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# EXAMINATION OF THE HISTORICAL EVOLUTION OF GENDER BASED VIOLENCE AND THE PREVALENT FORMS OF GENDER-BASED VIOLENCE IN NIGERIA

Kiyenpiya F. M. Mafuyai*
Alphonsus O. Alubo**

## ABSTRACT

*Gender-based violence has become recognised as a gross human rights violation, but this had not always been the case. It took a period of time for this form of violence to be acknowledged as aggression that needs to be punished and proscribed. The historical evolution of gender-based violence is examined to reveal the significant steps that have been taken over decades, globally, to build a solid foundation to provide legal protection for the vulnerable. Nigeria, being a patriarchal society, had its own struggle in overturning cultural norms and traditions and creating legislation that could punish gender-based violence. Conceptual clarification is provided for the types of gender-based violence that are prevalent in Nigeria. Civil Society organisations and women's rights, over a period of time, agreed on those forms of gender-based violence that were of greatest concern in the country and, after concerted efforts, passed a Bill through the National Assembly known as the Violence against Persons Prohibition Act, 2015. This legislation became a panacea to the established trends of violence, particularly against women, by criminalising actions that had previously been considered tolerable behaviour. The forms of gender-based violence that are prevalent in Nigeria were identified in the Violence against Persons Prohibition Act and defined with such clarity that they can no longer be ignored, overlooked or brushed aside by communities, law enforcement, prosecutors or the judiciary*.

## INTRODUCTION

Gender-based violence is a popular topic of discussion in current times, but this has not always been the case. It evolved over a period of time from a theme that was considered to be in the private sphere to being recognised as a human right that should be enforced by state parties. This paper traces the historical origins of gender-based violence in order to provide a clear understanding of the term and its significance. It goes on to indicate and describe those that are prevalent in Nigeria on the backdrop of the Violence Against Prohibition Act, 2015; which is a transformative legislation that provides protection against gender-based violence.

### *Historical Evolution of Gender Based Violence*

Violence has always occurred from the beginning of the existence of men. The Bible records violence between Cain and Abel, the first children that were created mortal beings. Even animals fight among each other in contests over territory, rivalry, over mates, or simply to survive. Violence is a fairly commonly used word which is generally understood to mean using force wilfully in order to cause injury. Black's Law Dictionary defines violence as 'The use of physical force usually accompanied by fury, vehemence or outrage; especially

physical force unlawfully exercised with the intent to harm.'[1] The dictionary definition of the word violent is actions involving physical force with the intention to hurt or kill.[2] These definitions place emphasis on physical activity and physical injury, and rightly so. However, the definition has been evolving over the years and has grown beyond physical force and injury.

The reality is that the concept of violence is multifaceted and not so simple to define. It is not a precise principle but rather a matter of perception. The definition given by the World Health Organization is:

> The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.[3]

This definition extends the scope of violence to the emotional realm. It encapsulates not just physical force but threats; not just harmful action but inaction that could result in injury, both physical and mental. In the local context, within Nigeria, the dictionary definition has been the prevalent one, and particularly when viewing violence from a criminal angle. The viewpoint is shifting in contemporary times. A Nigerian author opines that violence is when a person uses might or influence to harm another on purpose or by accident, and also includes intimidation and deeds that have a probability of causing harm. Furthermore, the harm occasioned could be to their mental or general well-being and not just to their body.[4]

Most societies had punitive measures in place to curb the misuse of violence and prevent the descent into anarchy. Each society determines on its own what could be considered as violence that is punishable by its traditional norms, and what could be excused or justified as discipline or cultural practice. For instance, a master punishing his servant would be excusable, and the ordeal a person may go through in initiation rites would be justifiable. There had been no law in Nigeria that gave a categorical definition of violence or even an explanation, but the Violence Against Persons' Prohibition Act 2015 (VAPPA) has given the criminal justice system a useful tool by furnishing a meaning in its interpretation section. It states that:

> Violence means any act or attempted act which causes or may cause any person physical, psychological, sexual, verbal, emotional, or economic harm whether this occurs in private or public life, in peace times and in conflict situation.[5]

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* Mrs. Kiyenpiya Mafuyai is a Deputy Director in the Department of Legal Services of the National Human Rights Commission. ( kmafuyai@yahoo.com; +2348037024734)
** Prof Alphonsus O. Alubo, SAN is a Professor of Law at the Faculty of Law, University of Jos

1 Bryan A. Garner ed., *Black's Law Dictionary* (10th ed. Thomson Reuters 2014).
2 A.S. Hornby, *Oxford Advanced Learner's Dictionary of Current English* (Oxford University Press 2001).
3 World Health Organization (WHO) - *World Report on Violence and Health: Summary* (Geneva, 2002) 13 http://www.refworld.org/docid/54aa8f744.html accessed 15 June 2017.
4 Onyinyechi Lilian Uche, 'Effects of Domestic Violence On Children: A Nigerian Syndrome' in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 238.
5 Violence Against Persons Prohibition Act, 2015 (VAPPA).

This description spreads the net wide to capture as wide a radius as possible of all categories of violence, even breaking frontiers, with economic harm. The definition deliberately points out the spheres in which violence occurs and indicates, private and public, or in periods of peace or conflict. This is because it was too frequently the norm that violence in private settings or during conflict was justified by society.

There is also structural violence, which Farmer defines as violence that occurs 'when gender, ethnicity, socio-economic status or a combination of such factors contribute to make an individual or group vulnerable to suffering.'[6] Thus, in many societies, social inequality and human suffering were buttressed by cultural beliefs; examples abound like slavery or the caste system. It was difficult to delineate boundaries, and suffering was perpetuated as there were no clear-cut guidelines to prohibit any community or nation from practising its cultures and beliefs. Sovereign states were permitted to independently determine what constituted criminal behaviour, and it was difficult for other nations to intervene when there was inhumane conduct by governments within the boundaries of their own country.

This was the general global philosophy prior to World War II; and through which the tyrannical reign of Adolf Hitler in Germany, who slaughtered over six million Jews amidst other atrocities, thrived. Nations of the world initially stood by politely, wondering whether it was appropriate to interfere in the affairs of a sovereign state. Eventually, overcome by the impending threats to their nations and a delayed sense of morality, they engaged and conquered the German government in battle. After World War II, nations of the world realised the need to clearly articulate the parameters that should not be crossed by any nation in the treatment of human beings, whatever their race, age, social status or gender. It was established that there was a nexus between preserving human rights, protecting people from violence, and ultimately maintaining international peace and security. This reasoning persuaded nations around the globe to metamorphose from the League of Nations to the United Nations; from there emanated the Universal Declaration of Human Rights.[7] This document furnished a baseline that provided that every human being is equal and is entitled to a basic standard of treatment that should be inherent, universal, interdependent and indivisible.

The Universal Declaration on Human Rights was adopted in 1948, becoming the guideline for governments on what was acceptable treatment of all people in their nation. However, it became apparent over time that the patriarchal nature of most societies caused women to face discrimination even in States that had ratified the Declaration. This brought into focus another form of violence known as gender-based violence (GBV). There are numerous definitions of gender-based violence that have been propounded over the years. According to UN Women, the more popular definition in humanitarian settings is that 'gender-based violence is an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females.' [8] A Nigerian NGO, Women's Rights Advancement and Protection Alternative

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6 Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (University of California Press 2003) <http://www.ucpress.edu/books/pages/9875/9875.ch01.php> accessed 14 July 2018.

7 Olajide Olakanmi, *Handbook on Human Rights,* (Lawlords Publications 2014) 20.

8 UN Women, *Terminologies and Definitions* (Virtual Knowledge Centre to End Violence Against Women and Girls 2013) <http://www.endvawnow.org/en/articles/1474-terminologies-and-definitions.html> accessed 2 February, 2019.

(WRAPA), states that it is violence inflicted on someone because of their gender. It includes acts of bodily harm, mental anguish or sexual pain, denial of liberty and intimidation. These can occur in the home or anywhere in society and can be perpetrated by the government and its agencies.[9]

Such violence can occur at any period in the lifespan of a person and comes in different guises. Some examples are: forced labour and trafficking, sexual abuse, domestic violence, female infanticide, harmful traditional practices like female genital mutilation, honour killing, early marriage and forced marriage.[10] It is noteworthy that many in defining GBV point out that the female sex is the major although not exclusive, target; thus, "violence against women" (VAW) is often used in place of "gender-based violence". In line with this, the UN Declaration on the Elimination of Violence Against Women, 1993, defined violence against women as:

> Any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.[11]

The whole concept stems from historic inequity between the sexes and is displayed when the imbalance of power causes, usually the male, to mistreat the female either physically, psychologically or through economic means in order to maintain control.[12]

General Recommendation 19 of the UN Committee on the Elimination of Discrimination Against Women in its 11th Session, emphasises this position. In its definition, it points out that women are the major targets of GBV, simply because they are women, and thus it constitutes gender discrimination.[13] The Declaration on the Elimination of Violence Against Women enumerates some acts of GBV to be - battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation[14].

Placing more weight and to show the enormity of GBV, the Beijing Platform for Action classified it as a human rights violation that hinders women from enjoying their fundamental freedom. Therefore, all States should ensure that women are properly protected from the violation of their rights.[15] Indeed, GBV violates a number of fundamental human

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9 Women's Rights Advancement and Protection Alternative (WRAPA), *Wrapa Tool Kit - Gender Based Violence: Facts and Consequences* 3 <https://wrapanigeria.org.2016/07/wrapatoolkit-pages-5-april-.pdf> accessed 6 June, 2017.

10 United States Agency for International Development (USAID) *Strategy to Prevent and Respond to Gender-based Violence Globally* (2012) <https://reliefweb.int/report/world/united-states-strategy-pprevent - respond-gender-based-violence-globally 6 accessed 23 July, 2018.

11 Yinka Olomojobi, *Human Rights: On Gender, Sex and the Law in Nigeria* (2nd edn. Princeton Publishing Coy. 2015) 56.

12 Emmanuel Chinweike Ibezim – Gender Based Violence in Nigeria: A Socio-Legal Perspective, in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 185.

13 Uchechukwu Ngwaba – Developing an International Perspective on Domestic Violence: A Case Study of Women Abroad in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 12.

14 Ibezim (n 12) 175.

15 Ibid 183.

rights which include the right to life, the right to dignity of the human person, and not to be subject to torture, the right to liberty, and the right to be free from discrimination.[16]

From the foregoing definitions, it can be deduced that this term is used to cover a broad spectrum of manifestations of aggression that a person may be subjected to because of the manner in which society perceives their role as a male or a female. The essence of violence as defined earlier remains, but it is now meted out to a person/s because of their sex or gender. GBV is described as an umbrella term because it covers quite a few categories of violence, each of which requires an explanation to be properly understood.

Focusing on the needs of women, the United Nations organised a series of global conferences for women that began in 1975 at Mexico City.[17] As a mechanism to protect women from discrimination, the United Nations in New York on December 18, 1979,[18] endorsed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, this document did not mention gender violence. It was at the 1980 conference in Copenhagen that the document made reference to violence against women. A further step was made in 1985, in the Nairobi Forward Looking Strategies, when it was acknowledged that curtailing violence against women could enhance peace.[19]

In 1989, the Committee monitoring CEDAW initiated a recommendation on violence against women, which was expounded on in 1992, when violence was identified as a type of discrimination.[20] The argument began as to whether to consider violence against women as a human rights violation, as it was usually perpetuated by individuals and not the State. On the other hand, it should be the duty of the State to protect women from violence, wherever and by whomever it is committed. Women's non-governmental organisations kept the issue on the front burner and collected 30,000 signatures from 123 countries to present at the UN Conference on Human Rights held in Vienna in 1993. This resulted in the Vienna Declaration and Programme of Action stating categorically that women's human rights are 'an inalienable, integral and indivisible part of human rights.'[21]

Later in the year, the UN Commission on the Status of Women developed, in collaboration with experts, the Declaration on the Elimination of Violence Against Women, which was adopted by the UN General Assembly in 1994.[22] Following the recommendation at Vienna, the Special Rapporteur on Violence against Women was appointed in 1994 'to collect information relating to violence against women, to recommend measures to remedy it.'[23] The fourth World Conference on Women, popularly referred to as the Beijing Conference, which was held in Beijing in 1995, was pivotal,[24] as the document produced from this Conference categorised violence against women as a problem of global concern.

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16 Jane Ezirigwe – Customary Law Perspective of Violence Against Women; The Position Under the Nigerian Legal System, in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 282.

17 Ibezim (n 12) 182.

18 Olajide (n 7) 90.

19 Sally Engel Merry, *Human Rights & Gender Violence. Translating International Law into Local Justice* (University of Chicago Press, 2006) < C:\Users\USER\Documents\My Digital Editions\Human Rights and Gender Violence Translating International Law i.pdf> accessed 11 March, 2019. 21.

20 Olajide (n 7) 90.

21 Merry (n 19) 23.

22 Ibezim (n 10) 185.

23 Merry (n 19) 22.

24 Ibezim (n 10) 185.

Five years later, the Beijing Plus Five Conference which was convened to review the outcomes of the Beijing Conference, endorsed the significance of the subject of gender violence.[25] The subject had evolved from being of such little consequence that it was not mentioned in 1979 at CEDAW, to occupying a central seat in global discourse, as a human rights abuse, by the year 2000. At each of these conferences, policies were formulated and published in documents, which do not carry the force of the law but bear the weight of moral obligation that emanates from international consensus[26].

However, from the African perspective, there were obstacles that prevented complete acceptance of these evolving international principles against gender violence. Factors such as religious opinions, historical traditional practices, incompetence in governance, and poverty enabled gender violence to continue unabated in the region. It appeared as though African traditions were being abrogated and Western culture imposed.[27] The continent needed to step up to the plate and take ownership of human rights standards and values. A momentous leap was taken in 1981, when members of the African Union adopted the African Charter on Human and Peoples' Rights (ACHPR) or the Banjul Charter; an instrument which laid down rudimentary human rights and freedoms[28] and provided a structure for human rights on the continent. However, women's rights issues were not properly addressed by it, as it was observed that women in Africa remained victims of harmful practices.

After concerted efforts of advocacy by civil society and the Special Rapporteur on the Rights of Women in Africa, a further step, and more significant for gender violence, was taken on the 13th of July 2003 at Maputo when the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted by the African Union; also known as the Maputo Protocol.[29] It has been described as 'the most detailed and cogent instrument at the international level, specifically addressing VAW in Africa.'[30] The Protocol has been ratified by 37 countries, but due to the challenges of enforcing rights that appear to contradict cultural and religious beliefs in Africa, there is a need for continuous assessment of how effectively it is being adhered to by member States.

In concluding the account of the historical evolution of gender-based violence, two fairly recent reports will be considered. First, a report conducted in 2016, commissioned by the African Union with the support of the Office of the United Nations High Commissioner for Human Rights and UN Women, is informative. The purpose of the report was to contribute to an ongoing assessment of how effectively the Maputo Protocol and similar documents have contributed to women's rights in the region. The statistics revealed that

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25 Merry (n 19) 23.

26 Ibid 48.

27 Benson Omoleye Olukayode, 'An Analysis of the Challenges of Implementing Women's Rights under International Instruments in Africa' *Journal of Law, Policy and Globalization* (2017) (66) ISSN:2224-3259 <http://www.iiste.org>Journals/index.php/JLPG/article /view/ 39358/40467> accessed on 10 January 2018.

28 Chibueze Ngozi, Irehobhude Iyioha and Ebenezer Tope Durojaye, 'The Violence Against Persons Prohibition Act, the Maputo Protocol and the Rights of Women in Nigeria'*, Statute Law Review*, (2018) (39) (3) 313.

29 Nkolika Ijeoma Aniekwu, 'Domestic Violence in Nigeria: Negotiating Litigation as an Alternative to Non – Adjudicatory Dispute Resolution' in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 273.

30 Ngozi, Iyioha and Durojaiye (n 28) 313.

there are huge gaps that still need to be covered such as 'an estimated 130 million girls and women alive today have undergone FGM, mainly in Africa and 125 million African women and girls alive today were married before the age of 18' and 1 in 3 women have experienced either physical or sexual violence in their life.[31]

However, progress is being made as the report acknowledged developments which included that several countries had made provision in their laws against domestic violence, gender-based violence, marital rape and provided services for women that were victims of violence.[32] On the continent, in six countries, there are no legal protections for women against domestic violence, these are Burkina Faso, Cote d'Ivoire, Egypt, Lesotho, Mali and Niger. In several other countries, legislations do not address the whole spectrum of violence that women experience, particularly that deemed to take place in the private sphere. Thus, a comprehensive legal framework to eliminate all forms of violence against women is lacking in most States in the region, and where they do exist, they are often not implemented.

In the second report, research was conducted by the United Nations Office of the High Commissioner for Human Rights, giving a breakdown of progressive legislation that African countries have adopted to promote gender equality since the adoption of the Maputo Protocol. In this report, when considering Nigeria, it noted that the Violence Against Persons Prohibition Act was adopted in 2015.[33] This legislation attempts to address the major issues that constitute gender-based violence and give appropriate sanctions as well as provide remedies to the victims.

The Act was passed after a concerted effort of non-governmental organisations and activists in Nigeria advocating for reform of laws on GBV in the country. A sixty-five-member coalition was formed in 2001 from members of civil society, religious organisations and other stakeholders. It was tagged the Legislative Advocacy on Violence Against Women (LACVAW), and the initial secretariat was situated at the headquarters of Women's Rights Advancement and Protection Alternative (WRAPA). The organisations came together to consolidate on the efforts that they had all been making to pass various bills on violence against women in state legislatures and the National Assembly.[34] All the bills were merged together to produce one document that would negate archaic laws promoting gender violence and enact a law that proscribes a wide range of violence targeted at women. Initially, the bill was largely ignored by the predominantly male legislature, particularly because, even by nomenclature, it was evidently female-oriented. However, when the name was changed, and women were replaced with persons, after 14 years of advocacy and agitation, the bill was passed.[35]

*Prevalent Forms of Gender Based Violence in Nigeria*

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31 African Union, Office of the United Nations High Commissioner for Human Rights & UN Women, *Women's Rights in Africa* 11. <https://www.ohchr.org/Documents/Issues/Women/WRGS/WomensRightsinAfrica_ singlepages.pdf> accessed 23 March, 2019.

32 Ibid 4.

33 United Nations Office of the High Commissioner for Human Rights, *Developments in Laws Since the Maputo Protocol,* (2017) 25 <https://www.ohchr.org/Documents/Issues/Women/WRGS/DevelopmentsinLawsinfographics.pdf> accessed 18 April, 2019.

34 Women's Rights Advancement and Protection Alternative (WRAPA) (n 9) 1.

35 Ngozi, Iyioha and Durojaiye (n 28) 3.

The Violence Against Persons Prohibition Act, 2015, identifies the prevalent forms of gender-based violence in Nigeria and makes them criminal offences. The following is a description of some of the categories of gender-based violence.

*Physical Violence*

When violence is mentioned, the most obvious type that immediately comes to mind is physical violence. This term has been described as follows:

> The intentional use of physical force that results in bodily injury, pain, or impairment. The severity of injury ranges from minimal tissue damage, broken bones to permanent injury and death.[36]

It has been observed that physical violence is the most prevalent kind of abuse where physical force is used in a manner that causes injury or puts the victim in jeopardy of injury.[37] Another definition omits the term force, but states that it 'refers to negative or harmful acts carried out by a person against another which results in bodily pain or harm.'[38]

Examples abound, and some are: killing, strangling, beating, slapping, choking, pushing, biting, stabbing, burning and threatening with dangerous instruments. Traditional practices harmful to women, such as FGM (*female genital mutilation),* are among acts of physical violence.[39] Others are arm twisting, kicking, flogging with a belt or stick, throwing the person or throwing objects at the person, poisoning, pouring chemical substances upon, spitting, forcing the person to swallow a harmful substance, restraining the person from getting medical help and a host of other negative actions that can cause injury. VAPPA confirms this description of physical abuse in its' interpretation section. [40]

All of the definitions and examples above paint a clear picture of physical violence and are adopted as such. The summary of these and what is acknowledged as physical violence is aggression against a person that results in some form of bodily injury, however minimal or severe. The aggressor uses bodily parts, instruments or substances to intentionally hurt the victim to demonstrate control over or subjugate the victim.

*Psychological and Emotional Violence*

There is a type of violence that may not necessarily cause physical injury. Psychological and emotional violence has been explained to mean deeds that have an adverse psychosomatic effect on a woman.[41] The interpretation section of VAPPA states that 'emotional, verbal and psychological abuse means a pattern of degrading or humiliating conduct towards any person.'[42] Thus, the underlying aim and effect of psychological violence is to undermine the

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36 PSI, *Gender-based Violence: Evidence Series* (2016) 9. <https://www.psi.org/wpcontent/uploads/2016/06/GBV_EvidenceSeries_d1.pdf > accessed 8 January, 2018.

37 Uche (n 4) 242

38 Kenechukwu Mbajiorgu – Domestic Violence: The Problem Pervading Nigeria, in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 153.

39 Ibid.

40 VAPPA.

41 PSI (n 36) 10.

42 VAPPA.

person and make them feel worthless, which can be done by repeated insults, degrading treatment, negative criticisms privately and in public.[43]

Other actions that could constitute psychological violence are: threats to injure the person or those close to her, harassment at the place of work or seclusion from associating with others and being sequestered. In such instances, the woman may be forced to stop working, prevented from seeing family, friends, or even getting medical attention. Children could also be used as a tool of control, by threatening to hurt them, or to take them away or asking the children to watch their mother being battered or injuring the children in her presence.[44] This is reinforced by VAPPA, which gives examples of psychological abuse as constantly mocking, repetitive threats with a view to inflicting mental anguish and extreme possessiveness, which compromises a person's safety and sense of well-being.[45]

It is clear from above that psychological violence is a cumulative set of threatening actions, possibly combined with a series of verbal slurs, that have the effect of altering the psyche of the victim. Each action or insult on its own might not amount to much, but the repeated onslaught becomes intimidating and inflicts emotional suffering that is tantamount to physical pain. Clear-cut examples are given, so that it is not dismissed as stress that may occur in normal relationships. People may argue among themselves and verbally abuse a partner, but that does not suffice to be classified as psychological violence. It would only be considered so if it is a part of a pattern of coercive behaviour that is used as a means of control and causes the victim to live in fear.[46]

*Economic Violence*

Another form of violence that is wielded to harm others without necessarily physically hitting them is economic violence. In this instance, perpetrators take charge of the family's financial resources and hinder access. Economic violence has been defined as when a perpetrator administers the family's income and prevents the victim from having access. This can be achieved by ensuring that the victim does not work or collect her wages if she is employed, yet refusing to give her any allowance for upkeep and excluding her from financial decisions in the household. There can be economic violence in a family, irrespective of who is the breadwinner, and even if both partners are contributing. It does not even matter who the primary provider is or if both partners contribute.[47]

It is exercised in various ways; the perpetrator may resist any opportunity for financial independence by ensuring his partner does not develop herself through education or empower herself financially by getting a job or running a business. On the other hand, he may refuse to work himself and lay upon her the burden of caring for the family alone. The perpetrator takes complete control and makes his partner beg in order to get money to meet basic needs. This kind of behaviour is exhibited in spite of the economic status of the family.[48] Economic violence is all about the manner in which the finances of a family or a couple are managed. For instance, it is economic violence where coercion is used to

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43 Olomojobi (N11) 77.
44 PSI (n 16) 10.
45 VAPPA.
46 Mamta Chandrashekhar, *Human Rights, Women and Violation,* 99, <https://books/google.com.ng> .
47 PSI (n 16) 10.
48 Chandrashekhar (n 46) 98.

extricate resources from one partner or that partner is used to get money from others, such as family members. In maintaining control, the perpetrator may refuse to provide money to run the household and prevent the victim the freedom to spend.[49] The definition given by VAPPA is that:

> Economic abuse means forced financial dependence, denial of inheritance or succession` rights, the unreasonable deprivation of economic or financial resource to which any person is entitled or which any person requires out of necessity. [50]

The primary objective of economic violence is to acquire control and exercise power over the woman. She is kept on a tight leash financially so that she is unable to do anything unless it is scrutinised and approved. She is rendered completely dependent and financially handicapped[51]. It can therefore be deduced that economic violence is a fiscal means by which a person is made vulnerable to suffering and servitude. A partner abuses the intimacy that has merged the family resources together and exploits it to suppress and hold sway over the other partner.

*Domestic Violence*

According to Black's Law Dictionary, domestic violence is the consistent mistreatment of any member of a family in a manner that could be harmful or cause misery. A member of a household abuses the rights of someone within the family by obnoxious behaviour.[52] It is also described as 'the inflicting of physical injury by one family member or household member on another; also, a repeated /habitual pattern of such behaviour.'[53] This form of violence has its domain in the private sphere, by people who are close to the victims. It involves not just physical violence but is usually a combination of physical, psychological and economic violence (as defined above), either one or the other or all of them.

It is a global problem that governments have been attempting to tackle and control over the years. The Home Office in Britain describes the phenomenon as 'any violence between current or former partners in an intimate relationship, wherever or whenever the violence occurs. This violence may include physical, sexual, emotional and financial abuse.'[54] The United States Office on Violence Against Women defines it as habitual offensive conduct used to control one partner by another. This befalls people despite their age, faith or race, and sexual, psychological, physical, economic or emotional means can be employed to inflict the abuse.[55]

In Nigeria, VAPPA once again broke new ground in domestic legislation by recognising, defining and criminalising domestic violence. It provides that domestic violence is 'any act perpetrated on any person in a domestic relationship where such act

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49 Haseena and others (n 1) 69.
50 VAPPA.
51 Olomojobi (n 11) 76.
52 Bryan A. Garner (ed), *'Black's Law Dictionary'* (Thomson West 2004) 149.
53 Mbajiorgu (n 38 ) 239.
54 Ngwaba (n 13) 4&5.
55 Ozioma Izuora 'The Perspective of Nigerian Women on Domestic Violence' in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 66 & 67.

causes harm or may cause imminent harm to the safety, health or well-being of any person.'[56]

It is also known as intimate partner violence or spousal abuse, and in most cases, it is a man who is in a position of trust who abuses the power he has over the woman.[57] This abuse is not just a random occurrence or a temper tantrum, but has been classified as a form of torture. Violence and psychological torture are employed routinely to control the victim, causing temporary physical pain and permanent psychological damage. [58] Obviously, in some cases, the physical pain could result in permanent disability or even death. Although it is usually between intimate partners, it should not be restricted to such relationships but broadened to include members of households. One author explains that such violence is often between spouses, but could actually be among any members of a household when they engage in acts of violence towards another. A list of such acts, although not exhaustive is: female infanticide, child sexual abuse, marital rape, battering, incest, emotional abuse, acid bathe, neglect and abandonment of wife and children, forced sterilization, amongst others. [59]

As the word domestic suggests this type of violence occurs within, what should be, the safe surroundings of home or family. An environment that has such significance that the privacy of the home is guaranteed and safeguarded by the constitution. This may explain the reluctance with which the State ventures into matters in this domain. Domestic violence is when one member of a family or a household treats another cruelly, viciously and inhumanely. Any one or all the forms of violence could be employed – physical, psychological, economic as described above, or sexual violence and harmful traditional practices as outlined below. The principal factors to be grasped in understanding this term are that the violation is inflicted by those closest to the victim in the environment in which the victim should be safest.

*Sexual Violence*

When any sexual act, remarks, or advances are directed against a person using coercion, whatever their relationship may be with that person, this has been said to amount to sexual violence. [60] Olomojobi describes the term as 'when a woman is physically pressured, coerced, forced against her wish by a male counterpart to have sexual intercourse against her consent, or she is afraid of the consequences of her refusal to do so.'[61] He stresses the essential aspect of duress, meaning that the woman is not a willing participant, but restricts his definition to sexual intercourse. The definition of rape has been expanded in Section 1 of VAPPA so that rape can be perpetrated by sexual assault through the vagina, anus or mouth or by an object. In addition, the provision is couched so that men may be victims and women

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56 VAPPA.

57 Suzie Onyeka Ifuani 'Domestic Violence and Rule of "Protective Law"' in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 149.

58 Tania Tetlow, 'Criminalizing "Private" Torture' *William & Mary Law Review* (2016) (58) 6.

59 Roseline Tasha – Prevalence of Domestic Violence in Nigeria: Implication for Counselling in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 321.

60 PSI (n. 36).

61 Olomojobi (n.11) 62.

perpetrators. There is also provision for the offence of gang rape with stiffer penalties in place.

However, sexual violence is not just about rape, it includes sexual harassment, touching of sexual parts without consent, forced exposure to pornography, forced sterilization and abortion, trafficking for sexual exploitation, incest and forced marriage.[62] Limiting the definition to forced sexual intercourse, would exclude other painful and humiliating experiences that women endure; violations like forced nudity, strip searches, compulsory miscarriages, rape with objects and deliberate sexual disease transmission.[63] This kind of violence can occur in all kinds of settings: within the home, in the workplace, in schools, during periods of conflict and in refugee or internally displaced persons camps. The setting does not excuse or justify the action. It remains sexual violence in whatever circumstances. This position is supported by Alubo, who opines that 'sexual violence against women transcends cultural, religious, ideological and national boundaries' and can take place both at home and in times of conflict.[64]

Men are usually the perpetrators of sexual violence, even though they already have a relationship with the victim, and sometimes they are total strangers. These predators come from diverse backgrounds; they may be wealthy, educated, religious, or have low income, poor education and be irreligious. [65] A very large proportion of them are never punished because many women do not report the crime. Thus, sexual violence for the purpose of this work means actions of a sensual nature that are directed, using duress, towards a person in a degrading or threatening manner. As pointed out earlier it is not just about rape alone but includes other derogatory sexual advances like the examples given. It occurs in almost every setting and could be carried out by a person or people the victim is familiar with or total strangers.

*Harmful Traditional Practice***s**

Art. 1 of the Maputo Protocol defines harmful practices as "all behaviours, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity."[66] Merry simply states that the term refers to observances that have been validated by a culture but are detrimental to a woman's well-being.[67] These traditional practices are injurious to physical and mental health and impede the full and free enjoyment of a person's human rights; the majority of whom are women and girls.[68]

Consolidating on this description, Alubo explains that:

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62 WRAPA (n 9).

63 Rashida Manjoo & Calleigh McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' *Cornell International Law Journal* (2011) (44) 12 <https://www.lawschool.cornell.edu>ILJ > accessed 8 January, 2018.

64 Alphonsus O. Alubo, *Modern Nigerian Criminal Law* (3rd edn., University of Jos Press, 2018) 342.

65 PSI (n 16) 3.

66 Office of the United Nations High Commissioner on Human Rights, *'Women's Rights in Africa'* https://www.ohchr.org/Documents/Issues/Women/WRGS/WomensRightsinAfrica_singlepages.pdf.

67 Merry (n 19)

68 PSI (n 16) 3.

> Harmful traditional practices are forms of violence which have been committed primarily against women and children in certain communities and societies for so long that they are considered, or presented by perpetrators, as part of accepted cultural practices.[69]

These rites that are carried out under the guise of tradition are detrimental to the health and well-being of those who are at the receiving end, usually women and children. Some of these practices can best be described as torture or degrading treatment and have no justification whatsoever in present-day realities. They are outright human rights violations, and vulnerable people subjected to them should be protected by society.

Examples of harmful traditional practices are female genital mutilation, early or forced marriage, widows being inherited by male relatives of the deceased, deprivation of women from the right to own land, and exclusion from inheritance rights.[70] They also include witch-hunting, caste-based discrimination or violence and marital rape. These cultural practices that are harmful to women's human rights to bodily integrity and expression have avoided national and international scrutiny because they are seen as cultural practices that deserve tolerance and respect.[71]

These practices stem from the patriarchal traditional settings that were discriminatory against women, viewing them more as objects than as human. Therefore, it manifests in the following ways: male children are preferred to female and celebrated at birth, girls are given away early in marriage without their consent and a price is collected as though they are goods to be purchased. In the course of the marriage, the husband is permitted to correct and discipline the wife, even by beating. The woman is not allowed to own property. She may only farm for her father or husband. Upon the death of her husband, she is usually accused of being the one responsible for his death, subjected to harrowing experiences under widowhood rites and can then be passed onto a designated male relative as a wife. Elderly women are not exempt from this debasing attitude. They are sometimes accused of witchcraft and can be made to suffer abusive treatment by local herbalists or lynched by a mob.[72]

It is evident that harmful traditional practices are conventional activities entrenched within a culture that are detrimental to the physical and mental condition of females. They may occur, depending on which culture, at any or several points throughout the entire life cycle of the woman. She is made vulnerable and exposed to all manner of indignity, which leads to physical injury, handicaps her economically and destabilises her psychologically. Some of these harmful practices will be elaborated upon below.

*Female Genital Mutilation (FGM)*

The Regional Plan of Action, to Accelerate the Elimination of Female Genital Mutilation by the World Health Organisation Regional Office for Africa defines the practice as any

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69 Alubo (n 64) 518.

70 Ibe Okegbe Ifeakandu – An Appraisal of the Impact of the Battered Women Syndrome on Criminal Defences in Nigeria in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 28.

71 Ibezim (n 10) 187.

72 Ezirigwe (n 16).

process by which the female genital organs are partially or totally removed for cultural or non-therapeutic reasons.[73] It has also been defined as:

> A traditional practice that involves cutting or altering the female genitalia as a rite of passage or for other socio-cultural reasons. Female genital cutting refers to practices that involve the surgical manipulation of the female genitalia.'[74]

The Violence Against Persons Prohibition Act refers to FGM as the circumcision of a girl or woman and defines it as 'the cutting off all or a part of the external sex organs of a girl or a woman other than on medical grounds.'[75] The damage inflicted is severe and permanent, and yet there is no known medical benefit for FGM. It is a clear form of violence and of gender-based discrimination. Indeed, medical experts have referred to it as, FGM has been defined by medical experts as, an intrusive and damaging procedure where part of the entire clitoris is surgically removed, usually prior to adolescence.[76] It hinders the enjoyment of the highest attainable standard of physical, sexual and reproductive health as well as mental integrity. [77]

The immediate effect is severe pain, shock and haemorrhage (bleeding). This could be followed by tetanus or sepsis, urine retention, open sores in the genital region and injury to nearby genital tissue. Furthermore, there could be long-term results of having recurrent bladder and urinary tract infections, cysts, infertility, an increased risk of childbirth complications and new-born deaths and the need for later surgeries to allow for sexual intercourse and childbirth. The procedure could also cause death. Indeed, female genital mutilation does not have any health benefits but is carried out to ensure chastity by limiting sexual pleasure. [78]

There are different forms of FGM employed by various peoples, but they can be classified into four groups. There is clitoridectomy, which is the partial or total removal of the clitoris and/or the prepuce. Also, excision involves removing the clitoris together with all or part of the labia minora. Another one is infibulation, where there is a removal of part or all of the external female genitalia and stitching and narrowing of the vaginal opening, leaving a small hole for urine and menstrual flow. Any other is described as unclassified, which includes all harmful procedures to the female genitalia for non-medical purposes[79]

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73 Olomojobi (n 11) 79.

74 Solomon Masho Atomsa and M.V.R. Raju, 'Female Genital Mutilation in Ethiopia: Health and Human Right Issue', *Journal of Law, Policy and Globalization* (2014) (30) 97 <<https://www.iiste.org/journals/index/php /JLPG/ISSN 2224-3259 > accessed 10 January, 2018.

75 See Violence Against Persons (Prohibition) Act (2015) S. 46.

76 Timothy F.Yerima and Daniel F. Atidoga, 'Eradicating the Practice of Female Circumcision/ Female Genital Mutilation in Nigeria Within the Context of Human Rights' *Journal of Law, Policy and Globalization* [2014] (28) 130 http://www.iiste.org/Journals/index.php/JLPG/article/ view/15003 ISSN 2224-3259> accessed 10 January 2018.

77 UnitedNations Office of the High Commissioner for Human Rights, *Developments in Laws Since the Maputo Protocol,* (2017) 39. https://ww.ohchr.org/Documents/Issues/Women/WRGS/DevelopmentsinLawsinfographics.pdf accessed 18 April 2019

78 Cheluchi Onyemelukwe, Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015 *DePaul Journal of Women, Gender & the Law* (2016) (5) Article 3 (De Paul University Libraries) 32.

79 Atomsa and Raju (n 74) 97.

Globally, 'FGM has been recognised as a violation of a female's right to health, security and physical integrity, the right to be free from torture, cruel, inhuman and degrading treatment and the right to life (where the procedure results in death).'[80] Based on the above, this act should be referred to as mutilation because circumcision gives the process an air of respectability. This is a heinous exercise of brutality against the sexuality as well as the physical and mental health of a woman. In order to preserve her purity for the man, her genital organs are mutilated in a torturous manner, which impedes her from any sexual pleasure in the future. Most of those who practice it refer to it as female circumcision to make it appear more acceptable. It is so deeply entrenched in such societies that women are the propagators and the practitioners. It is an extremely painful and distressing experience for the victim, often carried out without anaesthesia in unhygienic conditions, leading to a host of medical conditions and mental trauma.

*Harmful Widowhood Practices*

It is the traditional practice in many parts of Africa, and almost all ethnic groups in Nigeria, that when a woman loses her husband and is grieving, she is forcefully engaged in degrading cultural practices, that violate her right to human dignity. Harmful widowhood practices are such degrading treatment that widows are subjected to. They are usually accused of being responsible for the death of their husbands and have to undergo fetish rituals in order to prove their innocence.[81] There are different harmful practices meted out to widows depending on which ethnic group they come from. Examples of these are that the widow is secluded from others, 'dethroned' or forced to remain seated on the floor and could be subjected to purification rites that are not dignifying. She could be shorn and prevented from bathing or changing her mourning garb, known as defacement. She may either be disinherited from the estate of her late husband or be inherited as one of the 'belongings' of the deceased. These actions amplify the magnitude of suffering the widow undergoes during an already painful period.[82]

The widow may also be required to drink the water used to wash the corpse of her husband; be thrown across the coffin with the condition that her leg does not strike it, else it proves her complicity in her husband's death. Physical and sexual harassment are sometimes involved in the harmful widowhood practices.[83]

A classic example of this practice is reported in the case of Theresa Onwo v Nwafor Oko & Ors.[84] The plaintiff, Mrs. Onwo, claimed that at the death of her husband, the respondents (members of the family of the deceased) forcefully shaved her head, assaulted her grievously and locked her up in a room and removed all her property to conform with the tradition of mourning the dead. She sought a declaration that the respondents had violated her fundamental human rights to freedom of worship, conscience and religion, right to freedom of association, right to dignity of human person and right to own property as

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80 Onyemelukwe, (n 78) 32.

81 Ifemeje Sylvia Chika & Umejiaku Nneka - Discriminatory Cultural Practices and Women's Rights among the Igbos of South-East Nigeria: A Critique, in Epiphany Azinge and Lilian Uche (eds), *Law of Domestic Violence in Nigeria* (Nigerian Institute of Advanced Legal Studies 2012) 20.

82 Ibezim (n 12) 205.

83 Ibid 207.

84 (1996) 6 NWLR (pt. 456) 584.

guaranteed by the constitution. The Court of Appeal held that such practices were discriminatory against women and their fundamental human rights should be respected.[85]

The same court reiterated its position against such practices that are repugnant to natural justice and good conscience. In Nnanyelugo v Nnayelugo,[86] the Court of Appeal held in favour of a widow that 'the courts are poised to do substantial justice and not to allow repugnant traditions, customs and traditional law of inheritance or even technicalities distract them from achieving substantial justice.' The African Charter on the Rights of Women in Africa (2003) in Article 20 enjoins its members to take appropriate measures to protect the rights of widows.

Thus, harmful widowhood practices are when, through cultural rites, a widow, in her vulnerable state, is subjected to all manner of human rights abuses. She is often presumed guilty of her husband's death until she can prove herself innocent by undergoing inhumane and unhygienic rituals. Her freedom of movement is impaired, as in some customs, she may not leave the house for days on end. She is treated as a chattel that can be inherited by her husband's male relative and is prohibited from inheriting her husband's estate. Sometimes, her children are taken away from her and given to various relatives. The plight of the widow in Nigeria is often a desperate one.

## CONCLUSION

Violence against persons has been vividly portrayed above as not just physical force brutally applied to occasion bodily injury, but comprising various kinds of harmful actions, threats, inactions and traditions that have an adverse effect psychologically, economically, and sexually. The major targets of such violence have been identified as females, and the categories of violence expounded on above are those that are prevalent in Nigeria. The historical evaluation reveals that the concept of gender-based violence has developed from not being recognised globally to being integrated as a human rights violation. It has evolved from being defended as part of African culture to being criminalised by legislation in Nigeria.

The tragedy would be that after the giant strides taken in enacting this transformative legislation that it is not utilised. Therefore, it is recommended that sufficient publicity be given to the content of the Violence Against Persons Prohibition Act. Concise editions of the law could be translated into major Nigerian languages and simplified English, then circulated by the National Orientation Agency to all local governments for dissemination. There should be massive media campaigns on the contents of the law to create awareness among perpetrators and victims. It is further recommended that sufficient legislation should be properly funded. There should be a budget to back the enforcement of the law, as investigators, prosecutors and judicial officers would need to be trained to enforce it. Finally, women's rights activists should encourage women to report the offences under the law to the authorities for prosecution and stand by them to ensure that the prosecution is followed through to a logical conclusion. It is only the proper engagement of the law that will lead to a society where gender-based violence is reduced to the barest minimum.

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[85] Olomojobi (n 11) 85.
[86] (2008) ALL FWLR (pt. 401) 897.