



**EXAMINING THE LEGAL FRAMEWORK FOR THE PROTECTION OF  
WOMEN AGAINST VIOLENCE IN NIGERIA.  
MUHAMMED MUSTAFA ABDULKADIR**

**Abstract**

*Woman's right is an aspect of human rights reason being that human rights are applicable regardless of race, colour, sex or other distinctions which cannot be withdrawn by any person or government except under circumstances provided under the law of the land. Laws have been battling to curb the rate of domestic violence and woman slavery in Nigeria, but till this moment, the goal is yet to be achieved. There are plethora of legal regimes put in place by the Federal government, various States across the country, and international laws to eradicate domestic violence in Nigeria. But all seems not to have curtailed the rate of violation of human rights and domestic violence. This research appraised the laws provided for the protection of women in Nigeria, the general objective of this research is to look at the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other relevant laws for the protection of women. To further adumbrate on the Violence Against Persons (Prohibition) Act, 2015 and the inchoate offences thereunder. Finally, this research looked at some state laws and International Instruments for the Protection of Woman against Violence in Nigeria and prefer suggestion on how to curb violence against women in Nigeria. The research methodology adopted is doctrinal method by consulting text books, articles, journals and internet sources.*

*Keywords: discrimination, domestic violence, harassment, torture, physical abuse, rights and legal framework.*

## 1.0 Introduction

The contemporary broad prescription against sex-based discrimination has its origin in the United Nations (UN) Charter and various ancillary expressions and commitments, dealing with problems which affect women adversely. From these derived legal frameworks for the protection of woman against violence in Nigeria.

Woman's right is an aspect of human rights reason being that human rights are applicable regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals and they are those rights which every individual claims or aspires to enjoy irrespective of his colour, race, religion, status in life etc.<sup>1</sup>

From the above woman's rights are clearly imbedded in human rights. More so, women face discrimination, harassment, torture and physical abuse not simply by State organs but also by their family and other non-State organs.

There are quite numbers of legal frame work for the protection of woman against violence in Nigeria. These include; the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Matrimonial Causes Act, 1970, the Violence Against Persons (Prohibition) Act, 2015 which prohibits physical violence against women and made it an offence for a person who incites, aids, abets, or counsel another to commit an offence of physical or economic violence etc.

This research is to look at the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Matrimonial Causes Act, 1970, Violence Against Persons (Prohibition) Act, 2015, some States laws, Court pronouncements and Applicability of International laws and Instruments as legal frame works for the protection of women in Nigeria.

### **2.1 The 1999 Constitution of the Federal Republic of Nigeria (as amended) as a Legal Framework for the Protection of Woman against Violence in Nigeria.**

The Constitution of the Federal Republic of Nigeria 1999 (as amended) generally provides for freedom from discrimination and stated under section 42(2) that: 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.'<sup>2</sup> This provision is a cardinal law that can be invoke for the protection of women.

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<sup>1</sup> UO Umozurike, *The African Charter on Human Peoples Rights, The Hague* (Martinus Nijhoff Publishers 1979) 4

<sup>2</sup> *ibid*; *Mojekwu v Mojekwu* [1997] 7 NWLR (pt. 519) 283 CA

The right to dignity of human person and personal liberty of women is also guaranteed under the Constitution of the Federal Republic of Nigeria. The Constitution provided that: every person is entitled to respect for the dignity of his person and every person shall be entitled to personal liberty and no person (including all women) shall be deprived of such liberty save in case allowed by the law of the land.<sup>3</sup> Liberty in this context goes beyond freedom from any form of imprisonment. Liberty is a very wide word and includes every civil right.<sup>4</sup> Liberty is defined as; ‘the freedom of every law-abiding citizen to think what he will. To say what he will on his lawful occasions without let or hindrance from another person.’<sup>5</sup>

Personal liberty is; ‘the right of individual not to be subjected to imprisonment arrest, or any other physical coercion, in any manner that does not admit of legal justification.’<sup>6</sup>

From the foregoing, it will amount to breach of fundamental human right under the Constitution for a woman to be imprisoned by the husband as a form of punishment or to be treated without respect or to refuse her from expressing her mind by any form of coercion.

## **2.2 The Matrimonial Causes Act, 1970 as a Legal Framework for the Protection of Woman against Violence in Nigeria.**

The Act provides for some forms of reliefs which can be initiated by a woman to protect herself in any case of violence from the husband after a lawful marriage contract. The violence may take forms of physical or economic violence. For the woman to be protected under this heading, the conditions provided under sections 15 (2) (a), (b), (c), (d) and 16 (1) (a) of the Act must be fulfilled. The court may make decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably under section 15 (2) (c), if and only if the woman satisfied the court that since the marriage the husband has behaved in such a way that the woman cannot reasonably be expected to live with the husband i.e. by any form of violence.<sup>7</sup> However, this position of the law, is designed to protect either party to the marriage from violence in any manner. The relevant positions to this heading are sub paragraph (e) and (f) of section 15 (2) to the effects that, since the marriage and within the period of one year immediately preceding the date of the petition, the husband has been convicted by a court of law of having attempted to murder or unlawfully kill the woman or having committed an offence involving the intentional infliction of grievous harm or grievous hurt on the woman involving maiming,

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<sup>3</sup> Ss 34 and 35

<sup>4</sup> EO Malemi, *The Nigeria Constitutional Law* (1st edn, Princeton Publishing Co, 2006) 225.

<sup>5</sup> Lord Denning. *Freedom under the Law* (Steven & Son Ltd, 1948) 5.

<sup>6</sup> A V Dicey, *Constitutional law* (9th edn,) 207-208 cited in Malemi (n4).

<sup>7</sup> Matrimonial Causes Act 1970

disfigurement or disablement which seriously interferes with health or comfort of the woman.<sup>8</sup>

Provisions of the Act relate to the commission of serious offences which constitute a threat to the life of the petitioner and it will be unreasonable to expect a spouse who runs the risk of losing her life at the hands of the husband to continue with normal cohabitation.<sup>9</sup>

The second aspect of paragraph (f) of the same section can be categorized as economic violence in the sense that, the husband has habitually and willfully failed, throughout the period of two years immediately preceding the date of the petition, to provide maintenance for the wife. In this situation the woman can apply to High Court for the dissolution of the marriage to protect herself from hunger which is a form of violence against her personality.

### **2.3 Violence Against Persons (Prohibition) Act, 2015 as a Legal Framework Protection of Woman against Violence in Nigeria.**

Violence Against Persons (Prohibition) Act, 2015 was passed into law in May 2015 is an improvement on the Penal and Criminal Code in relation to violence; it also makes provision for compensation to victims as well as the protection of their rights; it is the most comprehensive legal regime for the protection of Women in Nigeria. The Act prohibits all form of violence against women in private and public life and provides maximum protection and effective remedies for victims and punishment for the offenders among others in the following ways:

#### **2.3.1 Nature of violence under the Violence Against Persons (Prohibition) Act, 2015**

##### **(a) Physical Injury**

A person who inflicts physical injury on another by means of any weapon, substance or object commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years or a fine of 100 thousand naira or to both.<sup>10</sup> Physical injury extends from light injury to the more aggravated form known as grievous hurt. Under section 335 of the Criminal Code Act 'grievous hurt' is punishable upon conviction with 7 years' imprisonment. On the other hand, a person who batters his or her spouse commits an offence which punishable with imprisonment not exceeding 3 years or to a fine not exceeding N200,000.00 or both.<sup>11</sup> Where a person incites, aids, abets or counsels the

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<sup>8</sup> ibid 16 (1) (e)

<sup>9</sup> EI Nwogugu, *Family Law in Nigeria* (Rev. edn HEBN Publishers PLC, 2011) 173.

<sup>10</sup> Violence Against Persons (Prohibition) Act, 2015 s2

<sup>11</sup> ibid, s 19

infliction of physical injury or the battering of a spouse, he will be punishable in the former on conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding N200,000.00 or both, and in the latter, to imprisonment not exceeding one year or a fine not exceeding N200,000.00 or both.<sup>12</sup>

It is surprising that the Act deviates from the time-tested classification of principal offenders with respect to inciting, aiding or counseling the commission of a crime. There is judicial academic disagreement as to whether these terms are to be treated as indistinguishable.<sup>13</sup> In *NCB v Gamble*<sup>14</sup> the court believed the two words could be used interchangeably.

Under section 7 of the Criminal Code Act, a person who incites, aids or counsels the commission of a crime is a principal offender. A principal offender is deemed to have taken part in the commission of an offence and may be charged for the commission of the offence.

Under the Penal Code Act the Code refers to those who assist in the commission of an offence as abettors.<sup>15</sup> It provides that: whoever abets an offence shall if the act abetted is committed in consequence of the abetment and no express provision is made by this Penal Code or by any other law for the time being in force for the punishment of such abetment, be punished with the punishment provided for the offence. In *Usman Kaza v State*,<sup>16</sup> the Supreme Court listed the ingredients of abetment. According to the Court, for an accused person to be convicted of abetment, the prosecution must prove:

- (i) that there was an encouragement, incitement, setting-on, instigation, promotion or procurement of offence.
- (ii) Any of the above acts must be positive, unequivocal and specifically.

To be guilty of aiding and abetting, a person must at the critical time either render effective aid to the principal offender or else must be present and in same way lend encouragement to him in what he is doing. Assistance given before the offence is committed will ground liability. Assistance given after the commission of the offence, that is, to enable someone to escape or dispose of evidence or proceeds does not come within the definition of aiding.<sup>17</sup> So, the assistance given to murderer after the victim is

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<sup>12</sup> *ibid*, (2) (3)

<sup>13</sup> CMV Clarkson and NM Keating, *Criminal Law: Text and Materials* (2nd edn, Sweet & Maxwell, 1998) 503

<sup>14</sup> (1959) 1 QB 11.

<sup>15</sup> Penal Code Act Cap P3 LFN 2004, s 85

<sup>16</sup> [2008] 7 NWLR (Pt.1085) 125 S.C. 151

<sup>17</sup> AO Filani and OA Oniyinde 'An Examination of the Scope of Aiding and Abetting in the Process of Crime Commission' *Journal of Law and Judicial System* Vol. 2 (2019) 19

dead or to a rapist after the act of intercourse has been concluded cannot ground liability for the crime in question.<sup>18</sup>

In prohibition of physical injury by the use of any toxic or acidic chemical the Act stated that:

A person who uses chemical, biological or any other harmful liquid on another commits an offence and is liable on conviction to a term of imprisonment without an option of fine.<sup>19</sup>

A person who attempt to attack the other with harmful substance commits an offence and is liable on conviction to a term of imprisonment not exceeding 25 years without an option of fine.<sup>20</sup>

A person who incites, aids, abets or counsels another to attack with harmful substance commits an offence and is liable on conviction to a term of life imprisonment without an option of fine.<sup>21</sup>

(b) Prohibition against circumcision or genital mutilation of women:

Female genital mutilation (FGM) comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.

The practice is mostly carried out by traditional circumcisers, who often play other central roles in communities, such as attending childbirths. In many settings, health care providers perform FGM due to the belief that the procedure is safer when medicalized. WHO strongly urges health care providers not to perform FGM. FGM is recognized internationally as a violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person's rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.<sup>22</sup>

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<sup>18</sup> Smith JC and Hogan B: *Criminal Law* (5th edn, Butterworth & Co Publishers Ltd) 124

<sup>19</sup> Violence Against Persons (Prohibition) Act, 2015, s 21(1)

<sup>20</sup> *ibid*, sub 2

<sup>21</sup> *ibid*, sub 3

<sup>22</sup> <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed on the 22nd day of May 2021

The Act prohibits the act genital mutilation under section 6 that: the circumcision or genital mutilation of the girl child or woman is hereby prohibited<sup>23</sup>.

A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.<sup>24</sup>

A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.<sup>25</sup>

A person who incites, aids, abets, or counsels another person to commit the offence provided in subsection 2 of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.<sup>26</sup>

#### (c) Prevention from property destruction

Property destruction is also a physical violence. The Act prevents the property of a spouse in the following manner: a person who causes mischief or destruction or damage to property of another with intent to cause or knowing that it is likely to cause distress or annoyance to the victim commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N300,000.00 or both.<sup>27</sup> The act of malicious damage of property has been criminalized by virtue of section 451 of the Criminal Code<sup>28</sup> in the case of *Tongo v Cop*<sup>29</sup> the appellants were arrested on the allegation of the complainant that they destroyed her wall of fence. They were charged before the Magistrates' Court for willful and unlawful damage of the block wall fence under section 451 of the Criminal Code. The court held that the essential ingredients of malicious damage to property contrary to section 451 of the Criminal Code was duly established thereby making out a *prima facie* case against the appellant.

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<sup>23</sup> Violence Against Persons (Prohibition) Act, 2015, s 6(1)

<sup>24</sup> *ibid*, sub s (2)

<sup>25</sup> *ibid*, sub s (3)

<sup>26</sup> *ibid* sub (4)

<sup>27</sup> *ibid* s, 11(1)

<sup>28</sup> Southern Nigeria

<sup>29</sup> [2007] All FWLR (pt. 376) 636 SC

A person who attempts to commit the offence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.<sup>30</sup>

A person who incites, aids, abets, or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 both.<sup>31</sup>

A person who receives or assists another who to his or her knowledge, committed the offence provided for in subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.<sup>32</sup>

(d) Eviction, false imprisonment and isolation

Eviction is the removal of a tenant from rental property by the landlord. In some jurisdictions it may also involve the removal of persons from premises that were foreclosed by a mortgagee (often, the prior owners who defaulted on a mortgage).<sup>33</sup> While False imprisonment occurs when a person intentionally restricts another person's movement within any area without legal authority, justification, or the restrained person's permission. Actual physical restraint is not necessary for false imprisonment to occur.<sup>34</sup>

Where a person forcefully evicts or refuses his or her spouse access to his or her home, he commits an offence punishable with imprisonment which may extend to 2 years imprisonment or a fine not exceeding N300,000 or both.<sup>35</sup> On the other hand, the offence of unlawfully depriving another of his or her personal liberty is created by section 10 of the Act. Like in the case of false imprisonment, it seems that for this offence to be committed, the plaintiff must prove that his freedom of movement in all directions has been restrained. Again, it is not necessary for the plaintiff to prove that any physical force has been applied on him. It suffices that the plaintiff has been restrained by the use of

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<sup>30</sup> Violence Against Persons (Prohibition) Act, 2015, s 11 sub 2

<sup>31</sup> *ibid* sub 3

<sup>32</sup> *ibid* sub 4

<sup>33</sup> E.I Naomi, D L Matthew , 'Why rejection hurts: a common neural alarm system for physical and social pain' *Trends in Cognitive Sciences Elsevier*. 8 (7) (2004) 294–300. [https://en.wikipedia.org/wiki/Abandonment\\_\(emotional\)](https://en.wikipedia.org/wiki/Abandonment_(emotional)) accessed on the 22<sup>nd</sup> day of May 2020

<sup>34</sup> *ibid*

<sup>35</sup> Violence Against Persons (Prohibition) Act, 2015, s 9



authority.<sup>36</sup> This is the case where police officers wrongfully order a person to accompany them to the station.

The acts of separating women or isolating them from their friends and families is a violence against women personality in Nigeria. The Act declared such form of treatment as an offence by providing that a person who forcefully isolates another from family and friends commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.<sup>37</sup>

A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding N100,000.00 or both.<sup>38</sup>

A person who incites, aids, abets or counsels another person to commit the offence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding N100,000.00 or both.<sup>39</sup>

While a person who receives or assists another who to his or her knowledge committed the offence provided under subsection (1) of this section is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding N100,000.00 or both.<sup>40</sup>

(e) Prohibition against verbal, emotional and psychological abuse

It is arguable that most of the offences created by the Act could cause Emotional and Psychological Discomfort, and this is true with offences such as rape, inflicting physical injury, eviction or false imprisonment. Thus, the question which the Courts must decide is the level of emotional and psychological discomfort sufficient to fall within the offence established in Section 14 of the Act. The Act states that a person who causes emotional, verbal and psychological abuse on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.<sup>41</sup>

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<sup>36</sup> Kodilinye and Aluko, *the Nigerian Law of Torts*, (2nd edn, Spectrum Books Ltd., 1999) 15-25.

<sup>37</sup> Violence Against Persons (Prohibition) Act, 2015, s 13(1)

<sup>38</sup> *ibid* sub 2

<sup>39</sup> *ibid* sub 3

<sup>40</sup> *ibid* sub 4

<sup>41</sup> *ibid* s 14(1)

A person who attempts to cause emotional, verbal and psychological abuse on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.

A person who incites, aids, abets or counsel another person to commit the act of this violence commits an offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.<sup>42</sup>

A person who assists another who to his or her knowledge, committed the offence provided in Section 14 of the Act is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.<sup>43</sup>

Recently, the Nigerian Court of Appeal amply demonstrated its competence and efficacy by declaring three customs in Enugu and Anambra States as discriminatory against women and violative of women's rights and human dignity in the following cases: <sup>44</sup> *Augustine Mojekwu v Mojekwu*,<sup>45</sup> and *Mwojekwu v Ejikeme*,<sup>46</sup>

In all the above cases, the Court of Appeal upheld the right of the widow to inherit her late husband's landed properties and it is not necessary for the widow to perform any form of dehumanizing and discriminatory customary rite to enjoy that rights.

In *Augustine Mojekwu v Mojekwu* the Court of Appeal approved the lower courts acceptance of the evidence of PW3 with regard to the *Oli-ekpe* custom: Under our custom, if a man dies leaving a male issue, the property belongs to the male child. If on the other hand the man has no male issue, his brother will inherit the property. If the male issue who survives the father dies leaving no male issue, the father's brother will inherit the property. If on the other hand, the deceased's brother dies leaving sons, the sons will inherit the property of the dead cousin. In particular the *diokpala* ie the eldest son of the uncle will inherit the property. If a man dies and subsequently his only son and brother die, if the late brother has sons, the 1<sup>st</sup> son of the late brother will inherit all the property. We call the 1<sup>st</sup> son of the late brother *Oli-Ekpe* i.e. he inherits the property of his relation. The *Oli Ekpe* inherits the land, the wives of the deceased and if the deceased had daughters he will give them in marriage. He the *Oli -ekpe* in other words inherit the assets and liability (sic) of the deceased. According to the learned and erudite justice:

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<sup>42</sup> *ibid* sub 2 and 3

<sup>43</sup> *ibid* sub 4

<sup>44</sup> M T Ladan, *Introduction to Jurisprudence Classical and Islamic*, (Malthouse Press Ltd, 2010) 171

<sup>45</sup> (*Supra*)

<sup>46</sup> [2000] 5 NWLR (Pt. 657) at 402 (Niki Tobi) (emphasis added)

[A]nd so PW3 gave evidence as to the almighty position held by the oli-ekpe in the inheritance of family property. The appellant claims to be the Oli- Ekpe. Is such a custom consistent with equity and fair play in an egalitarian society such as ours where the civilized sociology does not discriminate against women? Day after day, month after month and year after year we hear of and read about customs which discriminate against the women folk in the country. They are regarded as inferior to men folk. Why should this be so? All human beings male and female are born into a free World and are expected to participate freely, without any inhibition on grounds of sex, and that is constitutional. Any form of society discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenet of democracy which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including *Nnewi oli ekpe* custom relied upon by the appellant are not consistent with our civilized World which we live today.

The *Nrachi* ceremony is performed by an Ibo man where he has no son and he wants his daughter to inherit his estate in order to ensure continuity of the family line. This custom was explained in the case of *Mwojekwu v Ejikeme* by DW2 thus:

Nrachi ceremony is performed by a man who has no male child. He then chooses any of his daughter to stay in his family and produce children. He then invites his extended family and presents one goat, eight kola nuts, and four gallons of palm wine to them and declares his intention to them. If the extended family accepts, the goat is slaughtered and shared by the members. The daughter chosen can then start having issues for the father.

In the *Mwojekwu v Ejikeme*'s case the defendants/respondents claimed to be distant male cousins of the deceased founder of the property in question of which the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs/appellants are the grandchildren, the off springs of a daughter who the plaintiffs/appellants claimed the father performed the *Nrachi* custom of *Nnewi*. The learned trial judge found that this fact was not proved but accepted the fact that the plaintiffs/appellants are the children of a daughter of the founder, who without the *Nrachi* ceremony inherit the property. The trial court dismissed the case of the plaintiffs based on the *Nrachi* custom that the lineage of the plaintiffs' grandfather had become extinct on the death of the plaintiffs' mother. On appeal the Court of Appeal allowed the and held that the *Nrachi* custom is repugnant to natural justice, equity and good conscience. Some of the courts in the northern areas of Nigeria have applied the provision of the law which

states that in civil causes and matters, court may apply the principles of natural justice, equity and good conscience<sup>47</sup> in ameliorating the succession rights of women.

[T]he right of women to inherit their father's or husband's rights in land is like many other aspects of native law and custom, changing in many parts of Africa. The above statement does not hold good in some places but certainly in other places some new developments have started taking place. There are often today, cases before the elders of the family or even before the courts where women claim to join in the succession to land left by their deceased husbands or fathers. In some cases, the rights of the women are being reconised and given and in others not. In two cases before the Bukuru Area Court in Jos, Plateau State<sup>48</sup> the right of women to inherit land left by their husband under *Birrom* native law and custom was recognized.<sup>49</sup>

This judicial activism by the courts in Nigeria is commendable and courts of all grades should expound the numerous legislation both domestic and international that are applicable and will advance and promote the succession rights of women in Nigeria.<sup>50</sup>

The Act provide that a person who subjects a widow to harmful traditional practices commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both.<sup>51</sup>

A person who attempts to commit the act of violence provided above commits an offence and is liable on conviction to a term of imprisonment not exceeding 1year or to a fine not exceeding N200,000.00 or both.

A person who incites, aids, abets or counsels another person to commit harmful widowhood practices has the same punishment with the person who attempts to commit the act of violence.<sup>52</sup>

A person who receives or assists another who to his or her knowledge, committed the offence provided for in subsection (1) of Section 15 commits an offence and is liable on

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<sup>47</sup> High Court Law, Northern Nigeria, s 34 (3)

<sup>48</sup> *Titi Gyel v Gyel* (Unreported) Suit No 19/AC/B/75 (emphases added)

<sup>49</sup> Yakubu MG. *Land law in Nigeria* (Macmillan, 1985) 138 (emphasis added)

<sup>50</sup> O K. Edu ' Towards Sustainable Advancement of the Succession Rights of the Nigerian Woman' *Delsu Law Review* vol 2 No 1 (2006) 102

<sup>51</sup> [2005] 5 NWLR (pt. 723) 203

<sup>52</sup> *ibid* sub 2 and 3

conviction to a term of imprisonment not exceeding 6months or to a fine not exceeding N100,000.00 or both.<sup>53</sup>

(f) Prevention against abandonment

Some men considered abandonment of their spouses or children for the wives to care of the children as an act of punishment. Emotional abandonment is a subjective emotional state in which people feel undesired, left behind, insecure, or discarded. People experiencing emotional abandonment may feel at a loss, cut off from a crucial source of sustenance that has been withdrawn, either suddenly, or through a process of erosion.<sup>54</sup> Individuals who experience feelings of emotional abandonment are likely to also have feelings of maladaptive thoughts and behaviors such as depressive symptoms, relationship avoidance and/or dependence, which may cause abundant difficulty in daily life with interpersonal relationships and social settings. Feelings of emotional abandonment stem from numerous situations, whether one considers a romantic rejection, the dissolution of a friendship, ostracism by a group, estrangement from family members, or merely being ignored or excluded in casual encounters, rejections have myriad emotional, psychological, and interpersonal consequences.

It is paramount to note that attitudes of this nature are not govern by statutory law prior to the enactment of this Act. The Act stated that: a person who abandons a wife or husband, children or other dependent without any means of substance commit an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding N500,000.00 or both.<sup>55</sup>

A person who attempt to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N200,000.00 or both. A person who incites, aids, abets or counsels another person to commit the act of violence as provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N200,000.00 or both.<sup>56</sup>

A person who receives or assists another who to his or her knowledge, committed the offence of abandonment of spouse is an accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 1year or to a fine not exceeding N100,000.00 or both.<sup>57</sup>

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<sup>53</sup> *ibid* sub 4

<sup>54</sup> (n 33)

<sup>55</sup> Violence Against Persons (Prohibition) Act,2015, s 16 (1)

<sup>56</sup> *ibid* s 2 and 3

<sup>57</sup> *ibid* sub 4

(g) Prevention against intimidation

Intimidation is intentional behavior that ‘would cause a person of ordinary sensibilities’ to fear injury or harm. It is not necessary to prove that the behavior was so violent as to cause mean terror or that the victim was actually frightened.<sup>58</sup> the spouse is prevented under the Act from intimidation of any kind.

Under Section 18 of the Act, a person who intimidates another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding N200,000.00 or both.<sup>59</sup>

A person who attempt, aid, incites, or counsels another to commit the act of intimidation is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.<sup>60</sup>

A person who receives or assists another who to his or her knowledge, committed the offence of intimidation is described as accessory after the fact and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding N100,000.00 or both.<sup>61</sup>

In conclusion Section 44 of the Act mandates the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to administer the provision of the Act as the regulatory body. It seems from the provisions of section 42 of the Act that NAPTIP is also responsible for the appointment of a coordinator for the prevention of domestic violence. It is the duty of the coordinator to submit to the federal government an annual report on the administration of the Act. A copy of the report shall also be submitted to the National Bureau for statistics. Where a person has been convicted more than once for a sexual offence or for a sexual offence with a child, the Court shall declare such a person ‘a dangerous sexual offender.’<sup>62</sup>

### 3.0 State Laws for the Protection of Women

Due to women movements for solutions from states to create appropriate framework for dealing with cases of domestic violence. The subject does not fall within the exclusive legislative jurisdiction of the National Assembly under 1999 Constitution of the Federal Republic of Nigeria (as amended).

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<sup>58</sup> (n 54)

<sup>59</sup> Violence Against Persons (Prohibition) Act, 2015, s 18.

<sup>60</sup> *ibid* sub 2 and 3

<sup>61</sup> *ibid* sub 4

<sup>62</sup> Prof. Anthony N. Nwazuoke, ‘A Critical Appraisal of the Violence Against Persons (Prohibition) Act, 2015’ *Journal of Law, Policy and Globalization* Faculty of Law, Ebonyi State University, Abakaliki Vol.47, (2016) 75

Consequently, it comes squarely within the States. Some of the States legislation in this regard are:<sup>63</sup>

1. Cross River State Domestic Violence and Maltreatment of Widows (prohibition) Law<sup>64</sup>
2. Ebonyi State Protection against Domestic Violence and Related Matters Law<sup>65</sup>
3. Lagos State Protection against Domestic Violence Law<sup>66</sup>
4. Ekiti State Gender Based-Violence Prohibition Law<sup>67</sup>

### **1. Cross River State Domestic Violence and Maltreatment of Widows (Prohibition) Law.**

The Cross-River State law has two significant limitation. It criminalizes domestic violence by providing that “any person who subjects any woman to any form of unwholesome treatment or domestic violence commits an offence” punishable by imprisonment or a fine.<sup>68</sup>

Moreover, the law limits its operation to domestic violence against women only, reason being that women are the majority victims, although, domestic violence by its nature cannot be limited to women. The law also provides for a restricted definition of domestic violence to cover only “any abusive use of physical force or energy to cause damage or injury to a woman at home in the house or any other place.”<sup>69</sup>

### **2. Ebonyi State Domestic Violence and Related Matters law**

Ebonyi State adopted the same approach of criminalizing domestic violence as its Cross River counterpart.<sup>70</sup> However, it dealt with domestic violence committed between person in “domestic relationship” defined as “marital or familiar relationship” between the victim and the respondent.<sup>71</sup> Unlike the case in the Cross River State law, “domestic

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<sup>63</sup> E. I. Nwogugu, *Family law in Nigeria*, (3rd edn, HEBN Publishers PLC, 2014) 112

<sup>64</sup> 2004 No 10 of 2004

<sup>65</sup> 2005 No 003

<sup>66</sup> 2007

<sup>67</sup> 2001

<sup>68</sup> Cross River State Domestic Violence and Maltreatment of Widows (prohibition) Law 2004 No 10 of 2004, s 3

<sup>69</sup> *ibid* s 15

<sup>70</sup> Ebonyi State Protection against Domestic Violence and Related Matters Law, 2005 No.003 s 1

<sup>71</sup> *ibid* s 3

violence is defined to include physical attack or abuse including verbal attack capable of emotional and psychological pain.<sup>72</sup>

The law also establishes, elaborate civil procedure for dealing with instances of domestic violence. It empowers any person who is the subject of domestic violence to apply to a Magistrate's Court for a protection order.<sup>73</sup> Any Police Officer or social worker who is at the scene of the violence or learns about the incident is obliged to assist the victim by using reasonable force to rescue the victim to obtain medical treatment and arresting the offender.<sup>74</sup> In cases of repeated incidents of domestic violence against a particular victim or if undue hardship may be suffered by victim if a protection order is not made, the court will on application by the victim, notwithstanding that the respondent is not served notice of proceedings, issue a protection order against the respondent on such terms and conditions as it deems appropriate.<sup>75</sup> On the return date of the application for a protection order or if the respondent is brought to court on the execution of a warrant of arrest, the court will hear all relevant evidence. If satisfied that adequate case has been made, the court will make a protection order.<sup>76</sup> The order will restrain or prohibit the respondent from committing any further act of domestic violence against the applicant, enlisting the assistance of any person for that purpose, entering a residence shared by the applicant and the respondent entering a specified part of such residence, entering the applicant's place of work or indulging in any act harmful to the applicant.<sup>77</sup>

In other respects, the Ebonyi State is like the Lagos State law.

### **3. Lagos State Protection against Domestic Violence Law**

The Lagos State law of 2007 may be regarded presently as one of the most advanced in Nigeria for two basic reasons. Besides criminalizing domestic violence in appropriate cases, it establishes an appropriate civil procedure for dealing with the incidents of domestic violence.<sup>78</sup> By Section 1 of the law "no person shall commit any act of domestic violence against any person." This broad proposition makes it clear that the act of domestic violence may be committed against any member of a household by another. Consequently, the act may be committed by a husband or any member of a household. It

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<sup>72</sup> *ibid*

<sup>73</sup> *ibid* s 4(2)

<sup>74</sup> *ibid* s 5

<sup>75</sup> *ibid* s 7

<sup>76</sup> Lagos State Protection against Domestic Violence Law, s 9(1)

<sup>77</sup> *ibid* s 9(2)

<sup>78</sup>(n 63) 114



is significant to observe that domestic violence is not restricted to situations involving only persons who are married or to the spouses only.

Section 18(1) of the law defines what constitutes domestic violence. It includes physical abuse, sexual abuse (conduct which abuses, humiliates, degrades or otherwise violates the sexual integrity, or dignity of the victim), exploitation but not limited to rape, incest and sexual assault; starvation; emotional, verbal and psychological abuse which means a pattern of degrading or humiliating conduct towards the complainant including repeated insults, ridicule or name – calling as to cause emotional pain; repeated threats to cause emotional pain or the repeated exhibition of obsessive possessiveness or jealous which constitutes a serious invasion of the complainants privacy, liberty or security.<sup>79</sup> Economic abuse includes the unreasonable deprivation of economic or financial resources to which the complainant is entitled under the law or which the complainant requires out of necessity including necessities, mortgage bond repayments or payment of rent for shared residence or the unreasonable disposal or seizure of household effects or other property in which the complainant has an interest.<sup>80</sup>

Other illustrations of domestic violence are taking undue advantage of complainant (exploitations), denial of basic education, uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear or anxiety (intimidation);<sup>81</sup> engaging in a pattern of conduct that induces the fear of harm to a complainant (harassment), which includes repeatedly watching or loitering outside of or near the building or place where the complainant resides, works or carries on business, studies and place of recreation after studies; repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues and repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic or other objects to the complainant,<sup>82</sup> objects to the stalking; hazardous attack including acid bath and offensive or poisonous substance; damage to property; entry into complainant's residence without consent where the parties do not share the same residence or any other controlling or abusive behavior towards a complainant, where such conduct harms or may cause imminent to well-being of the complainant deprivation.<sup>83</sup>

Where the complainant is not represented by a legal practitioner, he is required to be informed by the court or the Registrar of his rights under the law including the right to

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<sup>79</sup> (n 77) s18 (1)(j)

<sup>80</sup> *ibid* 18(1)(h)

<sup>81</sup> *ibid* 18(1)(m)

<sup>82</sup> *ibid* 18(1)(l)

<sup>83</sup> *ibid* s 2(2)

also against the respondent where a criminal offence has been committed by the respondent.<sup>84</sup>

Any complainant which includes a person who is or has been in a domestic relationship with the respondent and who has been subjected to domestic violence including a child in the care of the women may apply to the High Court or Magistrate Court or any court which has criminal jurisdiction for a protection order.<sup>85</sup> Domestic relationship has been widely defined to mean persons married under any law, customs or religion; persons living or who has lived together in relationship in the nature of marriage although they are not married.<sup>86</sup> Besides, the woman by herself, an application for a protection order may be filed with her consent, by any person who has an interest in the well-being of the complainant including a counselor, health service provider, member of the Nigeria Police Force, Social Worker, Organization or Teacher. Other persons may apply without the complainant's consent where the complainant is a mentally incapacitated person.

The law also provides for interim protection order where the respondent has not been given notice of the proceedings. Such may be the case where the respondent is committing or has committed an act of domestic violence and undue hardship may be suffered by the complainant as a result of such violence if a protection order is not issued. Immediately, when issued, an interim protection order will require the respondent to show cause on the return date why a protection order should not be issued.<sup>87</sup>

Where the respondent fails to appear on the prescribed return date and the court is satisfied that the respondent who has been properly served has committed or is committing an act of domestic violence, the court may issue a protection order in the prescribed form.<sup>88</sup> On the other hand, if the respondent appears to oppose the issuance of a protection order, the court will hear the matter and consider all available evidence.<sup>89</sup> In the proceedings, the court may *suo motu* or on the request of the complainant order that in the examination of witnesses, including the complainant by a legal representative is not entitled to cross-examine directly a person who is in domestic relationship with the respondent and should not put any question directly to such a witness unless through the court.<sup>90</sup> The essence of this restriction is to void the likely psychology shock of direct

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<sup>84</sup> *ibid* s 2(3)

<sup>85</sup> *ibid* s 2 (3)

<sup>86</sup> (n 78)115

<sup>87</sup> s 5(1):s 7(1) of Ebonyi State

<sup>88</sup> s 6(1)

<sup>89</sup> s 5(2)

<sup>90</sup> s 6(3)

questioning of persons in domestic relationship with the respondent including the complainant. Such shock is likely to arise from the victim of the violence being questioned by the tormentor on the latter's conduct. If the court is satisfied on the balance of probability that the respondent has committed or is committing an act of domestic violence, it will grant a protection order a copy of which along with the original copy of the warrant of arrest specified in section 8(1)(a) will be served on the respondent.<sup>91</sup>

Certified copies of the documents are also to be forwarded to the Police station of the complainant's choice. A protection order remains in force until it is set aside and is not automatically set aside by a notice of appeal.<sup>92</sup>

#### **4. Ekiti State Gender Based-Violence Prohibition Law<sup>93</sup>**

Sections 6 to 9 provides for the lodging of complaint against gender-based violence with the Police, Police assistance and arrest by Police of a person for an offence of gender-based violence with or without warrant.

Applications for protective order, procedure for such order and the conduct of proceedings are dealt with in sections 12-15. The court to which an application was made may first grant an interim protection order and subsequently a protection order. A final order shall not exceed 12 months in the first instance but for good cause shown could be extended, modified or rescinded by the court on a motion by a party to the original proceedings. A protection order may be extended to a person specified in the order other than the applicant if, in the opinion of the court such measure is necessary in the circumstance.

The court may also under section 23 issue an eviction order requiring the respondent to vacate the matrimonial home. Pursuant to section 29 and 30, the institution of a criminal charge arising from acts of gender-based violence is additional to and does not affect the rights of any applicant to seek a protection order. Furthermore, criminal proceedings under the law will be in addition to and does not derogate from the right of a person to institute a civil action for damages.

#### **4.0 International laws and Instruments as a Legal Framework for the Protection of Woman against Violence in Nigeria.**

Generally, International laws and instruments are only applicable in Nigerian legal system in accordance with the provision of chapter 1 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) section 12 provides that: No treaty between the Federation and any other country shall have the force law except to the extent to which

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<sup>91</sup> s 6 (4)-(5)

<sup>92</sup> Ekiti State Gender Based-Violence Prohibition Law (2001) s 6 (7) also s 9 (2) of the Ebonyi State law

<sup>93</sup> 2001

any such treaty has been enacted into law by the National Assembly.<sup>94</sup> The National Assembly may make laws for the federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.<sup>95</sup> A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.<sup>96</sup>

From the foregoing, the applicability of International Laws and Instruments for the protection of women in Nigeria can only be affected where such laws or instruments has been enacted into law by the National Assembly or where a law is implemented by the National Assembly for implementing the international laws or instruments for the protection of women.

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<sup>94</sup> s 12 sub (1)

<sup>95</sup> ibid sub (2)

<sup>96</sup> ibid sub (3)

## 5.0 Conclusion & Recommendations

### Conclusion

There are some quiet numbers of statutory framework for the protection of women in Nigeria. For instance, the right to dignity of human person and personal liberty of women under the Constitution of the Federal Republic of Nigeria.<sup>1</sup> The Matrimonial Causes Act, 1970 which provides for some forms of reliefs that can be initiated by a woman to protect herself in any case of violence from the husband after a lawful marriage contract. The court may make a decree of dissolution of marriage on the grounds that the marriage has broken down irretrievably, under section 15 (2) (c), if the woman or man satisfied the court that since the marriage the husband has behaved in such a way that the woman cannot reasonably be expected to live with the husband.<sup>2</sup> Violence Against Persons (Prohibition) Act, 2015 is a comprehensive statute for the protection of Women in Nigeria. The Act prohibits all form of violence against women in private and public life and provides maximum protection and effective remedies for victims and punishment for the offenders in the following among others: physical injury, prohibition against circumcision or genital mutilation of women, prevention from property destruction, eviction, false imprisonment and isolation of women, prevention of women against verbal, emotional and psychological abuse, prevention of women against abandonment and prevention of women against intimidation. Courts also upheld the right of the widow to inherit her late husband's landed properties without the widow performing any form of dehumanizing and discriminatory customary rite to enjoy that rights.

Records indeed have it that violence within the family in Nigeria has reached alarming proportions. Reports of beating, torture, acid attacks and killing of women in the family or relationships are regular features in the media and documented reports.<sup>3</sup> Nigerian Television Authority (NTA) has interviewed many women victims, the National Orthopedic Hospital, Igbobi, Lagos, as well as Lagos University Teaching Hospital (LUTH) have reported such cases too.<sup>4</sup> Public testimonies before the Civil Resources Development and Documentation Centre Tribunal in Enugu and Abuja since 1996 have revealed other harrowing cases of wife battering in Nigeria.

### Recommendations

The following recommendations are however made, to curtail the rising numbers of violence against women;

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<sup>1</sup> s 34 and 35 of the 1999 Constitution

<sup>2</sup> S 15 (1) Matrimonial Causes Act

<sup>3</sup> H. I. Bazza / 'Societies Without Borders' Vol.4 (2009) 175–192 179

<sup>4</sup> [https://www.google.com/search?q=Nigerian+Television+Authority+\(NTA\)+has+interviewed](https://www.google.com/search?q=Nigerian+Television+Authority+(NTA)+has+interviewed) accessed 6<sup>th</sup> May 2021

- (a) Each State of the Federation should establish a Ministry/Machinery task with the responsibility of preferring solution for cases of violence against women;
- (b) The Ministry/Machinery should be responsible to shoulder all cases involving violence against women. Reason being that, some women suffer violence because of cost of litigation and absence of finance to follow up their cases;
- (c) The Ministry/Machinery should carry out the task of sensitization to various locality because lack of awareness is one of the reasons why some Nigerians still follow their culture without realizing that they are violence against women; and
- (d) The Ministry/Machinery should be able to protect women or young adult who have the interest of been educated or to further their education against the force marriage induced by their parent.

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