right to equitable share

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through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them; c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting; d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance”.

<sup>66</sup> Article 6 (b) states, “States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: b) the minimum age of marriage for women shall be 18 years.”

<sup>67</sup> “States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that: a) separation, divorce or annulment of a marriage shall be effected by judicial order; b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage; c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance; d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.”

<sup>68</sup> “Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure: a) effective access by women to judicial and legal services, including legal aid; b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid; c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitize everyone to the rights of women; d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; e) that women are represented equally in the judiciary and law enforcement organs; f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women”

<sup>69</sup> Article 14 2 (c) of the Protocol states, “States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programs to women especially those in rural areas; b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding; c) protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus”

<sup>70</sup> Article 20 provides, “States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions: a) that widows are not subjected to inhuman, humiliating or degrading treatment; b) a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children; c) a widow shall have the right to remarry, and in that event, to marry the person of her choice.”

in the inheritance of the property of her husband and shall have the right to continue to reside in the matrimonial house.

Nigeria has signed and ratified this instrument and is therefore bound to implement its provisions.

## **2. International instruments**

As a member of the United Nations, Nigeria has signed and ratified several of the human rights instruments. Some are general human rights instruments that specifically recognize the right to non discrimination. Such general instruments that provide protection against non discrimination which Nigeria has signed and ratified include the United Nations Universal Declaration on Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (in force in 1976), the International Covenant on Civil and Political Rights (in force 1976), the Convention on the Rights of the Child.

There are also other instruments which focus specifically on women such as the Declaration on the Elimination of Discrimination Against Women (Resolution 2263 (XXI) of November 1967), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (entered into force on 3<sup>rd</sup> September 1981), the Declaration on Elimination of Violence Against Women (UN Resolution 48/104 of December 20 1993 and the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women.

Nigeria signed and ratified the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on 13 June 1985 without any reservations. It also ratified the Optional Protocol to CEDAW on 22 November 2004. CEDAW provides the basis for ensuring equality between men and women. It urges state parties to condemn discrimination against women in all its forms and pursue without delay a policy of eliminating discrimination against women by embodying the principles of equality of men and women in the Constitutions.<sup>71</sup>

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<sup>71</sup> Article 2 provides, “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:  
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle”

Article 4 encourages the principle of Affirmative Action as a temporary special measure to ensure women's advancement.<sup>72</sup> Sexual exploitation of women especially for prostitution and trafficking are addressed in Article 6 and state parties are obliged to take all appropriate measures to ensure trafficking and other forms of sexual exploitation are eliminated.<sup>73</sup>

Article 15 grants women equality before the law<sup>74</sup> while Article 16 obliges state parties to take all appropriate measure to eliminate discrimination against women in all matters relating to family relations.<sup>75</sup>

By ratifying CEDAW and its Optional Protocol, Nigeria promises to incorporate the principles of equality of men and women in the Nigerian legal system, abolish all discriminatory laws and adopt appropriate legislative and other measures to eliminate discrimination against women. By ratifying CEDAW and its Optional Protocol without reservations, Nigeria is promising the international community that it would be bound by those provisions and would repeal laws that impede the success of women. However, the Nigerian government is yet to domesticate CEDAW in line with Section 12 of the Constitution.<sup>76</sup> This means that at best, the principles of CEDAW can only have persuasive influence on the domestic legal system.

### **3. Domestic legislations, policies and guidelines**

The civilian administration that began in 1999 has provided the opportunity for advocacy on women's rights in Nigeria. Laws and policies have been formulated to eliminate gender based discrimination and bridge the gap between men and women. Some of these include 1999 Constitution of the Federal Republic of Nigeria,<sup>77</sup> the National Policy on Women,<sup>78</sup> the Infringement of a Widow's and Widower's Fundamental Rights Law

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<sup>72</sup> Article 4 states, "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved"

<sup>73</sup> Article 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."

<sup>74</sup> Article 15 provides, "States Parties shall accord to women equality with men before the law"

<sup>75</sup> 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"

<sup>76</sup> This Section provides that international treaties can only be enforced upon the enactment of a domestic law to that effect by the Parliament.

<sup>77</sup> Section 42 of the 1999 Constitution confers equality on all citizens of Nigeria irrespective of ethnic group, place of origin, sex, religion or political opinion.

<sup>78</sup> A policy guideline based on the principles of CEDAW. However, it is just a guideline without any legal force, It is not binding on any government, organization or individual.

No. 3 of Enugu State,<sup>79</sup> the Prohibition of Female Genital Mutilation Law, Cross River State,<sup>80</sup> the Prohibition of Early Marriages Act, Kebbi State,<sup>81</sup> the Retention in School and Against withdrawal of girls from school Act, Kano State,<sup>82</sup> the Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2003<sup>83</sup>, the Child Rights Act.<sup>84</sup>

#### **d. Failure of the existing criminal justice system**

Some provisions of the law, rather than protecting women from domestic violence, encourage incidents of domestic violence and give the accused person wide room to escape any punishment. For instance, in S. 55 (1) d of the Penal Code<sup>85</sup> a man is empowered to correct an erring child, pupil, servant or wife. The section provides “Nothing is an offence which does not amount to infliction of grievous hurt upon any person which is done ..... by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law and custom under which such correction is lawful.”

The Penal Code designates the following as grievous hurt: emasculation, permanent deprivation of sight of an eye, of the hearing of an ear, or of the power of speech, deprivation of any member of joint, destruction or permanent impairing of the power of any member or joint, permanent dislocation of the head or face, fracture or dislocation of bone or tooth, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pains or unable to follow his ordinary pursuits.<sup>86</sup>

Another provision states “nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause any injury if that injury is so slight that no person of ordinary sense and temper would complain of such injury.”<sup>87</sup>

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<sup>79</sup> This law aims at eradicating harmful rites and practices that accompany the death of one’s spouse, especially inflicted on the woman on the death of her husband.

<sup>80</sup> The goal is to abolish female genital mutilation

<sup>81</sup> The law focuses on early marriage very common in the northern part of Nigeria

<sup>82</sup> This is intended to prevent early marriage as most girls are withdrawn from school and given out in marriage in some parts of the country

<sup>83</sup> A comprehensive law to combat trafficking in persons and provide rehabilitation and reintegration services to victims

<sup>84</sup> This Act domesticates the Convention on the Rights of the Child and echoes the requirement of free compulsory education and punishment for the marriage of a girl child.

<sup>85</sup> Laws of Northern Nigeria Cap 89

<sup>86</sup> Section 241 of the Penal Code

<sup>87</sup> Section 58 of the Penal Code

Since there is no law against domestic violence in Nigeria, at best a victim who seeks protection under the law will rely on the provisions of the Criminal Code<sup>88</sup> on common assault. The Criminal Code considers assault on a woman as a misdemeanor while assault on a man is a felony.<sup>89</sup> This lower sentence of 2 years means that assault on a woman is not as serious as assault on a man. Victims of domestic violence are reluctant to use these laws as the justice system is not victim friendly. In some cases, the judges openly blame the victims for the violations of their rights.<sup>90</sup> Prosecutors and judges ask patronizing and intimidating questions during investigation and trial and the fear of intrusive questions about their private lives prevent victims from reporting rape and using the legal system.<sup>91</sup>

Under the Criminal Code, sexual abuse of children between the ages of 13 – 16 is known as defilement and not as serious as rape.<sup>92</sup> In some states, sexual abuse of a girl child between the ages of 11-13 is merely a misdemeanor or indecent treatment with a punishment of 2 years imprisonment. In many cases of sexual assault, the law requires corroboration in addition to the victim's testimony. In particular, Section 221 of the Criminal Code requires corroboration before a conviction for defilement of a girl under the age of 16 can be sustained. Since sexual assault is hardly carried out in the open, the requirement of corroboration cannot be met.<sup>93</sup> As a result of this, many accused persons are set free which further traumatizes the victim and prevents other victims from speaking out and seeking redress. Moreover, the burden of proof of lack of consent in rape allegations is with the prosecutor.<sup>94</sup> This means that the victim herself has to prove she did not consent. This is often difficult to do, especially as these offences take place where there are no witnesses.

The offence of rape is defined as “unlawful carnal knowledge of a woman or girl, with or without her consent, or if the consent is obtained by force or by means of threats, intimidation of any kind, or by fear of harm or by means of false and fraudulent misrepresentations as to the nature of the act or in the case of a

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<sup>88</sup> Laws of the Federation of Nigeria, Cap 77

<sup>89</sup> Section 353 of the Criminal Code prescribes 3 years punishment for a indecent assault on a man, calling it a felony while Section 360 prescribes 2 years punishment for the same offence on a woman calling it a misdemeanor.

<sup>90</sup> “Nigeria: Unheard Voices- Violence against women in the family” p. 15

<sup>91</sup> “Nigeria: Unheard Voices- Violence against women in the family” p. 15

<sup>92</sup> “Background Paper and Domestic Violence Bill” published by Legal Defense and Assistance Project

<sup>93</sup> See *Upaha V. State* (2003) 6 NWLR Part 816 where the court held that medical evidence did not satisfy the requirement for corroboration

<sup>94</sup> Akinseye George, *ibid*

married woman, by impersonating her husband.”<sup>95</sup> The punishment for rape is life imprisonment with or without whipping.<sup>96</sup> A man cannot be guilty of raping his wife because under common law which gave rise to the Criminal Code, there is mutual consent and contract between a man and his lawful wife. Thus the wife had given up herself unto her husband which she cannot retract.<sup>97</sup>

Sharia law is said to forbid marital rape generally.<sup>98</sup> However, the husband may withdraw maintenance to his wife if she refuses him sexual intercourse. In establishing the offence of rape, the state must prove that the victim did not give her consent. At the same time, the accused in defending himself is allowed to give evidence of prior sexual history of the victim, the partner notwithstanding.<sup>99</sup>

Under the present legal framework, it is most likely that a victim of domestic violence who lays complaint and pursues legal remedy against the perpetrator will break up her home or create more insecurity problems for herself and her children. It is likely that she will lose the economic support of the male perpetrator. She may be forced out of her matrimonial home and if she returns to her father’s house might be driven back to her husband’s house of horror. As she cannot support herself and the children, they may end up on the streets or become victims of other forms of abuse. Or she may return to the violent home to face a more aggressive and more arrogant husband. This vulnerability of women discourages them from reporting cases of domestic violence or abuses against them at home, or to seek legal redress. There are no provisions for shelter or other victim rehabilitative services.<sup>100</sup>

The Nigerian legal system is more adversarial than reconciliatory. The indirect outcome of most judicial proceedings is usually the termination or straining of the relationship of the litigants, and this is true of a domestic violence victim who takes the perpetrator to the police station or the court for redress under the

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<sup>95</sup> Section 357 of the Criminal Code

<sup>96</sup> Section 358 of the Criminal Code

<sup>97</sup> Hale, 1 PC 629; See also Smith and Hogan, Criminal Law 4<sup>th</sup> Edition p. 401

<sup>98</sup> “Women’s Access to Justice and Personal Security in Nigeria: A Synthesis Report” publication of Baobab for Women’s Human Rights

<sup>99</sup> Section 210 of the Evidence Act, Cap 112 Laws of the Federation of Nigeria, 1990

<sup>100</sup> I recall the day a young woman of 22 years walked into my office with her aunt and sister in law. She had been brutalized by her husband who threatened to take her children away from her if she did not endure the beatings. At the end of the discussion, the only thing she was certain of was that she did not want to end her marriage and did not want her husband prosecuted. All she wanted was for the violence to stop. She did not want to lose the economic support of her husband and how I was going to stop the violence without her cooperation and within the confines of the existing domestic law is something I am still trying to figure out.

present law. Many victims of domestic violence, who lay complaints at police stations usually get taunted, humiliated, or their complaints trivialized. In this way the victim suffers more emotional and psychological violence. This is because law enforcement officials, like officials of other male dominated institutions, are not sensitized on the issue of domestic violence or trained on how to respond to such complaints. They also operate from the prejudices and stereotypes of the male dominated customs and traditions in the society. Without any effective remedy that would protect her and her children without their leaving the home, she remains silent and sometimes dies from the continued violence. Again, relations, neighbors, and the community who witness the violence in the home may be willing to help, but cannot directly do so under the present legal system, because the victim needs to initiate the complaint as there is no provision for third party complaint.

Under the current legal framework, there is no confidentiality of proceedings nor are there specially designated family courts. The result is that domestic violence cases, especially of sexual abuse, become a public affair and the victims are further traumatized by the disclosure of private matters. The legal system does not take into consideration the specific needs of a domestic violence victim neither does it offer any specific protection.

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

## **Part 11: CURRENT INITIATIVES FOR LEGAL REFORM IN NIGERIA**

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

### **a. VIOLENCE AGAINST WOMEN (PROHIBITION) Bill 2003**

The Violence Against Women (Prohibition) Bill 2003 is an initiative of a coalition of non governmental organizations involved in law reform advocacy as well as provision of services to victims and survivors of

violence against women.<sup>101</sup> In addition to drafting a comprehensive bill on violence against women, the coalition aims at creating awareness that will promote attitudinal changes in the society that are necessary for the bill's successful implementation. The Bill was first submitted to the House of Representatives in 2000 but did not see the light of day until the end of that legislative session in 2003. It was then reintroduced to the same House of Representatives in 2003 but yet to be passed into law.<sup>102</sup>

The VAW bill aims at addressing obstacles to the practice of constitutional principles arising from all forms of gender based violence. Section 1 of the Bill prohibits certain acts that constitute violence against women, including willfully placing or attempting to place a woman or girl in fear of physical injury; coercing a woman or girl (by force or threat) to engage in any act, sexual or otherwise, to the detriment of her physical or psychological well being; mutilating, attempting or aiding the mutilation of a woman's or girl child's genitals; indecently assaulting a woman or girl; raping a woman or girl; committing incest with a woman or girl; marrying or giving an under aged girl into marriage; sexually harassing a woman or girl; sexually assaulting a woman or girl; sexually exploiting or enslaving a woman or girl; sexually abusing a woman or girl; forcing a woman or girl into prostitution, slavery or trafficking; depriving a woman of her liberty; denying a woman of economic benefit without just cause; exposing any woman or girl to forced labor; forcing any woman to isolate herself from family and friends; inflicting any emotional abuse on a woman; abandoning wife or children without any means of subsistence; stalking or intimidating any woman or girl and inflicting any domestic violence on a woman.

Any person who attempts to commit any of the offences listed there or any person who aids, incites or counsels another person to commit any of these offences is deemed to have taken part in committing the offence. If the court finds that person guilty, such a person will be liable on conviction to imprisonment for a minimum of 2 years or a minimum fine of N10,000 or both fine and imprisonment.<sup>103</sup> The State High Court

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<sup>101</sup> The coalition is known as the Legislative Advocacy Coalition on Violence Against Women (LACVAW). It is a national membership organization made up of 55 organizations and 6 individuals.

<sup>102</sup> As at the time of writing this article, it was very difficult to get information on the position of the Bill. The only certainty was that it was still with the House Committee on Women.

<sup>103</sup> Section 1 of the proposed Bill

is designated as the court of competent jurisdiction to hear cases of violence against women brought pursuant to the provisions of the proposed bill.<sup>104</sup>

The Bill empowers any police officer to use his or her discretion to arrest any person whom he or she has reasonable grounds to suspect of having committed any of the offences under Section 1.<sup>105</sup> A police officer may also arrest any person against whom a complaint of having committed any of the offences listed in the bill has been made. Such arrest can be made without a court order or warrant of arrest.

The Bill also stipulates conditions for issuing a Protection Order for survivors of violence and provides that an application for a protection order may be made before any High Court following a complaint of violence against a woman as defined under Section 1.<sup>106</sup>

According to Section 6 (1) (a) – (g), only certain persons or agencies may apply for a Protection Order at the States High Court namely the complainant, the Commission on violence against women, the police, a relation of the victim, a social worker or health worker, a representative of a relevant civil society organization or any person who witnesses the act of violence.

The modalities and procedures for applying for a protection order are also included in the Bill.<sup>107</sup>

The Bill provides for an Interim Protection Order in circumstances where there is reasonable cause to believe that unless the order is issued, the applicant or dependent if the applicant will be at risk of acts of violence by the respondent.<sup>108</sup> Subsection 2-3 provide that application for a Protection Order must be made *exparte* supported by an affidavit of the applicant or any person knowledgeable about the matters concerned and can be heard by the judge in chambers. Such application must be heard within 24 hours of being filed. The return date on the interim protection order should not be more than 14 days from the date the interim order is made and a copy of it must be given to the respondent.<sup>109</sup>

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<sup>104</sup> Section 5 of the proposed Bill

<sup>105</sup> Section 13 of the proposed Bill

<sup>106</sup> Sections 6 – 12 of the proposed Bill

<sup>107</sup> Section 6(2-9)

<sup>108</sup> Section 7

<sup>109</sup> Section 7 (2-4)

The police officer must assist a survivor of domestic violence to file a complaint, provide or arrange safe transport to alternative residence or shelter, provide transportation to the nearest medical facility for treatment and inform the survivor of her rights to protection against domestic violence.<sup>110</sup>

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

As stated above, this Bill has been in the lower House of Representatives for the past 5 years and has not even been listed in the Order Paper for hearing.<sup>111</sup> At a meeting organized by the House Committee on Human Rights, the author raised concern about the slow progress of the Bill. A member of the Committee in the House of Representatives explained in confidence that the provision on marital rape has delayed the passage of the bill into law. According to this source, committee members view this provision as western and against the culture of Nigeria and once this “issue” is settled, the bill will be passed into law. With just a few more months left before this legislative year ends in 2007, the possibility of passing the Bill into law grows dimmer every day.

## **b. DOMESTIC VIOLENCE BILL ADVOCACY PROJECT**

The Domestic Violence Bill Advocacy Project is an initiative of the Legal Defence and Assistance Project (LEDAP), a non governmental membership organization of lawyers in Lagos, Nigeria. As the then Coordinator of the women’s program of LEDAP, the author drafted the Domestic Violence Bill between June and September 2000. In drafting this bill, the first of its kind in Nigeria, references were made to the

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<sup>110</sup> Section 14

<sup>111</sup> A Bill goes through 5 stages before it is passed by the legislature. The stages are First Reading, Second Reading, Committee Stage, Report Stage and the Third Reading. At the Third Reading, the Bill is placed before the legislature for a final vote. However, the Bill has to be listed in the Order Paper for the particular day before it can go through the first Reading, which is basically a formality to notify members that the Bill is now before them. The Bill on Violence Against Women is yet to be formally presented to the House. It has not undergone the First Reading yet.

Family Violence Law of South Africa as well as other laws on domestic violence and/or family violence.<sup>112</sup>

The goal of the project is to raise awareness about the dangers of domestic violence in the project states and mobilize support for the campaign to enact a law on domestic violence. The project is being implemented in 12 states in Nigeria.<sup>113</sup>

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

Stakeholders Consultative Forum on the draft bill – This first meeting after the drafting of the bill was the Stakeholders Consultative Forum held in Lagos on November 16, 2000. Participants included non governmental organizations, lawyers, legislators, Ministry of Justice and Ministry of Women Affairs, Journalists, etc. Three key learning points at the roundtable were the need to sensitize and enlighten men on the dangers of domestic violence and carry them along in the campaign; the need for provision of counseling services for the perpetrators of domestic violence in the draft bill and the willingness and enthusiasm of other women's groups to support and contribute to the success of the project and carry them along in the campaign. A Strategic Committee of eleven civil society activists and 5 media partners was set up to harmonize the views of participants at the consultative roundtable and produce the second draft.<sup>114</sup>

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<sup>112</sup> I have been asked on different occasions why I embarked on this project. As a young child, I was not exposed to domestic violence until my father had a new tenant, a young couple with 2 beautiful children. Even though the man was half the size of the woman, he was constantly beating her up to the extent that she had to be admitted in the hospital. Anytime I think of domestic violence, this incident comes to my mind. I remember wondering why she could not take him to court, or in any case, just retaliate and beat him up too. After all, she was bigger than him. I never understood why she endured the beatings. When I had the opportunity to design and implement a project on women's rights, I could not think of a better project than domestic violence bill project.

<sup>113</sup> The author designed and raised funds for this project which was carried out in two phases. The first phase involved six pilot states, one project state from each of the six geo political zones in Nigeria. This first phase of the project was funded and supported by the Department for International Development (DFID) through the Nigeria Governance Fund managed by the British Council, Nigeria. The second phase of the project included another 6 states, one each from the six geo political zones in Nigeria. The United Nations Development Fund for Women (UNIFEM) provided the funding for this second phase of the project. The twelve states are Cross River, Benue, Jigawa, Edo, Ekiti, and Enugu States. Others are Akwa Ibom, Ebonyi, Katsina, Kaduna, Lagos and Plateau States.

<sup>114</sup> Members of this Committee subsequently became project state coordinators with the responsibility of coordinating the activities of the network in the state.

As part of the advocacy campaign, the first ever National Workshop for men on domestic violence was held from August 15 – August 17 2001 in Abuja.<sup>115</sup> This workshop provided an opportunity for Nigerian men to discuss the issue of domestic violence and their role in raising awareness and campaigning for the enactment of the Domestic Violence Act. Participants included students, legislators, journalists, lawyers, judges, religious leaders, police officers, etc. Participants at the workshop highlighted the need for a multi discipline lobby and advocacy network of men on domestic violence, identification of strategies for lobby at the States Houses of Assembly as well as creation of awareness at pilot states and at the National Assembly. An important out put of this workshop was the formation of an all male lobby groups in the project states to campaign for the domestic violence bill. This network, known as the Blue Ribbon, played a vital role in the advocacy campaign.<sup>116</sup>

Series of Legislative Advocacy Training and Strategic Linkage workshops were held in all the project states. The goal of the training and strategic linkage workshops was to train civil society organizations on the skills of legislative advocacy with particular focus on the domestic violence bill.<sup>117</sup> This provided a link and platform for interaction and network for community based organizations and other agents of change in the state. It also built a network of civil society organizations in the states on legislative advocacy and promotion of rights of women and other vulnerable persons. These workshops also provided participants the opportunity to discuss the provisions of the draft bill and make suggestions in line with the peculiarities of the states. Participants at these workshops formed the legislative advocacy coalitions which lobbied intensively for the passage of the bill into law. They followed the progress of the bill in the parliament and lobbied legislators to pass the bill into law.

Members of the coalition engaged in several consultation and advocacy visits with state legislators. At the roundtable, the legislators were given the opportunity to discuss the provisions of the bill and for the

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<sup>115</sup> This workshop was supported by the Canadian International Development Agency (CIDA)

<sup>116</sup> The Blue Ribbon is the first network of men focusing on women's rights in Nigeria. This network was vital to the campaign as male policy makers tended to pay more than the usual attention to other men discussing the issue of violence against women. The fact that men, who are majority of the perpetrators are speaking out against domestic violence was a novelty and participation of men in the campaign facilitated easy access to several offices and individuals.

<sup>117</sup> The outcome of the training workshop included the formulation of strategies for introducing, lobbying and promulgating the bill at the state house of assembly, formulation of strategies for awareness creation and enlightenment on domestic violence and women's human rights in general as well as networking and collaboration between agents of change in the state.

coalition to lobby for sponsors of the bill. It also provided an opportunity to open linkages between them and civil society organizations.

Enlightenment and sensitization program was launched in each of the project states on the problems of domestic violence and its implications on the lives of the people as well as the benefits they will derive if the bill is passed into law. The goal was to raise awareness of women's human rights generally and the issue of domestic violence in particular and to provide information to lobby legislators on the issue. Campaign materials included radio and television interviews, posters, booklets, rallies and use of T-shirts.<sup>118</sup>

The media proved to be a strong ally in the domestic violence bill campaign. In each of the project states, the state or national media provided wide coverage on the issue of domestic violence and encouraged state legislators to pass the bill into law. In one of the states, Cross River State, the state media provided a live television phone-in program which allowed members of the public to air their views on domestic violence.<sup>119</sup>

Two days before the public hearing on the bill, an analysis of domestic violence and the key provisions of the bill were highlighted and members of the public urged to turn out for the public hearing. This strategy was hugely successful as the state legislature eventually passed the bill into law.<sup>120</sup>

### **Unique Provisions of the Domestic Violence Bill**

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

Under the bill, a survivor of domestic violence or third party who is qualified to do so may approach any court in the state and ask for a Protective Order against the perpetrator for a certain period of time, within which also the perpetrator undergoes counseling. If the perpetrator continues with the violence despite the

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<sup>118</sup> These campaign materials were of various concepts, depending on the common form of domestic violence prevalent in the particular project state. Also taken into consideration was the target audience of the enlightenment program.

<sup>119</sup> The author was interviewed on all the media activities in all the project states as well as members of the network and the Blue Ribbon

<sup>120</sup> Even though the legislature passed the bill into law, it still required the Governor's Assent which was not forthcoming as the Governor was said to be out of the country. After 30 days without the Governor's Assent, the bill could not revert to the House as the legislative year had ended and new elections were being conducted.

Protective Order against him or her, the court may make an order to protect the woman's insecurity with respect to her subsistence, shelter and maintenance of the children while the perpetrator is compelled to comply with the protective order.

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

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

### **Summary of the Proposed Domestic Violence Bill**

The Bill is cited as the Domestic Violence and Other Related Matters Bill. The interpretation clause contains definition of terms and phrases used in the bill. Under the bill, a police officer is bound to assist a complainant of domestic violence at the scene of the incident or when it is reported, either to find a suitable shelter and obtain medical treatment, or to explain to the complainant the remedies available to the complainant and the right to lodge a criminal complaint if applicable.<sup>121</sup> Police officer may arrest the respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against the complainant.<sup>122</sup>

A complainant or any other person that has a material interest in the well being of the complainant can apply for a protection order with the consent of the complainant. Consent may not be imperative for third party application if the complainant is a minor, mentally retarded, unconscious or a person whom the court is satisfied is unable to provide the required consent. The application can be heard at any time

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<sup>121</sup> Section 2

<sup>122</sup> Section 3

whether in court or in chambers by a magistrate or high court judge.<sup>123</sup> The court has an obligation to consider the application within 48 hours, and if a prima facie case is established, make an interim protection order, even if the respondent has not been served. If the court does not grant the order, the respondent should be served with a notice calling him to show cause on the specified date why a protection order should not be issued against him.<sup>124</sup> If the respondent does not appear on the return date after he has been served, the court must issue a protection order. If he appears, the court must hear the matter. If the court finds that the respondent has committed or is committing the act of domestic violence, the court must issue the Protection Order. A copy of the order is then forwarded to a police station of the complainant's choice.<sup>125</sup> The court may prohibit the respondent from committing any act of domestic violence either by himself or through another person, from entering the complainants' place of employment or residence. The court may also order emergency monetary relief.<sup>126</sup>

Once a court issues a protection order, a warrant of arrest of the respondent must also be issued and an order suspending the execution of such warrant may be made subject to compliance by the respondent. Further warrant can be issued on application.<sup>127</sup> Any firearm or dangerous weapon in possession of the respondent, whether used in the violation or not, will be seized and kept at the police station until the court orders that it be released to the respondent or the rightful owner or it be forfeited to the government.<sup>128</sup>

A complainant or respondent can apply for the setting aside or variation of the protection order. In the case of the complainant, the court must be satisfied that the application is made freely and voluntarily.<sup>129</sup>

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<sup>123</sup> Section 4

<sup>124</sup> Section 5

<sup>125</sup> Section 6- this is an important provision as the victims decides the police station which will receive the copy of the protection order. It is also important as wealthy perpetrators have been known to have police officers in their pay.

<sup>126</sup> Section 7

<sup>127</sup> Section 8

<sup>128</sup> Section 9

<sup>129</sup> Section 10

The only parties to be present at the hearing of the application under the bill are officers of the court; parties to the proceedings; person bringing an application on behalf of the complainant; legal representatives; witnesses; not more than 3 persons for the purpose of providing support to the complainant; any other person permitted by the court. The court may order that information relating to the proceedings should not be published.<sup>130</sup>

Any court within the state in which the complainant or the respondent resides, carries on business or is employed or where the cause of action arose has jurisdiction to hear a case under the Bill. A protection order is enforceable throughout the Federation irrespective of where the order was made.<sup>131</sup> Service of documents under the Bill is in the prescribed manner by registrar of court or the Sheriff and Civil Processes Act.<sup>132</sup> The provisions in respect of appeal and review in the Magistrate's Court Laws or High Court Law of the relevant state shall apply to any proceedings.<sup>133</sup>

Any person who contravenes any prohibition, condition, obligation or order imposed is guilty of an offence and liable on conviction to a maximum fine of 100,000 Naira or imprisonment for a period not exceeding five years or to both fine and imprisonment, or to a maximum fine of 20,000 Naira or imprisonment for a period not exceeding one year or to both fine and imprisonment.<sup>134</sup>

No police officer shall withdraw a charge or refuse to institute a prosecution unless authorized by the Attorney General of the state.<sup>135</sup> The Chief Judge of the state may make regulations, which he deems necessary or expedient to be prescribed in order to achieve the objects of the Act.<sup>136</sup>

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<sup>130</sup> Section 11

<sup>131</sup> Section 12

<sup>132</sup> Section 13

<sup>133</sup> Section 14

<sup>134</sup> Section 15

<sup>135</sup> Section 16

<sup>136</sup> Section 17

## **Part 111: Challenges of legal reform advocacy**

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

***Lack of advocacy skills*** – Many activists have lived most of their lives under the military and are used to advocacy under a totalitarian military regime for the enforcement of civil and political rights, and for the military to return to the barracks and hand over power to civilian government through a free and fair election. With the coming into power of the civilian government, there was need for a change of tactics in order to ensure citizen's participation in the new democracy. However, women's rights activist have been found wanting in the art of lobbying and advocacy in a democratic setting. This was particularly evident in the first legislative year 1999 – 2003, when the Violence Against Women Bill was submitted by the National Coalition to the House of Representatives (the Lower House in the bicameral legislative structure). Apart from getting a sponsor for the Bill, nothing much was achieved even though there was a collaboration with the House Committee on Women of the Lower House. The need for training on advocacy was recognized by some international human rights organizations which stepped in to provide some form of training on lobby and legislative advocacy. Such organizations include the Global Rights (formerly known as the International Human Rights Law Group) who provided the first training on legislative advocacy at the onset of the civilian administration. The second legislative year which began in 2003 seems to have already yielded some fruits as more bills on women's rights issues have been passed. For example: Infringement of a Widow's and Widower's Fundamental Rights Law No. 3 of 2001 in Enugu State; The law against Female Genital Mutilation (FGM) in Edo, Ekiti, Bayelsa, Ogun, Delta, Ebonyi and Cross River States; Prohibition of early marriages in Kebbi and Niger States; Retention in schools and against withdrawals of girls from schools in Kano, Borno, Gombe and Bauchi states; Trafficking in women and children in Edo State; Child Rights Act; Trafficking in Persons (Prohibition) Law Enforcement and Administration Act; The Nigerian Constitution;

National Human Rights Commission (Gender Desk); National Action Committee on Women in Politics; Universal Basic Education; Women Development Centres in all the states, etc.<sup>137</sup>

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

***Lack of female and gender sensitive representation -***

In spite of enhanced political awareness, the level of women’s participation in governance and decision-making in the society has not improved. Factors such as lack of education, cultural prejudices, gender insensitivity in party programs and manifestos, economic disabilities and lack of skills in the art of politicking have contributed to the non-realization of women’s political rights.<sup>138</sup> The percentage of women representatives is a far cry from the expected 30% representation stated in the Affirmative Action principle as well as the principles contained in the National Policy for Women. Both documents provide for at least 30% women representation in the legislative and executive arms of government as well as political party hierarchies.<sup>139</sup>

**Women representation in 1999 and 2003**

S/N	Position	No of Seats Available	No of women elected and % in 1999	No of women elected and % in 2003
1	Presidency	1	- 0%	- 0%
2	Senate	109	3 3.7%	3 3.7%
3.	House of Representatives	360	12 .33%	21 5.83%

<sup>137</sup> For more information on efforts by the present civilian administration to promote women’s rights, see <http://www.un.org/News/Press/docs/2004/wom1427.doc.htm>

<sup>138</sup> <http://www.un.org/News/Press/docs/2004/wom1427.doc.htm> - In its statement to the CEDAW Committee in January 2004, the leader of the government delegation stated that attempts had been made to increase women’s participation in political and public life. According to her, several political parties had made positive concessions to encourage women’s participation in politics and cited the waiver of mandatory registration/nomination fees for women by the ruling Peoples’ Democratic Party and a declaration by the All Nigerian Peoples Party that in the event of a tie between a male and female candidate during the primary elections, the male candidate would step down. These steps however do not combat the root causes of lack of participation of women in the political process such as women membership of political parties, constitutional constraints, violence, and negative attitude to women’s leadership.

<sup>139</sup> The National Policy on Women states, “Affirmative Action of proportionate ratio or 30% representation will be employed to increase the total representative seats in each of the legislative houses, executive arm, party hierarchy and structures shall be reserved for women for trial period up to year 2000.” Article 15.3

4	Governorship	36	-	0%	-	0%
5	State Houses of Assembly	990	12	1.21%	29	3.84%

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

The result of non female representation in Nigeria is that gender sensitive laws and policies are not a priority either at the state or national level. In the campaign for the Domestic Violence Bill, access to male dominated legislatures and sustaining the interest of men in an issue considered “domestic” and “private” was a major obstacle. The obvious entry point is the Women’s Committee of the various State Houses of Assembly, but this becomes a burden when the Committee is not only headed by a man but is also an all male Committee whose members are reluctant to discuss what is termed a domestic matter between a husband and wife. I recall when I had the opportunity to address the parliamentary sitting of the Lagos State House of Assembly. While some showed genuine interest and asked questions at the end of the presentation, others challenged me to go to the Sharia states<sup>140</sup> to discuss women’s rights issues, believing that sharia law prohibits women’s rights. In other words, if I can convince an advocate of sharia law that domestic violence is a crime, then I can count on his support. I was very happy as this gave me the opportunity to identify friends and foes as well as potential friends whom I can lobby to support the bill. Interestingly, the only female legislator at that time was not present at the hearing.

With persistence, the use of the media and changes in advocacy strategies, it was possible to win over some members of the women’s committee who subsequently sponsored and introduce the Bill in the House of Assembly.

Noteworthy is the position of the few women in the State and National Assembly. Many of them were even more gender insensitive than their male counterparts. Some were reluctant to sponsor bills on women’s rights

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<sup>140</sup> In 1999, some states in northern Nigeria expanded the sharia law applicable in their states to criminal matters. There are various arguments as to whether sharia law actually protects or violates the rights of women. Many people believe sharia law discriminates against women while others believe that the implementation of sharia law, and not sharia law per se that is discriminatory against women. Unfortunately, there have been more media reports of discriminatory practices against women. The famous cases of Safiya Hussaini Tungar Magajiyar Sani and Amina Lawal (both sentenced to die by stoning for adultery but set free on appeal) showed instances of discrimination against women.

issues for fear of being labeled, others commented that women were not the only ones that voted them into power. In the case of the Domestic Violence Bill, some argued that the concept of domestic violence is foreign, contrary to cultural norms and practices for a woman to take her husband to court, more so over a trivial matter like wife beating. In one of the states, the female legislator who heads the women Committee could not understand why I was lobbying for a domestic violence bill in the state. In one of the meetings, she asked me, “What exactly do you gain risking your life to come to this state. You are not from this state, neither do you live here, what is your gain?” In another state, another female legislator whom I wanted to sponsor the bill said, “Are you saying that if my brother beats his wife she can take him to court because of that beating? Do you think she can come back to that house?” Still others gave stringent conditions for sponsoring the bill and bringing it before the legislature.<sup>141</sup> One of the learning points in the advocacy campaign was the support from some of the male legislators who spoke strongly in favor of the Bill and the need for a law on domestic violence.

***Lack of effective Gender Policy-*** In July 2000, President Olusegun Obasanjo approved and signed the National Policy on Women, marking a milestone in the women’s rights movement in Nigeria.<sup>142</sup> The National Policy embraces the principles and provisions of equality in CEDAW and calls for enforcement of existing laws and enactment of new ones in consonance with the provisions of CEDAW.<sup>143</sup> However, there is no positive action from any arm of government to implement the principles of the policy. The Federal Government is not obligated to follow the guidelines neither is it binding on any individual, group or organization. As stated in its preamble, the Policy is “another expression of the government’s commitment to the development of all sectors of the population and to the institutionalization of processes which will pilot the Nigerian society towards social equity, justice and a much improved quality of life.”<sup>144</sup> The approval of the Policy without giving it a force of law which will enable women to challenge its lack of enforcement will

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<sup>141</sup> In one of the project states, legislators led by two female members demanded compensation of different forms before the women’s committee can sponsor the domestic violence bill.

<sup>142</sup> After the foot-dragging by the previous military regimes, it is commendable that the Obasanjo finally signed and approved the National Policy in July 2000. The Policy is an outstanding initiative for bridging the gap between men and women in Nigeria.

<sup>143</sup> According to Article 3 of the Policy, one of its goals is to eliminate all form of discrimination against women and in adopting CEDAW, Nigeria affirms its support for the alleviation of the numerous constraints to women’s full integration into its development process.

<sup>144</sup> Preamble to the National Policy on Women

not improve the situation of women in Nigeria, especially domestic violence victims. There are also no clear guidelines on the implementation of the guidelines, no evaluation, monitoring or enforcement of the guidelines.

In the opinion of the researcher, domestication of CEDAW would provide a better legal framework which will pave the way for gender equality in Nigeria. In its General Comments to the 4<sup>th</sup> and 5<sup>th</sup> Country Report, the CEDAW Committee expressed concern that CEDAW is yet to be domesticated although Nigeria ratified the Convention in 1985.<sup>145</sup> Other principles areas of concern were some provisions of the 1999 Constitution that discriminate against women, in particular the area of nationality and employment; the existence of three pronged legal system, namely statutory, customary and religious laws which result in lack of compliance with international obligations and continued discrimination against women; lack of comprehensive measures to address all forms of violence against women in the family and in society and to recognize that such violence constitutes a violation of human rights of women; lack of evaluation of the impact of policies like the National Policy on Women and of effective monitoring mechanisms, as well as dearth of data and information disaggregated by sex on the results achieved.

## **Part 111: Obstacles to realizing a better legal regime in Nigeria**

### **a. Lack of access to justice**

Access to justice presupposes that citizens are aware of their rights and have access to institutions that can remedy violations of such rights. It includes among other things awareness of legal rights and duties, accessibility to the justice administration mechanisms and institutions that have the power to remedy injustice. Many women in Nigeria are not aware of their rights. For instance, a majority of the women interviewed in Kwara State stated that they were not aware of the laws protecting women's rights whether in Muslim laws or in customary laws.<sup>146</sup> A major reason for this lack of awareness is the high level of illiteracy among Nigerian women. The United Nations Education and Scientific Commission (UNESCO) rated Nigeria as one of the

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<sup>145</sup> CEDAW/C/2004/1/CRP.3/Add.2/Rev.1

<sup>146</sup> "Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 15, published by Baobab for Women's Human Rights, a non governmental organization based in Lagos, Nigeria.

nine countries with the highest number of illiterate population in the world.<sup>147</sup> The National Demographic and Health Survey (NDHS, 2003) stated that 46% of women in Nigeria have never attended school.<sup>148</sup> This is not surprising as male preference in the Nigerian society has led to women being kept out of school. In many societies in northern Nigeria, the girl child is usually given out in marriage at an early age while the boy child is sent to school.<sup>149</sup> Generally, the girl child is denied proper education because her role is considered primarily as one of caring for the family, which is not work worthy of formal education. On the excuse of assisting the parents with housework and agricultural work, the girl child is withdrawn from school which results in a higher percentage of school dropouts among girls than boys.<sup>150</sup> Lacking the ability to read and write, Nigerian women cannot articulate their demands in English, the official language of the justice system in Nigeria. Women hardly understand the elitist language of the court and often feel very uncomfortable in the court premises.

The formal legal system in Nigeria is very expensive and out of reach of majority of Nigerians. Nigeria is rated as one of the six poorest countries in the world with a GNP per capita income of about \$280 US Dollars and a population of about 133,000,000.<sup>151</sup> Women, being the majority of the poor in Africa, are unable to afford the high cost of legal services. Although the Legal Aid Act<sup>152</sup> obliges the state to provide legal aid services, such legal aid services are only limited to defendants in criminal charges who are unable to afford legal representation. A victim of domestic violence, not being a defendant in a criminal matter is not entitled to government funded legal aid services.<sup>153</sup> Moreover, the gross under funding of Legal Aid

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<sup>147</sup> Nigeria NGO Report on Beijing +10, p. 11

<sup>148</sup> Nigeria NGO Report on Beijing +10

<sup>149</sup> Many states in the northern part of the country have passed legislation prohibiting withdrawal of girls from school for marriage.

<sup>150</sup> "Background Paper and Domestic Violence Bill", published by Legal Defence and Assistance Project,

<sup>151</sup> World Bank Report 2003, also NGO Report on Beijing +10

<sup>152</sup> Established by the Legal Aid Act, 1976, the scheme is aimed at helping indigent persons within certain economic bracket<sup>61</sup> to have access to justice by providing them with defence lawyers. Only persons with no income or with income below N50,000.00 are eligible. The court can also recommend that the Legal Aid Council provide a counsel which is usually limited to legal representation in court.

<sup>153</sup> Yemi Akinseye-George, "The Dilemma of Legal Aid in the Protection of Human Rights" in *Journal of Human Rights Law and Practice* (Dec. 1993) Vol.3 Nos. 1,2 & 3.p. 47. The offences in respect of which legal aid is available are murder of any degree (PC: culpable homicide punishable with death), manslaughter (PC: Culpable homicide not punishable with death), malicious or willful wounding (Grievous hurt inflicting grievous bodily harm), assault occasioning actual bodily harm (PC: criminal force occasioning actual bodily hurt), affray, stealing and rape. Others are aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforementioned offences. Legal aid is also available In respect of civil claims arising from accidents and civil claims in respect of human rights. In all cases, it is limited to the defendant/respondent.

Commission in Nigeria renders legal aid services out of reach of many indigent Nigerians.<sup>154</sup> Even where they might be able to afford legal services, these courts are situated in urban areas with very few court houses in the rural areas. The undue delay of cases in courts also constitutes obstacles to women's access to justice. In many instances, civil and criminal matters last for upward of 7-10 years before judgment is rendered and the woman gets tired and frustrated and stops going to the court. In many cases, the matter is usually discontinued by the court and the defendant set free for lack of diligent prosecution.

## **b. Law Enforcement**

The Nigerian Police, the first point of contact with the formal justice sector for victims of domestic violence, often trivialize incidents of domestic violence and do not file reports of complaints made. In some cases, they are reluctant to investigate and prosecute the matter. An example is the case of one Ego Osadebe,<sup>155</sup> the first publicized case of acid bath in Nigeria. Ego died in the hospital on 23 November 1998, three weeks after her husband poured acid on her. The delay in prosecuting her husband (allegedly kept in protective custody rather than in detention) caused a protest by concerned women and women organizations to the Criminal Investigation Department of the Police in Lagos state.<sup>156</sup> The Lagos State Anti Robbery Squad disrupted the demonstrations, asking why women should protest over the death of a woman who wanted to run away with her husband's wealth.<sup>157</sup>

Due to the high level of corruption and inefficiency of the Nigerian police, the average Nigerian has no faith in the integrity and competence of the police. Wealthy perpetrators and those who have relatives and friends in the police force are believed to influence the decisions of the police whether to prosecute and at times who to prosecute.<sup>158</sup> In a particular case reported by Amnesty International<sup>159</sup> a domestic worker was allegedly raped by her employer's husband. Her father took items of material evidence including her underwear to the

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<sup>154</sup> Discussion paper presented by the Legal Resources Consortium on Transforming the provision of Legal Aid services in Nigeria. ( Abuja: The British Council, April 2000) p.4

<sup>155</sup> "Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 16, published by Baobab for Women's Human Rights, a non governmental organization based in Lagos, Nigeria.

<sup>156</sup> "Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 15, published by Baobab for Women's Human Rights, a non governmental organization based in Lagos, Nigeria.

<sup>157</sup> "Violence Watch", Volume 1, a newsletter of Project Alert on Violence Against Women

<sup>158</sup> "Nigeria: Unheard Voices – Violence against women in the family" p. 13

<sup>159</sup> "Nigeria: Unheard Voices – Violence against women in the family" p. 13

local police station. He was told that the alleged perpetrator had already lodged a complaint of slander against the girl for accusing him of rape. A medical examination four days after the event showed evidence of penetration and bruising on her private parts and concluded she had been sexually assaulted. However, it was the domestic worker who was subsequently brought before the magistrate court and charged with slander. She was remanded in prison custody for seven days until her family could pay the bail. During her imprisonment, she had no access to medical attention and her father was informed that the evidence he handed over to the police had since disappeared. Lawyers with the women's human rights organizations that took up the case believed strongly that the alleged perpetrator had used his social and political influence in his community to exert pressure on investigating officials.<sup>160</sup>

In a survey conducted by Project Alert<sup>161</sup> in 2001, law enforcement officials confirmed that many of them had negative and discriminatory attitude towards victims of family violence. When asked of their responses in cases of family violence, 51.9 percent thought they were doing enough to help victims of violence in the family; 46.8 percent thought they did not do enough; 63.3 percent said the police did not respond enough in such cases; 41.8 percent said the lack of speedy or appropriate response was because such cases were of a private matter.<sup>162</sup>

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

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<sup>160</sup> Interview with lawyers at Women Advocates Research and Documentation Center (WARD C), Lagos, published in "Nigeria: Unheard Voices – Violence against women in the family" p. 14

<sup>161</sup> A non governmental organization based in Lagos, Nigeria

<sup>162</sup> In an interview with Mr. Ighodalo, Public Relations Officer, Lagos State Police Command, reported in "Nigeria: Unheard Voices – Violence against women in the family" p. 12, the police spokesman said they did not take violence in the family seriously, "unless it is a case of the rape of a child or the husband kills his wife."

### c. Tripartite legal systems

The Nigerian legal system is made up of three different systems of law, the statutory law, religious laws and customary laws. Statutory laws include the Constitution, laws made by the government as well as government policies. There are different types of religious groups in Nigeria with different laws for their members. However, the common ones are Christianity, Muslim/Islamic and traditional religious laws. Customary laws include laws of diverse people of Nigeria which govern personal matters like marriage, children, inheritance and other things. These three types of law are enforced by three types of courts namely the formal courts, customary courts in Southern Nigeria and sharia courts in Northern Nigeria.<sup>163</sup>

In principle, statutory law takes precedence over all other laws. In practice though, things are different. In the Northern part of the country, the predominant religion is Islam. Prior to 1999, Muslim laws governed only personal matters but have since been expanded to include criminal matters.<sup>164</sup> In personal matters like marriage, Muslims are free to choose between statutory marriage and marriage under Muslim laws.<sup>165</sup> However, couples very rarely choose statutory laws, preferring instead the Muslim laws. In other parts of the country, especially in the South which is predominantly Christian, it is common practice to marry both under the statutory laws and under customary laws. Even though it is often argued that statutory laws govern such relationships having precedence over customary law, it is usually customary laws that govern the personal matters of the couple.<sup>166</sup> Therefore, where there is a dispute, it is not uncommon that both parties resort to customary laws and practices. For majority of women in Nigeria, Muslim laws and customary practices/laws govern their personal lives rather than statutory laws. These two systems of law are male dominated and have male focused interpretation.

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<sup>163</sup> Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 2, published by Baobab for Women's Human Rights, a non governmental organization based in Lagos, Nigeria

<sup>164</sup> Prior to October 1999, only the sharia civil or personal law was applicable in the predominantly Muslim states of northern Nigeria but the government of Zamfara state promulgated the Sharia Penal Code to introduce criminal sharia law in the state. Since then, other states have followed suit and we now have sharia criminal law in almost all the northern states in Nigeria.

<sup>165</sup> Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 2,

<sup>166</sup> Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report" p. 2,

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

## **Chapter Five: PROSPECTS FOR A BETTER LEGAL REGIME FOR VICTIMS AND SURVIVORS OF DOMESTIC VIOLENCE IN NIGERIA**

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

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

In January 2004, Nigeria submitted its 4<sup>th</sup> and 5<sup>th</sup> Country Report to the CEDAW Committee, an action that was neglected by the previous military regime. Although the submission of the report was commendable, a laudable aspect of this process was the involvement of civil society organizations in the writing of the government country report. For the first time the government reached out to civil society for inputs in the process even though it was alleged that this was just window dressing as their inputs were not reflected in the report<sup>167</sup>. Also civil society organizations were represented in the government delegation. This initiative was commented upon by the CEDAW Committee which noted the high level delegation of "officials from various branches of Government as well as representatives of NGOs, which enabled the members of the Committee to engage in a frank and constructive dialogue with the delegation."<sup>168</sup> As a result of this collaborative effort, the report submitted by Nigeria was prepared according to the laid down guidelines for report writing and the Committee commended the delegation for its comprehensive oral presentation.

Following the submission of the report, the government has tried to comply with the suggestions and recommendations of the CEDAW Committee. Indications of compliance include the ratification of the

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<sup>167</sup> There was a debate in the women's rights movement as to the status of women activists who were involved in the government report. Some argued that these women were hired in their individual capacity as consultants to give the report credibility and were not representatives of the women's rights movement in Nigeria. It was also alleged that their inputs were not reflected in the report submitted by the government even though their names were included as having participated in the process. This led to the writing of the shadow report by a coalition of civil society organizations which was submitted to the Committee.

<sup>168</sup> Concluding comments by CEDAW Committee CEDAW/C/2004/1/CRP.3/Add.2/Rev.1

Optional Protocol to CEDAW; the ratification of the Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the appointment of the first female judge to the Supreme Court. For the first time also, a female police officer was appointed a state Commissioner of Police. The Ministry of Justice as well as the House of Representatives has set up different committees to look into existing laws with a view to bringing them into compliance with Nigeria's international obligations. This has resulted in the enactment of different laws already listed in this paper.

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

**Jurisdiction of the Court:** The Violence Against Women Bill designates the High Court as the court of competent jurisdiction to hear cases of violence against women. A likely argument in favor of the High Court will be the application of statutory rules and procedure unlike lower courts like the customary and magistrate courts that apply customary law rules. The effect of having the High court as the court of competent jurisdiction is that custom and traditions that discriminate against women and enforce subjugation of women common at the lower court levels are bypassed. Another advantage is that trained judges preside over proceedings at the High Court and legal representation is by trained legal practitioners. However, this argument falls short when compared with the issue of access to justice already discussed. High courts are not accessible to women who are majority of victims. Women are reluctant to approach formal court structures due to lack of understanding and fear of the institution. High courts are also located in urban areas, inaccessible to many women who would, in many circumstances, need urgent access to court to apply for the Protection Order. Moreover, the language of the court is English, a language not understood by majority of the victims and survivors of domestic violence. This is more worrisome when one considers Section 6 of the proposed Violence Against women bill which states that the court shall accept applications for Protection

Order from the complainant, the police, relation of the victims and any person who witnessed the act of violence. These categories of people are mostly uneducated and are automatically excluded from the protection of the proposed bill. In addition the rules of procedure of the High Courts do not permit these classes of people to file documents in the High courts; only certified legal practitioners have that right. Many judges before whom the *ex parte* application for Protection Order should be made are not accessible during or after court sittings as many of them, except in a few states, live outside their jurisdiction.

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

Penalty or fine for non compliance with the Protection Order –The bill on Violence Against Women stipulates N10, 000 (approximately 72 US Dollars) as penalty for non compliance with the order of the court. While this may appear a reasonable fine for the farmer in the rural area (who might never be brought before the court because the victim is inhibited as discussed above) this sum is a mere token to the rich perpetrator who in most cases has the police on his pay roll. When the issue of penalty was debated in the different states during the campaign for the domestic violence bill, majority of the participants expressed the desire for a higher penalty arguing that the life of a woman might be equated with the penalty. Their reasoning was that rich perpetrators who would never receive imprisonment term would trivialize the whole issue, saying “after all, it is only N10, 000. I will pay it and still beat you up.”

This issue of fine needs to be further analyzed in line with the misgivings of the women who are expected to benefit from the law.

## Conclusion

“Extending the idea of human development to encompass women’s empowerment and gender justice puts social transformation at the center of the agenda for human development and progress of women, choices for women, especially poor women, cannot be enlarged without a change in relations between women and men as well as in the ideologies and institutions that preserve and reproduce inequality. This does not mean reversing position, so that men become subordinate and women dominant. Rather, it means negotiating new kinds of relationship that are based not on power over others but on a mutual development of creative human energy.... It also means negotiating new kinds of institutions, incorporating new norms and rules that support egalitarian and just relations between women and men.”<sup>169</sup>

All over the world, the law remains a vital tool for promoting the rights of women either in public or in private or domestic sphere. It serves the purpose of ensuring that abusers are held accountable for their actions and gives the victims a sense of safety and justice. The law also assists victims to protect themselves from further abuse and to move on with their lives.

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

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

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<sup>169</sup> Progress of the world’s Women, 2000. UNIFEM Biennial Report. (United Nations Development Fund for Women, New York, 2000), pp. 20 - 21

