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Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015

Cover Page Footnote

Dr Cheluchi Onyemelukwe, a health law and policy expert, has particular interests in gender and women's rights and the intersections of gender and health. She has advised on a wide range of legal and policy issues in the health, gender, social protection and inclusion, governance and development sectors. She has considerable experience in developing, drafting, researching, and analysing policies, legislation, and regulations. She is the founder of the Centre for Health Ethics Law and Development (CHELD) which does extensive work on violence against women, including developing online resource for domestic violence, the first of its kind in Nigeria, available at: <http://www.domesticviolence.com.ng/>

LEGISLATING ON VIOLENCE AGAINST WOMEN:
A CRITICAL ANALYSIS OF NIGERIA'S RECENT
VIOLENCE AGAINST PERSONS (PROHIBITION) ACT, 2015

Cheluchi Onyemelukwe

Abstract

In many African countries, as in other countries around the world, women suffer violence on the basis of their gender. Unfortunately, many countries lack legislation that provide effective protections against gender-based violence. Evidence from Nigeria, including the passage of new legislation at federal and state levels, suggests some progress. How effective such laws will be is yet to be seen. This paper begins the process of investigating the potential for the effectiveness of these new laws by conducting an in-depth analysis of Nigeria's recently enacted Violence Against Persons (Prohibition) Act, 2015. This examines the relevance of the Act and its significance for issues around violence against women. This critique investigates the provisions of the Act alongside internationally accepted best practices and standards on legislation against gender-based violence. From this analysis, the article identifies gaps within the provisions articulated in the Act. It also examines the place of the VAPP Act amongst the pantheon of extant laws addressing violence against women. It argues that, by itself, the law will have only a limited impact, in part because of its limited geographical reach. This impact can only be moderated by intensive advocacy to ensure that this legislation is adopted by all States in the federation. The paper suggests the next steps after enactment to ensure effective implementation. The article concludes that the enactment of the Act is a positive step, which has the potential to provide effective protections for women against gender-based violence. However, gaps exist in the legislation, which will need to be remedied. Finally, specific actions will need to be taken to move the law from words on paper to active implementation and protection of women from gender-based violence in Nigeria.

I. INTRODUCTION

In many African countries, as in other countries around the world, women suffer violence on the basis of their gender. Unfortunately, the law is not always available to help them.¹ This is in part due to the predominant cultural systems of patriarchy and the consequent subordinate status of women, which filters through to low rates of reporting, a tacit tolerance of and condoning of violence against women, and the reluctance to engage legislative processes in addressing them. Evidence from Nigeria, including the passage of new legislation at federal and state levels, indicates that a shift is occurring. How effective such laws will be is yet to be seen. This paper begins the process of investigating the potential for effectiveness by conducting an in-depth analysis of one such recent legislation.

In Nigeria, 28 per cent of all women, almost a third of all women in the country, have experienced physical violence.² This is a significant number in a country of about 170 million, where almost half are women.³ There is no data for women who have undergone emotional, psychological or abuse but evidence from the work of my organisation and anecdotal evidence suggest that the figures are likely more considerable than physical violence. Other statistics indicate that this problem remains enduring, with young women between the ages of 15 and 24, being most likely to have experienced physical violence in the past one year.⁴ They have also been found most likely to justify violence, including wife beating.⁵ As a result, in 2012, the Report, *Gender in Nigeria*, recommended, amongst other

¹ ENIKO HORVATH ET AL., *Gender Based Violence Laws in Laws in Sub-Saharan Africa*, THE CENTER FOR REPRODUCTIVE RIGHTS, Feb. 22, 2008, at 3 (noting that many African countries do not have laws on gender-based violence).

² National Population Commission and ICF International, *Nigeria Demographic and Health Survey*, at 304 (2013) (hereinafter NDHS).

³ The NDHS further showed that educated women were more likely to have experienced domestic violence. Further women who live in urban areas are more likely than their counterparts who live in rural areas to have experienced domestic violence. Women in the southern part of the country were also more likely to have experienced physical violence more than women in the northern part of the country NDHS, *supra* note 2, at 305-06.

⁴ British Council Nigeria, *Gender in Nigeria Report 2012: Improving the Lives of Girls and Women in Nigeria*, at 48 (2012).

⁵ NDHS, *supra* note 2, at 292-93.

things, that a national campaign be mounted against gender-based violence and greater legal protection be provided to victims of gender violence.⁶

Legislation provides a solid foundation for effective, coordinated, legal action against violence against women. While only a part of the solution, it offers the positive attributes of sustainability, providing a foundation that can survive successive governments. often *The UN Women's Handbook for Legislation on Violence Against Women* notes that “States have clear obligations under international law to enact, implement and monitor legislation addressing all forms of violence against women.”⁷

Unfortunately, however, Nigeria currently has disparate pieces of legislation, which do not address violence against women or gender-based violence uniformly across the country. A few states have passed legislation on domestic violence, harmful traditional practices or gender-based violence. A few others have attempted to do so unsuccessfully. Much of the existing legislation is out-dated, not sufficiently comprehensive, not specifically directed to this grave problem and not adequately enforced. Until recently, there was no comprehensive legislation on violence against women at the national level.

Activism for the enactment of legislation often helps draw women's groups with disparate interests in improving women's conditions together, facilitating often formidable advocacy on violence against women.⁸ Human rights and women groups have, thus, over the years pushed for the passing of comprehensive legislation against gender-based violence/violence against women. Their efforts in the past had either been rebuffed or stalled. But, as I describe in subsequent sections, the coming together of different groups eventually helped mobilise action to improve the legislation landscape for violence against women in Nigeria. The result of that activism was the signing into law of the Violence

⁶ British Council Nigeria, *supra* note 4, at 65.

⁷ UN Women, *Handbook for Legislation on Violence Against Women*, (2012) 1.

⁸ Chris Hunter, *The Master's Tools Revisited: Can Law Contribute to Ending Violence Against Women?* 37:6 IDS BULLETIN 57, 59 (2006).

Against Persons Prohibition Act⁹ on the May 25, 2015, after over ten years in the legislative process.

The enactment of the Violence Against Persons (Prohibition) Act (hereafter, the “VAPP Act” or “the Act”), which proposes wide-ranging provisions of many aspects of violence, including violence against women, is therefore a pivotal event with the potential, arguably, to transform the landscape of violence against women in Nigeria. It is an amalgamation of different bills, which sought to abolish all obsolete laws relating to matters such as rape and assault, and enact new laws on hitherto neglected areas such as domestic violence. It aims to improve upon similar provisions on violence as contained in Nigeria’s Criminal and Penal Code. In part, initial delays stemmed from the gender-sensitive nature of earlier bills. Thus, it was initially focused on violence against women. Passage of this bill proved difficult for many years because of the heavily masculine legislature’s bias against focus on women’s issues.

The Act is the latest, most wide-ranging legislation against persons, including women, in Nigeria. It is thus important to examine what contributions it makes or has the potential to make in providing women with protections against violence. Also, for other African countries with similar cultures and colonial backgrounds and legislative gaps in protections for women from gender-based violence an exploration of the history and the subsequent legislative provisions enacted, may prove helpful as they navigate the process of legislating on violence against women. The Nigerian experience provides a history that one can draw lessons from. This article also identifies how to best implement these provisions going forward in order to achieve the desired effect.

In subsequent sections, I provide an overview of the provisions of the Act, focusing on the provisions of the VAPP Act that are most relevant to gender-based violence or

⁹ See generally Violence Against Persons (Prohibitions) Act (2015) (Nigeria).

violence against women. Violence against women in this article means violence experienced by women on account of their gender; thus, for convenience I use “violence against women” and “gender-based violence” interchangeably. I provide an analysis of the VAPP Act, examining its relevance and significance for issues around violence against women. I do this by examining the provisions of the Act against best practices on gender-based violence into compliance with international standards and best practices. I adopt the model legislative frameworks created by the United Nations and drawn from the experiences of a variety of countries. From this analysis, I identify gaps within the provisions articulated in the Act. Further, I argue that more work will need to be done to ensure that the potential of the law to protect women, to provide uniform protections, and to ensure conformity with best practices. Further, I examine the place of the VAPP Act amongst the pantheon of extant laws addressing violence against women. In this regard, I argue that by itself the law will have only a limited impact because of its limited geographical reach. This can only be mitigated by intensive advocacy to ensure that this legislation is adopted by all States in the federation. My analysis aims to underscore the significance of the Act, identify the gaps in the legislation with respect to effective protections for women against gender-based violence and its effects and suggest the next steps to ensure effective implementation. I conclude that the Act is a step in the right direction but that gaps exist in the legislation, and that specific actions will need to be taken to move the law from words on paper to active implementation and protection of women from gender-based violence in Nigeria.

II. BACKGROUND AND OVERVIEW OF THE VAPP ACT

Violence against women has been defined by the United Nations Declaration on the Elimination of Violence against Women as, “[a]ny act 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 in private life.”¹⁰ In international law, the recognition of women’s rights in the public and private sphere, including the right to protection against gender-based violence, has been clearly articulated in various instruments including the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*¹¹ and the *United Nations General Assembly Declaration on the Elimination of Violence against Women*.¹²

Nigeria is a signatory to CEDAW though it has failed over many years of advocacy to domesticate it. CEDAW recommends that state parties must ensure that legislation on gender-based violence provides adequate protection to all women and respect for their integrity and dignity.¹³ It also recommends that state parties should take all legal and other measures are necessary to provide effective protection of women against gender-based violence, including effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence.¹⁴ Nigeria is also a signatory to the *African Charter on Human and Peoples Rights*, which it has taken the extra steps to domesticate, thus making the Charter domestic law in Nigeria. The African Charter provides that every individual shall have the right to the respect of the dignity inherent in a human being and prohibits all forms of exploitation.¹⁵ In addition, the *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, to which Nigeria is a signatory, requires State parties to enact and enforce laws to prohibit all forms of

¹⁰ United Nations General Assembly *Declaration on the Elimination of Violence against Women* G.A. Res. 48/104 (I), U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

¹¹ Committee on the Elimination of Discrimination against Women, Rep. on its 11th Sess., 1992, U.N. Doc. (1992) This was preceded by the UN General Assembly Declaration on the Elimination Of Discrimination Against Women (CEDAW) (1967).

¹² *United Nations General Assembly Declaration on the Elimination of Violence against Women* G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

¹³ Committee on the Elimination of Discrimination against Women, Rep. on its 11th Sess., 1992, U.N. Doc. ¶ 24 (b), (t) (1992).

¹⁴ Committee on the Elimination of Discrimination against Women, *supra* note 11 at ¶ 24.).

¹⁵ African Charter on Human and Peoples’ Rights, Oct. 21, 1986, 1520 U.N.T.S. 217, Art. 4-5.

violence against women,¹⁶ and take all necessary legislative and other measures to eliminate harmful practices.¹⁷

The enactment in 2015 of the VAPP Act can be said to be a measure in line with Nigeria's international obligations under CEDAW and the *Protocol to the African Charter*. The VAPP Act came into existence to address gaps that existed in the protections and remedies available to women who had suffered various harms as a result of violence meted out to them on account of their gender. Many women experienced domestic violence, including financial abuse, abandonment and eviction from their homes. The discrimination embedded in the law was further exacerbated by the active discrimination experienced by women in accessing what limited justice was available. Patriarchal attitudes prevailed and violence against women in their homes were often considered (and continue to be considered) private matters to be settled within the family. These attitudes prevented women from seeking redress from law enforcement for matters such as rape, child marriage, harmful traditional practices and other kinds of violence. These attitudes and experiences remain prevalent.

The extant criminal laws in the country, the Criminal Code operative in the South and the Penal Code in force in the North did not adequately protect women from violence. For example, while rape was a crime punishable by life imprisonment, marital rape was not covered under either Code—sexual relations being traditionally considered a right of the husband. The criminal law did not allow for negotiations or provide civil remedies which can be as, indeed sometimes more relevant to a woman. Some provisions in the Criminal Code delineate mild punishments for sexual violation, permit spousal or marital rape. Other

¹⁶ Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, African Comm'n on Human and Peoples' Rights, Art. 4(2).

¹⁷ Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *supra* note 16, Art. 5.

provisions in the Penal Code allow husbands to beat wives in chastisement.¹⁸ Offences such as domestic violence were not provided for in the two principal pieces of criminal legislation. In summary, existing laws were inadequate, gave impetus to inequality, were discriminatory to women, and allowed violence against women. This continues to be the situation in many cases.

Women's rights and other civil society groups began to agitate for a change: a comprehensive reform of the extant laws to ensure protections for women against violence and other forms of discrimination. As Nwankwo notes:

The idea of a separate law on violence against women was therefore conceived because it was extremely difficult for Nigerian women to access existing remedies satisfactorily. The obstacles ... are the patriarchal nature of the society and the attitude of the police that matrimonial misunderstandings should remain in the private realm.¹⁹

Over the years, women's groups in Nigeria have advocated for the repeal of discriminatory provisions in the law and for the enactment of new law to cover acts of violence against women not previously covered. Legislative advocacy by different groups has resulted in the development of new laws at State and Federal levels. At the Federal level, the Child Rights Act, which amongst other things prohibits child marriage and sexual offences against children, was enacted in 2003, domesticating to a large extent the *Convention on the Rights of the Child*. The federal government also passed the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act in the same year. At the state level, several states, such as Edo and Osun states, passed laws to criminalize female genital mutilation. Twenty-four states have adopted the federal Child Rights Act, which prohibits child marriage. Other states criminalized harmful widowhood practices, including Cross River, Oyo, and Anambra, while others criminalized domestic violence, such as Lagos,

¹⁸ Penal Code Act Cap. (2), § 55 (Nigeria).

¹⁹Oby Nwankwo, Effectiveness of Legislation Enacted to Address Violence against Women in Nigeria, 11 (May 30, 2008), http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20_Oby%20Nwankwo_.pdf.

Ekiti, Ebonyi, and Jigawa. These laws have varying provisions on the same matter.²⁰ Many of these pieces of legislation are fragmentary, covering only certain aspects of violence against women and girls but not others, thus still leaving gaps in protections for women.

The upshot is that there remained a need for comprehensive legislation covering all aspects of violence against women on account of gender. This problem can be argued to be solved, to great degree, by the VAPP Act, which provides protections against a wide range of types of violence against women. Advocacy for the Act began around 1999 when the current democratic dispensation began after many years of military rule. Many women's rights and civil society groups came together to advocate for a comprehensive law, which would protect women against all kinds of violence experienced in Nigeria as a result of their female gender. The Legislative Advocacy Coalition on Violence Against Women (LACVAW), an umbrella body of various women's and civil rights group, developed the Violence against Women Bill which was presented to the National Assembly in 2002.

The male-dominated body also resisted the addressing of issues relating to marital rape. As a pragmatic, though some might argue regressive, step, the Bill was changed to the Violence Against Persons (Prohibition) Bill, receiving much more support than had hitherto been the case. Following advocacy efforts by stakeholders, public hearings were held in March 2015, followed by passage by the Senate. Continued advocacy eventually culminated in Presidential Assent in 2015.²¹

However, the legislators felt that a gender-neutral approach would be more inclusive. Thus, the bill, originally submitted as the Violence Against Women Bill, was changed by the legislators to read the Violence (Prohibition) Bill, 2003. After many years of advocacy and

²⁰ For instance, Jigawa State excludes physical abuse committed in accordance with the personal law of the husband in its definition of domestic violence whereas Lagos State and Ekiti State laws criminalise all physical abuse.

²¹ Edosa Oviawe, Background to the Passage of the VAPP Act: Legislative Advocacy Process and the Journey at the National Assembly, 1 (2015).

changes in government, the Act was finally signed into law in May 2015 in the dying days of the last administration.

What does the Act provide? The Act defines violence as “any act or attempted act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situations.”²² In this regard, it provides a broad description of acts that may be described as violent. It does not limit violence to physical violence or sexual violence but also covers economic harm.

The Act has forty-seven sections, is divided into six parts, and has a schedule. The Act provides for a range of offences, twenty-six in all, which constitute violence. Importantly, for the purposes of violence against women, these include, but are not limited to, provisions criminalising rape, physical injury, spousal battery, harmful traditional practices, intimidation, coercion, and political violence. The Act, among other things, prohibits female circumcision, forceful ejection from home and harmful widowhood practices. It also prohibits abandonment of spouses, children and other dependents without sustenance. Each of these attracts some penalties ranging from life imprisonment in certain cases of rape, to two years imprisonment or the option of a fine for giving false information to the judiciary. The Act also provides for the issuance of a protection order to victims of domestic violence.

Amongst its innovative and progressive features is the criminalisation of matters previously not explicitly recognised as offences under Nigerian law. These include harmful traditional practices, female genital mutilation, emotional abuse, abandonment, and attack with harmful substances. The definition of rape is now inclusive and gender-neutral.²³ The law also provides for compensation for rape as well as for criminal sanctions.²⁴ It also requires the establishment of a sex offender register, which should be helpful in preventing

²² Violence Against Persons (Prohibitions) Act (2015) Art. 46 (Nigeria).

²³ *Id.* Section 1.

²⁴ *Id.* Section 2.

further crime and protecting potential victims. The Act also recognises the important role of international law. Section 38(1) provides that victims of violence have the right to all remedies allowed under international law. Nigeria has ratified several international instruments, which afford remedies and protective mechanisms with respect to violence against women.” These include the *Convention on Elimination of Discrimination Against Women*, domesticated the *African Charter on Human and Peoples Rights*, the Convention on the Rights of the Child, domesticated as the Child Rights Act, law in 24 states) and signed the *African Protocol on Human and Peoples’ Rights on the Rights of Women in Africa* (Maputo Protocol). It is, however, important to note that the provision of Section 38 would not preclude the requirement for domestication of international treaties as required by the Constitution of the Federal Republic of Nigeria.²⁵ What it does achieve is to give further impetus to broaden the scope for wide interpretation of the provisions of the Act, particularly with respect to the rights and entitlements of victims.

The questions that must follow this apparent victory for women would include the following: How comprehensive are the protections contained in the Act? Does the Act align with international best practices on violence against women? How effective is the Act likely to be in solving the challenges of violence against women in Nigeria, given its provisions and the practical realities? In subsequent sections, with a clear eye on the issue of violence against women, this article dissects several of the Act’s provisions.

III. KEY COMPONENTS OF LEGISLATION ON VIOLENCE AGAINST WOMEN

It is clear that the VAPP Act is innovative and a step in the right direction in the protection of women and other victims of violence. Matters that have not received any recognition under Nigerian law, for instance economic abuse, a predominant kind of gender-based violence which Nigerian women have endured in the past, are addressed in this Act.

²⁵ *Constitution of the Federal Republic of Nigeria*, 1999, Section 12.

The questions that may arise, however, are how well the Act protects women and whether there are further gaps in the law that may need to be addressed in the future.

In order to engage in an examination of the Act, I begin by identifying briefly some of the best practices that have developed internationally on the enactment of legislation on violence against women. The aim is to measure the VAPP Act against international standards that have developed over time and which have drawn from the benefit of the experiences of different countries, research studies on the impact of these laws, logical reasoning, and the experiences of women. The United Nations and other international organisations have developed model frameworks for the design, scope, application, use, and evaluation of legislation against violence against women. These frameworks identify key ingredients that should ideally be found in legislation and policies on violence against women. Many of these frameworks reflect in their recommendations the causes and the consequences of violence against women, thus providing a more holistic approach.²⁶ I have summarised the key essentials of legislation against violence against women. In sum, such legislation should be sure to do the following:

- ***Recognise women as beneficiaries and acknowledge roots of violence in***

discrimination against women: Legislation should acknowledge that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights.

Legislation should also define discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective

²⁶ See generally, United Nations Women, *supra* note 7; *Report of the Special Rapporteur on violence against women, its causes and consequences*, United Nations Economic and Social Council, 52d Sess., E/CN.4/1996/53 (Feb. 5, 1996); United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, *15 years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences*, <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>; HORVATH ET AL., *supra* note 1.

of their marital status, on a basis of equality between men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Essentially, it must be gender-sensitive, not gender-blind.

- ***Be comprehensive:*** Legislation should provide broad definitions of all forms of violence against women and define sexual and domestic violence in line with international human rights standards. It should criminalise the main forms of violence against women – economic, psychological, physical and sexual. It should encompass not only the criminalization of all forms of violence against women and the effective prosecution and punishment of perpetrators, but also the prevention of violence, and the empowerment, support and protection of survivors.
- ***Integrate all interventions:*** Legislation should integrate interventions related to the prevention of violence against women, incorporate protection, support, empowerment, and care of victims and survivors. Legislation must provide for educational interventions and awareness-raising activities, and professional training for those working to reduce violence against women. Interventions should be multidisciplinary, engaging the participation of the participation of various sectors various sectors; namely, law enforcement, education, health, media, and social services.
- ***Provide sufficient punishment for perpetrators and adequate compensation:*** Legislation should make available remedies for survivors, including civil remedies and compensation.
- ***Provide consistent legal framework:*** Legislation should provide for the amendment and/or removal of provisions contained in other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women’s human rights and gender equality, as well as

the elimination of violence against women. It should also provide that no custom, tradition or religious consideration may be invoked to justify violence against women.

- ***Contain provisions and mechanisms for its effective implementation, evaluation and monitoring:*** This would include provision of an organic link to a comprehensive national action plan or strategy. It should mandate a budget for its implementation. It should also provide for the elaboration of rules, regulations, and protocols necessary for the law's full and effective implementation as well as and the creation of specialized institutions and officials to implement legislation on violence against women. The legislation should emphasize the critical importance of monitoring the implementation of the law. Legislation should establish institutional mechanisms, such as multi-sectoral task forces or committees, or national rapporteurs, to undertake this task. It also recommended that legislation require the regular collection of statistical data and research to ensure an adequate knowledge base for effective implementation and monitoring.²⁷

I consider the provisions of the Act in relation to the best practices below, providing analyses with respect to how closely they are aligned to the Act.

IV. ANALYSIS OF THE VAPP ACT

A. Recognition of Women as Beneficiaries

One of the key ingredients of an ideal law on violence against women is that the law should identify women as beneficiaries and acknowledge that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights. For violence against women, the major issue that needs to be addressed is whether legislation captures the essence of violence

²⁷ *Id.* See also, PAHO, *Modelo De Leyes Y Politicas Sobre Violencia Intrafamiliar Contra Las Mujeres*, (2004) online: <<http://cidbimena.desastres.hn/filemgmt/files/LeyModelo.pdf>> (January 7, 2016) (hereafter *Model Laws and Policies on Domestic Violence Against Women*); Center for Reproductive Rights, *Gender-Based Violence Laws in Sub-Saharan Africa* (2007).

against women and therefore truly provides protections for women from gender-based violence: that is, violence that women experience exclusively or primarily because they are women.

How well are issues around violence against women captured in this Act? How effectively are women protected from gender-based violence under the Act? And why is it important that women's interests are covered comprehensively and directly in this Act?

Violence against women has long been recognised as not only a violation of women's human rights but also as an impediment to the enjoyment of many rights. Countries, therefore, have the obligation to take active steps to eliminate violence against women, which would include developing effective laws alongside other necessary approaches. Enacting a law that recognises that gender-based violence against women is a result of gender inequality²⁸ must therefore be considered a reasonably responsive way to address the roots of such violence, allowing these historical factors to be addressed and uprooted rather than superficially glossed over. Viewed in this way, legislation that refuses to acknowledge that women have historically, and continue today, to be the greater victims of certain kinds of violence on the basis of their gender would appear to be retrogressive. Several countries have adopted this understanding in order to provide women with the legal, and thus legitimising, recognition of the impact of gender-based violence on them and comprehensive protections. For example, in 2003, the Pan American Health Organisation (PAHO) highlighted the importance of the naming style of legislation on violence against women as one of the basic, non-negotiable components of all legislation in the PAHO countries. It indicated that the use of general or imprecise terms in the titles of legislation may have the effect of wilting or weakening the force and extent of judicial protections available to victims of violence against women. It therefore recommended specific reference to violence directed against women in the title of

²⁸ Certain international instruments like the UN 1993 UN Declaration on the Elimination of Violence against Women recognise gender inequality as a significant cause of violence against women.

the legislation.²⁹ Further, one of the key elements recommended to be part of the legislation is the clear and specific identification of women as beneficiaries of the legislation.³⁰

In light of the above, what is the target of the VAPP Act and how well are women covered as beneficiaries under this law? The title of the law and the definition of violence provide answers to this question. The Act does not comply with the recommendation on acknowledging women as clear beneficiaries of the legislation on the title. Its title – Violence Against Persons (Prohibition) Act – does not specifically address women, but has the broader appellation of “persons.” It adopts a broad definition of violence, defining it as “any act or attempted act, which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life, in peace time and in conflict situations.”³¹ “The definition is all embracing, as it attempts to capture every scenario imaginable – violence against men, women, and children, thus potentially pushing issues of violence against women to the periphery. Beyond the title, women and girls are not acknowledged specifically as the beneficiaries of this legislation. Thus, the Act is, on its face, gender-neutral. While this would appear to fly in the face of recommendations and best practices about the positive effects of enacting gender-sensitive legislation, it may be remedied in certain ways. One way, for instance, could be by identifying gender-based violence as one of the kinds of violence covered, or by making provisions that clearly address key aspects of violence against women. Below I discuss how the VAPP Act has addressed gender.

²⁹ See generally, Organizacion Panamericana de la Salud Componentes clave en la formulacion de leyes y politicas contra la violencia hacia las mujeres, Pan American Health Organization (2003), <http://www1.paho.org/Spanish/DPM/GPP/GH/ComponentesClave.pdf>; GABY ORTIZ-BARREDA & CARMEN VIVES-CASES, Legislation on Violence Against Women: Overview of Key Components, 33 REV PANAM SALUD PUBLICA, 61, 62 (2013).

³⁰ ORTIZ-BARREDA & VIVES-CASES, Legislation on Violence Against Women: Overview of Key Components, 33 REV PANAM SALUD PUBLICA, at 62.

³¹ Violence Against Persons (Prohibitions) Act (2015) Art. 46 (Nigeria).

It is important to note that although it does not mention women in its title, as stated in the Introduction, the VAPP Act began its life as a bill for violence against women.³² This was changed later on to “Violence Prohibition Bill” with a long title - “A Bill for an Act to prohibit all forms of Violence which includes Physical, Sexual, Psychological, Domestic Violence, Harmful Traditional Practices; Discrimination against Women; to provide adequate remedies for Victims; Punishment for offenders; Establish a Commission on Violence and a Trust Fund for victims of such Violence.” Clearly, this was a process conceived and developed by women’s group for the benefit of women, who have disproportionately suffered much violence and continue to do so today.

During the process of enactment, there were several debates in the National Assembly where the male-dominated legislature felt that an Act in opposition to violence solely against women would be discriminatory to men.³³ According to Nwankwo, “their rationale for the change was that there are men who suffer violence in the hands of their wives and such men should be protected in the provisions too.”³⁴ Violence, it was argued, was a challenge to males also, and beyond gender, it affected persons from different walks of life, including domestic workers, employees, among others. The National Assembly thus preferred a gender-neutral approach, which simply states that everyone suffers violence in Nigeria.

It is certainly important to acknowledge that violence affects all people, and that there is a need to provide legislative solutions. But it is equally necessary to emphasise that, as previously noted, some types of violence affect women only because of their female gender. The blanket approach to violence by the National Assembly lacked an understanding of the ways in which gender-based violence affects women. It did not address the fact that other kinds of violence may require different forms of treatment and interventions from gender-based violence. Furthermore, while domestic violence, acid attacks, rape, trafficking and

³² NDHS, *supra* note 2, at 127-28..

³³ OVIawe, *supra* note 21, at 2.sa, *supra*, 2.

³⁴ Nwankwo, *supra* note 18, at 14.

incest may affect men, they disproportionately affect women, including in the area of reproductive health. Child marriage, with the attendant health consequences, predominantly affects women. Traditional practices like female genital mutilation, son preference, and harmful widowhood practices affect women exclusively. Forced pregnancy, forced abortion, and forced use of contraceptives are also experienced solely by women. In addition, there is no gainsaying the fact that women in Nigeria suffer extensively from gender-based violence. In Nigeria, about one in three females have experienced physical violence at one time or another in their lifetime.³⁵ Violence against women generates the majority of all domestic violence. Violence against women is in large part due to domestic violence, with one-third of all women in Nigeria having experienced some form of violence in a domestic context.³⁶ Patriarchy is widely recognised to be a causal factor of violence against women in the Nigerian context: the idea that women are less than men and should be controlled by men. Violence against women is tolerated in Nigeria, leading to a tacit societal legitimisation, underreporting and lack of justice for victims, lack of deterrence of offenders, and limited support and rehabilitation for victims. Various types of violence meted out to women in Nigeria include rape, sexual harassment, domestic violence/intimate partner violence, harmful traditional practices, including female genital mutilation, childhood marriage, and widowhood practices, and trafficking. Each type of violence causes harm. Each has grave financial, health, social, and in many cases intergenerational consequences. Many fatalities have resulted from gender-based violence against women. Moreover, for many years, as noted above, such legislation has been absent at the national level. What existed and continues to exist are inchoate, fragmentary pieces of law that address different kinds of violence, including some, but not all, violence against women. Many states have passed laws on child rights, including laws prohibiting child marriage, laws prohibiting FGM, domestic

³⁵ NDHS, *supra* note 2, at 304.

³⁶ *Gender in Nigeria Report 2012: Improving the Lives of Girls and Women in Nigeria*, *supra* note 4, at vii.

violence, et cetera. But many states lack laws that cover gender-based violence in a comprehensive way.

Following from the picture painted above, it would appear that there are good reasons for ensuring that women are clearly and specifically protected in legislation across the country. There are several ways in which this could have been accomplished. One way would have been developing legislation specifically and clearly on violence against women, as had been the original intentions of the drafters of the Act. The recognition and protection of specific categories of persons is not without precedent in Nigerian law. Thus, for instance, we have the Child Rights Act, the Widowhood Practices Laws of states such as Cross River and Anambra States. These laws are not discriminatory but recognise the specific circumstances and vulnerabilities of the groups covered. Another avenue would have been to amend the Criminal Law, revising and enhancing it to cover protections for women against gender-based violence. Additionally, another way is to incorporate gender-based violence and acknowledge it explicitly in an Act alongside other kinds of violence, in other words, include “gender-neutral and gender-specific provisions to reflect the specific experiences and needs of female complainants/survivors of violence, while allowing the prosecution of violence against men and boys.”³⁷ An examination of the Act indicates that the approach attempted, was, as the discussion of specific provision below suggests, inchoate at best. There is no clear identification of gender-based violence in the Act, possibly in a bid to deemphasise women as the beneficiaries. A definition of gender-based violence would also have helped in this regard.

The *United Nations Handbook on Drafting Legislation on Violence against Women* notes in this regard that:

³⁷ *UN Handbook for Legislation on Violence Against Women*, supra note 7, at 15.

Gender-sensitivity recognizes the inequalities between women and men, as well as the specific needs of women and men. A gender-sensitive approach to legislation on violence against women acknowledges that women's and men's experiences of violence differ and that violence against women is a manifestation of historically unequal power relations between men and women and discrimination against women.³⁸

It is also pointed out that in some countries where gender-neutral legislation is operative, women survivors of violence themselves have been prosecuted for the inability to comply with certain provisions which should ordinarily be to their benefit such as abandonment provisions. Further, Further, gender-neutral legislation tends to give precedence to the stability of the family over the rights of the complainant-survivor, who are frequently female, because it does not specifically reflect or address women's experience of violence perpetrated against them.³⁹ These are not new issues but have been analysed by feminist scholars.⁴⁰ It is problematic that in countries like Nigeria, that are only slowly waking up to address these issues, the challenge of recognising and combating the inherent gender-based discrimination remains even in legislative processes meant to address it.

As a result of the gender-neutral language it adopts, the VAPP Act fails to acknowledge, as recommended by the UN Handbook, that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights. A cursory look at some of the provisions of the Act raises potential concerns, for instance, the offence of abandonment which provides that a spouse can be charged with abandonment if they abandon the home and their responsibilities.⁴¹ Would a woman who seeks refuge outside the house in the face of domestic violence be accused of abandonment?

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Busch, for example, observes that "the bureaucratic structure of the liberal democratic state means that state response to women's movement demands criminalises violence against women without recognising that such violence is rooted in unequal gender relations." Quoted in, S. LAUREL WELDON, PROTEST, POLICY, AND THE PROBLEM OF VIOLENCE AGAINST WOMEN: A CROSS-NATIONAL COMPARISON, 112-13 (University of Pittsburgh Press 2002)..

⁴¹ Violence Against Persons (Prohibitions) Act (2015) Art. 16 (Nigeria).

It is clear that the women's groups that pushed the law forward and eventually had to accept the changes made to the language of the Act were being practical, seeking to get the support of a legislature still overwhelmingly dominated by men and patriarchal attitudes. The legislators sought to adopt a broad-based, inclusive approach, which on the face of it, is not a bad thing. However, it remains yet to be seen how the reluctance to acknowledge the disproportionate adverse impact of gender-based violence will affect the protection of women and the full implementation of the Act. This seemingly neutral stance can be another means of continuing to entrench prejudice, by denying a clear and existing need for specific acknowledgement of a long-standing problem.

In my view, an explicit acknowledgement of the peculiar ways in which violence affects women and the pernicious roots of it within the patriarchal system would legitimize the claims that women make in this regard. Perhaps this would have instigated a more forceful push for enforcement of the law by all relevant agencies and for implementation by the government itself. Such clear articulation would have, in my view, been more effective in promoting awareness and shifting attitudes, including the attitudes of law enforcement who have continued to tell women that matters like domestic violence are a private affair.

One can only hope that implementation of the specific provisions of the Act will benefit women. This hope comes from a close consideration of the provisions of the Act, which reflect its persisting concern with the specific issue of violence against women. Having started out as legislation prohibiting violence against women, much of the provisions that remain address issues that are clearly germane to women in the Nigerian context. For instance, the definition of violence against persons draws from other definitions of violence against women around the world.⁴² Further, many of the violent offences described are offences that perpetrated against women – rape, female genital mutilation, substance (acid)

⁴² Cf. *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (April 12, 2011).

attacks, abandonment and neglect. Indeed, it would appear to capture any kind of violence against women. These are offences that women in Nigeria have suffered and complained about for many years. The inclusion of matters such as an acknowledgement of spousal or marital rape, and a wide definition of offences like domestic violence are indicative of its sensitivity to the concerns of women and girls. These definitions and the offences reflect the active inputs of civil society groups focused on women's rights and health in this legislation.

Thus, while women are not specifically identified as beneficiaries in the title and gender-based violence is not clearly defined, it is obvious from a reading of the provisions that the Act retains some female empowerment flavour, even though the gender –neutral language also has the possibility of imperilling and relegating the women's experiences and rights. Undoubtedly, this is as a result of its history as originally a law to protect women from violence. These groups exercised the necessary pragmatism to surmount many obstacles placed before them in seeing the law enacted.

An understanding of the need for antecedents of the law, the history of the Act and the reluctance of the legislature to engage with the problems that women face as a result of gender-based violence in a patriarchal society, and the continued need for protection of women and girls must remain as an utmost priority for civil society groups and advocates. Civil society groups and women's rights activists must therefore work to ensure that women and girls benefit specifically from the Act, and that discussions around the implementation of the Act do not gloss over, subsume, neglect or abandon the main impetus for the work done to enact this Act – the protection of women and girls from violence meted out on account of gender. In subsequent sections, I will consider the extent of the interventions provided by the Act for each of the violent offences that are typically gender-based.

B. Criminalisation of Main Forms of Violence against Women

The UN Handbook recommends that legislation should define and criminalise the main forms of violence against women, that is, economic, psychological, physical and sexual.⁴³ These forms of violence manifest as rape, abandonment, female genital mutilation, domestic violence, many of which are defined and criminalised in the Act. The VAPP Act is extensive and comprehensive in its approach to recognising and criminalising all forms of violence against women. In this regard, the Act criminalises a variety of offences –rape, female genital mutilation, forceful eviction from home, deprivation of liberty, forced financial dependence or economic abuse, forced isolation or separation from friends, emotional, verbal and psychological abuse, harmful widowhood practices, abandonment of spouse, wife and children without sustenance, stalking, intimidation, spousal battery, harmful traditional practices, attack with harmful substances, and administering services in order to induce sexual intercourse. It provides criminal penalties, including fines and imprisonment, for each of these offences.

Rape is one of the most pervasive acts of gender-based violence. While it also affects men, anecdotal evidence suggests that Nigerian women and girls are disproportionately affected. Before the enactment of VAPP Act, the offence of rape was principally governed by the Criminal Code, Penal Code and Criminal Procedure Code. Section 357 of the Criminal Code defined rape as “unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.”⁴⁴ Two key elements are clear: carnal knowledge and lack of consent. Thus there must be unlawful carnal knowledge of a girl or a woman. Carnal

⁴³ *Handbook for Legislation on Violence Against Women*, *supra* note 7, at 8

⁴⁴ Criminal Code Act (2004) Cap. (30), § 357 (Nigeria).

knowledge must be without the consent of the victim; or if there is consent, it is either coerced or fraudulent. The Act further defined carnal knowledge as “carnal connection which takes place otherwise than between husband and wife.”⁴⁵ Rape committed within a marriage was not contemplated as an offence. Thus a man could legally rape his wife without violating the provisions of the Criminal Code. This definition is antiquated. It continues to be problematic and a major source of worry for advocates against domestic violence. Many women who experience domestic violence are also often raped as part of the abuse. This provision empowers abusers and denies their victims of any legal protections because no form of carnal knowledge between a man and his wife could be unlawful.

The Penal Code contains similar provisions, merely replacing the phrase “carnal knowledge” with “sexual intercourse.”⁴⁶ Even more problematic are the provisions of the Penal Code which provides that: “Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.”⁴⁷ Protection from non-consensual intercourse would therefore apply only to females who have not attained puberty. It is important to observe that the Penal Code applies in the Northern States of the country where the incidence of child marriage, that is marriage to a person under the age of 18,⁴⁸ tends to be highest. In the Northern parts of the country where the incidence is highest. Often viewed as a husband’s prerogative, based on the premise that a woman who voluntarily enters into a marital relationship should be ready to engage in any form of sexual act with her husband, spousal rape is not prohibited under both the Criminal Code and the Penal Code. In *Posu and anor v The State*, the Supreme Court defined rape as “unlawful sexual intercourse with a female without her consent, ... an unlawful carnal knowledge of a woman by a man forcibly and against her will; the act of sexual intercourse committed by a man with a woman who is not his wife without her consent.”⁴⁹ Similarly in *Upahar and another v The State*, the Court of Appeal held that “[t]o prove a charge of rape the prosecution must establish that the accused had sexual intercourse with the woman in

⁴⁵ *Id.* at Cap. (1), § 6.

⁴⁶ Penal Code Act Cap. (18), § 282(1) (Nigeria).

⁴⁷ *Id.* at § 282(2).

⁴⁸ The Child Rights Act, (2003) Cap. (3) § 21 (Nigeria).

⁴⁹ *Posu & Anor v. The State*, [2011] 3 NWLR 393, 414 (Nigeria).

question; that the act of sexual intercourse was done in circumstances falling under anyone of the five paragraphs in section 282 (1) of the Penal Code; that the woman was not the wife of the accused; or if she was his wife that she had not attained puberty; and that there was penetration.”⁵⁰

Another important loophole of the above two pieces of legislation can be seen in Section 6 of the Criminal Code where it is stated that the offence of rape is complete upon penetration. Penetration as envisaged here is that between a man and a woman, and does not include that of a husband and wife. This narrow definition of the offence of rape means that only vaginal penetration by the penis suffices to constitute the offence. Thus the act of sodomy performed on a woman without her consent or the insertion of objects into her genital or anal cavities cannot be defined as rape.⁵¹ Newspaper reports of rape incidents include reports about penetration with other objects and into other orifices, including the mouth and the anus, all of which inflict grave harm. Furthermore, according to the definition of rape in both the Criminal Code and the Penal Code, only a man can commit the offence of rape and only a woman or a girl can be a victim of such an act. This excludes forcible sexual encounters against men.

Corroboration, although not a legal requirement, has become accepted in practice by Nigerian courts. In this regard, the victim is required to provide independent evidence, aside from her word, that indicates that said rape took place. The courts have held in several cases that while this is not a legal requirement, it is good practice to be observed by courts.⁵² This requirement is, in itself, rooted in discrimination against women. It has been observed that, “One can therefore conveniently submit that rules relating to corroboration requirement in sexual offences originate from the strong belief that some women have the tendency to pretend or lie especially in sex-related offences. This is the justification for subjecting

⁵⁰ *Upahar and another v The State* (2011) 6 NWLR (PT 816)230 at 250 (Nigeria).

⁵¹ ISABELLA E. OKAGBUE, *THE REFORM OF SEXUAL OFFENCES IN NIGERIAN CRIMINAL LAW* (Nigerian Institute of Advanced Legal Studies) (1991).

⁵² See for example, *Sunmonu v State* (1957) WRNLR 23; *Ibeakanma v Queen* (1963)2 S.C.N.L.R. 191.

allegation of sexual offences to serious scrutiny such as requiring corroboration from sources independent to the victim.”⁵³

In short, to obtain a conviction in rape cases, the prosecution is expected to prove that (1) there is carnal knowledge; (2) there is penetration of the vagina; (3) such penetration was unlawful; (4) there was no consent; and (5) testimony is independently corroborated.⁵⁴

The VAPP Act 2015 addresses these problems, and it supersedes all previous legislation on the same subject matter.⁵⁵ The Act⁵⁶ The Act defines rape as intentional penetration, “of the vagina, anus or mouth of another person with any other part of his or her body or anything else . . . the other person does not consent . . . the consent is obtained by force or by means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of married person by impersonating his or her spouse. The definition does away with arcane language such as “carnal knowledge.”

Thus, under the Act, the definition of rape, adopting clearer, simpler language, becomes more in tune with modern realities, more inclusive, and explanatory of consent. The offence of rape has become inclusive against all genders. Victims of rape are no longer restricted to women and girls. Perpetrators can also be male or female. Moreover, penetration remains an important ingredient, however this now includes penetration of orifices other than the vagina, The offence is no longer limited to penile penetration - the use of “anything else” to penetrate constitutes the offence of rape. Spousal or marital rape is now recognised under the Act. In this regard, it can be reasonably assumed that in the absence of an express

⁵³ O. Olantuji, Penetration, Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing Its Shortcomings, 8 U. ILORIN L. J. (UILJ) 79, 82 (2012).

⁵⁴ OLUGBENGA A. OLATUNJI, Penetration, Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing Its Shortcomings, 8 U. Ilorin L.J. 79, 81-82 (2012).

⁵⁵ Violence Against Persons (Prohibitions) Act (2015) Art. 45 (2) (Nigeria).

⁵⁶ Violence Against Persons (Prohibitions) Act (2015) Art. 1 (Nigeria).

exclusion, any husband or wife, who acts in contravention of the above section, is guilty of the offence of rape and punishable accordingly. “The use of “any person” clearly includes either husband or wife. With these modifications, the Act has brought the definition of rape in line with modern day realities and increased the scope of legal protection for victims.

Besides the arguably obvious offence of rape, however, there is no clear criminal penalty for other kinds of sexual violence. Many sexual offences are defined in the interpretation sections including sexual abuse, sexual assault, sexual exploitation, sexual harassment, and sexual intimidation. Previous versions included penalties under the Act. Many of these appear to have been excised in the process of negotiation, and the Act clearly suffers as it has much less force behind it. It can only be hoped that future amendments will address these issues.

Besides sexual violence, one innovative feature of the VAPP Act is the recognition of previously unrecognised violence suffered by women such as emotional, verbal and psychological abuse. Emotional, verbal and psychological abuse means a pattern of degrading, humiliating conduct towards any person including repeated insults, ridicule or name calling, repeated threats to cause emotional pain or the repeated exhibition of possessiveness that constitutes a serious invasion of such person’s privacy, liberty, integrity or security. Intimidation is defined as the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort.

The inclusion of economic abuse as an offence under the VAPP Act is particularly interesting. While physical and sexual abuse are well acknowledged as problematic and violating of the human person thus engaging criminal responsibility, economic abuse is only just being recognised as an offence. Economic abuse is an insidious form of violence that keeps women, particularly in domestic violence situations, from seeking help. In a patriarchal culture, men assume the authority to determine if, when, and where their partners

work, and what they do with money earned. In many of the cases I have dealt with, employers may be insulted, and property such as phones and computers, which may be necessary for a woman's job, may be seized or destroyed as part of a show of control. Economic abuse not only harms the abused women, it hinders the country's socio-economic development by limiting the ability of women to contribute productively to the economy. In the VAPP Act economic abuse is described as forced financial dependence, denial of inheritance or succession rights, the unreasonable deprivation of economic or financial resources to which any person is entitled or which any needs including household necessities, mortgage bond repayments or payment of rent or unreasonable disposal or destruction of household effects or other property in which the other person has an interest.⁵⁷ This definition is more extensive than the definitions found in other state legislation on domestic violence. For instance, the Lagos State Protection Against Domestic Violence Law (2007), while it clearly recognised economic abuse, it does not include denial of inheritance or succession rights.⁵⁸ The provisions of the VAPP Act also further support recent jurisprudence on the point of women's rights to inherit property under customary law. In 2014, the Supreme Court held in the case of *Ukeje v Ukeje*⁵⁹ In 2014 the Supreme Court held, in the case of *Ukeje v. Ukeje*, that the customary law that allowed females to be disinherited in favour of males violated the Constitution on the ground of discrimination and was therefore void. The scope of this decision is broader than the VAPP Act, given its applicability throughout the country.

Male child preference, another form of violence against women, is not specifically mentioned in the Act. However, it can be argued that this is included in the definition of

⁵⁷ Violence Against Persons (Prohibitions) Act (2015) § 46 (Nigeria).

⁵⁸ A Law to Provide Protection Against Domestic Violence and for Connected Purposes of Lagos (2007) Cap. (18), § 1(h) (Nigeria).

⁵⁹ *Ukeje v. Ukeje* [2014] LPELR 22724 1, 43 (SC). The case clarifies the situation left open in *Mojekwu v. Iwuchukwu*. In that case, the Supreme Court left open the matter of whether the repugnancy doctrine could be applied to the denial of inheritance rights to women under customary law. *Mojekwu v. Iwuchukwu* [2004] S.C. (pt. 11) 1 (Nigeria).

harmful traditional practices under section 47 of the VAPP Act. Aspects of it are also covered under the definition of economic abuse, which includes a denial of inheritance or succession rights. Though prevalent across many parts of Nigeria, the Constitution clearly prohibits it. Section 42 of the Constitution states “[n]o citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.”⁶⁰ Inheritance rights in several cultures across Nigeria exclude women on the grounds of their gender. This limits the ability of women to escape from violent and abusive marriages and enjoy other human rights to which they are entitled. Recognition of a deprivation of inheritance and succession rights as economic abuse is a step in the right direction.

The Act also criminalises harmful traditional practices.⁶¹ Harmful traditional practices, as defined by the Act, are all traditional behaviours, attitudes or practices which negatively affect the fundamental rights of women, girls or any person.⁶² Such practices violate women’s rights to life,⁶³ health, non-discrimination on the basis of sex,⁶⁴ to liberty⁶⁵ and security of the person and dignity including the right not to be subjected to any form of violence⁶⁶ or freedom from inhuman or degrading treatment. Harmful traditional practices inflict physical, psychological and emotional trauma, can cause grievous harm to health and may lead to irreversible and permanent disability or to death. Harmful traditional practices are often a form of discrimination against women. Usually emanating from gender inequality, these practices reinforce the lower status of women and girls and discriminatory values, and are usually rooted in the cultural, social and religious belief in male primacy and domination.

⁶⁰ Constitution of the Federal Republic of Nigeria, Section 42.

⁶¹ The Act provides that any person who carries out harmful traditional practices on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or a fine not exceeding N500,000 or both. There are also penalties for attempting, inciting, aiding and abetting the offence.

⁶² Violence Against Persons (Prohibition) Act (2015) Section 46 (Nigeria).

⁶³ CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999), § 33.

⁶⁴ CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999), § 42.

⁶⁵ CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999), § 35.

⁶⁶ CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999), § 34.

With its gender-neutral approach, the Act recognises that harmful traditional practices can affect both men and women.⁶⁷ However, women and girls tend to be most affected and often suffer grievous harm. The Act specifically recognises gender in this regard, prohibiting harmful traditional practices against widows. Some cultures in Nigeria practise traditional rites on the death of husbands that harm widows. These typically include scraping or cutting of hair, particularly with a razor with or without blunt instruments against one's wishes; being forced to wail loudly for long and sustained periods to show sorrow, being compelled to lie down or to sleep next to the corpse of the deceased husband; being made to drink water used to wash the corpse; being stripped naked or made to bath in public; being prevented from taking a bath for a given period; or dressed in filthy clothes or rags a sign of mourning. The root of such practices, however well-meaning in origin is gender inequality as men typically do not suffer these violations when their wives die.⁶⁸ As I discuss in other sections, a few states had previously prohibited such practices but many have not. Before the enactment of the VAPP Act, some states in Nigeria, had already legislated against these practices.⁶⁹ However, the implementation of these laws has been poor, as deeply held cultural beliefs are met with tepid government action. One can only hope that the VAPP Act is implemented more forcefully.

Harmful traditional practices also include forced marriage, child marriage, denial of inheritance or succession rights, female genital mutilation,⁷⁰ isolation from friends and family,⁷¹ and son or male child preference. While the Act does not specifically mention all these practices, the definition is sufficiently wide as to include matters like male child or son

⁶⁷ See definition of harmful traditional practices *supra* note 64.

⁶⁸ See generally, Osai Ojigbo, *Scrape her Head and Lay Her Bare – Widowhood Practices and Culture*, GENDER ACROSS BORDERS, <http://www.genderacrossborders.com/2011/10/28/scrape-her-head-and-lay-her-bare-widowhood-practices-and-culture/> (last visited December 3, 2015).

⁶⁹ See, e.g., Prohibition of Infringement of Widows and Widowers Fundamental Rights Law of Enugu (2001) (Nigeria). See also Malpractices against Widows and Widowers (Prohibition) Law of Anambra (2004) (Nigeria). See also Mary Imelda Obianuju Nwogu, *The Legal Anatomy of Cultural Widowhood Practices in South Eastern Nigeria: The Need for a Panacea*, 3 GLOBAL J. OF POL. AND LAW RES. 79 (2015).

⁷⁰ Violence Against Persons (Prohibition) Act (2015) § 6 (Nigeria).

⁷¹ Violence Against Persons (Prohibition) Act (2015) § 13 (Nigeria).

preference which are not specifically mentioned but are harmful to women.⁷² This is a practice that encourages preference of male children over their female siblings, usually due to the need to continue the family lineage in patrilineal cultures. The result is often a displacement of girls in inheritance and succession matters, depriving them of land rights, attendant revenues, and opportunities for wealth creation. Perhaps, more insidiously, females are deprived of opportunities for good health, education, recreation, adequate parental care and so on. This practice is by no means specific to Nigeria but is prevalent, in varying degrees, across the world. Indeed, in some cultures, women go through selective abortion to terminate the pregnancy of female children.⁷³ “Because the VAPP Act does not specifically mention all of the harmful traditional practices that are detrimental to women, it is more difficult for women to prove that their rights have been violated.”⁷⁴ This would, hopefully, not prove too difficult with the legal scholarship and jurisprudence that have developed on this subject. However, it does leave matters open for interpretation.

Female genital mutilation (FGM) is a harmful traditional practice which is specifically prohibited in the Act.⁷⁵ Female Genital Mutilation (FGM), also known as female circumcision, is a traditional practice or ritual involving the removal of some part or all of the external female genitalia. The Act defines the FGM as “the cutting off all or a part of the external sex organs of a girl or a woman other than on medical grounds.”⁷⁶ Often undergone as a rite of passage for young girls, it is usually carried out by a traditional circumciser with blades or razors and in many cases without the use of anaesthesia. The various forms include clitoridectomy (partial or total removal of the clitoris or the prepuce); excision (partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora);

⁷² Ime Nnadi, *Son Preference – A Violation of Women’s Human Rights: A Case Study of Igbo Custom in Nigeria*, 6 J. OF POL. & LAW 134, 140 (2013).

⁷³ This is done mostly in China and India.

⁷⁴ See Violence Against Persons (Prohibition) Act (2015) § 20 (Nigeria).

⁷⁵ See Violence Against Persons (Prohibition) Act (2015) § 6 (Nigeria).

⁷⁶ See Violence Against Persons (Prohibition) Act (2015) § 46 (Nigeria).

and infibulation (removal of the labia and suturing of the vulva). The major aim of the practice appears to be to limit sexual enjoyment and therefore promiscuity and lack of chastity, behaviours which are often looked upon unfavourably by traditional communities.

FGM has no known health benefits and involves cutting off healthy tissues, preventing natural functions. It poses several dangers to the health of women and girls, including but not limited to immediate complications such as severe pain, shock, haemorrhage (bleeding), tetanus or sepsis, urine retention, open sores in the genital region and injury to nearby genital tissue. Long-term consequences can include 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, increasing the possibility of complications. Given these risks, 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).

Several communities in Nigeria practise FGM. In the past, Nigeria has the highest absolute numbers of FGM in the world and continues to have significant number today.⁷⁷ Thus many women and girls in Nigeria face the health risks of FGM. As a signatory to international conventions that prohibit the practice of FGM,⁷⁸ Nigeria has taken steps in the past to curb the practice, including establishing a policy since 1998 with the latest revision in

⁷⁷ See UNICEF, Nigeria: Female Genital Mutilation, available online: http://www.unicef.org/nigeria/FGM_.pdf (last visited December 3, 2015).

⁷⁸ African Charter on Human and Peoples' Rights, Oct. 21, 1986, 1520 U.N.T.S. 217; G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Sept. 2, 1990); African Charter on the Rights and Welfare of the Child, Nov. 29, 1999, CAB/LEG/24.9/49; G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993); World Conference on Human Rights, *Vienna Declaration and Programme of Action* (June 25, 1993); Rep. of the Int'l Conf. on Population and Dev., Sept. 5-13 1994, A/CONF.171/13/Rev. 1 1994; Fourth World Conference on Women, Sept. 4-15, 1995, Beijing, China, *Beijing Declaration and Platform for Action* (Sept. 15 1995); G.A. Res. 52/99, U.N. Doc. A/RES/52/99 (Dec. 12, 1997); Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, African Comm'n on Human and Peoples' Rights; Solemn Declaration on Gender Equality in Africa (July 6-8, 2004), http://www.un.org/en/africa/osaa/pdf/au/declaration_gender_equality_2004.pdf; WHO, *Resolution on Female Genital Mutilation*, WHA61.16 (May 24, 2008).

2013,⁷⁹ all aimed at eliminating the practice. These policies, however, did not have the binding force of law. Indeed, one of the strategic objectives of the extant National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria 2013-2017 was the enactment of the VAPP Act, which has now been accomplished. Prior to the VAPP Act, twelve states out of thirty-six states in Nigeria had passed laws, banning the practice of FGM within those states. These states include Abia, Bayelsa, Cross Rivers, Edo, Ogun, Osun, Rivers and Bayelsa States. Thus, violence against women, including FGM, was only partially regulated and prohibited in the country. Whereas activists and scholars had previously relied on the constitutional right to dignity and the right to freedom from cruel and degrading treatment, the ban by the Act leaves no room for conjecture. The VAPP Act currently prohibits FGM only in the Federal Capital Territory where the Act is operative. It remains crucial, however, because it has the potential to prohibit the practice of FGM throughout the country. As things stand, neither policies nor the state laws have been fully effective, although there is evidence of government action in this area with the support of international development partners. Implementation of the VAPP Act is as important as enacting the legislation.

Domestic violence is another prevalent type of gender-based violence. Although there is limited data on domestic violence, the prevalence of domestic violence in Nigeria can be described as being of epidemic proportions with at least one third of all women having suffered domestic violence. Domestic violence can be defined as the physical and/or psychological abuse of an intimate partner. Domestic violence also includes physical and sexual abuse of children and women within a home, as well as economic exploitation, intimidation, emotional abuse, coercion, threats and isolation. Domestic violence is a serious public health issue. As the World Health Organization has noted, partner abuse can lead to physical injury and death, and also to deleterious effects on mental health of its victims,

⁷⁹ Federal Ministry of Health, *National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria 2013-2017* (Abuja, 2013).

including eroding self-esteem, depression, anxiety, post-traumatic stress disorder (PTSD), gynaecological problems, sexually transmitted diseases, alcohol and drug abuse, and suicide.⁸⁰

Interestingly, the VAPP Act does not specifically make domestic violence an offence, although the interpretation section includes a definition of domestic violence which includes violence between intimate partners, persons who have been in intimate relationship in the past as well as spouses.⁸¹ Instead, the Act prohibits spousal battery,⁸² defined as the intentional and unlawful use of force or violence upon a person, including the unlawful touching, beating or striking of another person against his or her will with the intention of causing bodily harm to that person.⁸³ Previous versions of the Act contained an offence of domestic violence; it is not clear why the enacted version omitted such offence. Instead, we are left to draw the inference that spouses, persons in an intimate relationship, or those who have previously been in a relationship can bring charges on other offences in the Act including physical injury, emotional, verbal and psychological abuse, financial abuse, stalking, harassment, coercion and intimidation. The only specific remedy provided for domestic violence is a complainant's right to seek a protection order where she faces imminent danger.⁸⁴

Traditionally, the beating of wives is sanctioned in some cultures and by extant laws in Nigeria. In this regard, the Penal Code allows a woman to chastise his wife.⁸⁵ The domestic violence law of Jigawa State also allows physical chastisement according to the personal law of the husband.⁸⁶ Such physical chastisement is regarded as a form of discipline,

⁸⁰ Cynthia Grant Bowman, *Domestic Violence: Does the African Context Demand a Different Approach?*, 26 INT'L J.L. & PSYCHIATRY 473, 473 (2003); See generally, Jacquelyn C. Campbell, *Health Consequences of Intimate Partner Violence*, 359 THE LANCET 1331 (2002).

⁸¹ Violence Against Persons (Prohibition) Act (2015) §46 (Nigeria).

⁸² Violence Against Persons (Prohibition) Act (2015) §19 (Nigeria).

⁸³ Violence Against Persons (Prohibition) Act (2015) §46 (Nigeria).

⁸⁴ Violence Against Persons (Prohibition) Act (2015) §28 (Nigeria).

⁸⁵ Penal Code Act Cap. (2), § 55(1)(d) (Nigeria).

⁸⁶ Domestic Violence and Other Related Matters Law Cap. (2), § v (2006) (Nigeria).

which a man is entitled to impose on his wife in his role as head of the family within some customary and religious law, that is, Islamic law. In many cultural contexts, even if there is a case of domestic violence, this is a matter to be handled within the family without the intervention or interference of the law. The VAPP Act renders such views and laws obsolete and without force in the area where the Act operates. It remains to be seen how effective implementation will be, given that even law enforcement agents are raised in this cultural milieu and have often in the past expressed the view that domestic violence is a private affair, thus denying complainants their rights to investigation and protection under the law.

Neglect and abandonment of partners, spouses and children is a form of domestic violence.⁸⁷ This may inflict no actual physical injury but it is almost always emotionally and financially traumatic for victims. Many women have suffered and continued to suffer such neglect and abandonment. Given women's general lower economic status in Nigeria, this is not a minor problem. The VAPP Act criminalizes the act of neglect and abandonment without sustenance by any spouse. It provides stiff penalties for this offence, which may entail three years of imprisonment or fine, not exceeding 500,000 naira, or about \$2,500 USD.⁸⁸ The Act also prohibits aiding, abetting, counselling, and receiving or assisting an a person who seeks to abandon his or her spouse. It is also clear that the provision only covers spouses. Under the Act, either a wife or a husband can be found guilty of the offence of neglect and abandonment. In most cases, men are more prone to abandon their spouses and children. This may become a double-edged sword with potential unintentional consequences if women who abandon abusive marriages are charged with this offence. Typically, divorces are not often easy to obtain especially because of cultural inhibitions and lengthy delays in court processes. Further, as I discuss below, there are not many resources for women in abusive relationships, including shelters, financial aid amongst other interventions. Previous

⁸⁷ Violence Against Persons (Prohibition) Act (2015) §46 (Nigeria).

⁸⁸ Violence Against Persons (Prohibition) Act (2015) §16 (Nigeria).

versions of the legislation, possibly in recognition of these facts, made this an offence that could be committed only against women. Much education, sensitisation, and efforts to provide resources are therefore necessary to ensure that the Act is not unduly disadvantageous to women. It is also not clear that others in an intimate relationship, even longstanding relationships can benefit from this provision. On its face, women in intimate relationships that are not marriage cannot benefit from this provision. It is not clear why the provision was drafted in this discriminatory way.

Further, the Act also fails to address matters such as forced abortion, forced prevention of contraception and virginity checks, all of which are rampant in Nigerian society and violate the bodily integrity and fundamental rights of women. The omission of these violations of women's dignity and rights may be due to the Act's lack of gender sensitivity.

Despite some gaps noted in the discussion, regarding the criminalisation of the main forms of violence, the Act is somewhat commendable, especially in light of the previous state of the law. It is apparent that many offences previously unknown to Nigerian law have been covered by the VAPP Act. The Act is thus in substantial conformity with best practices on legislation against women on the matter of criminalising a broad range of gender-based violence against women. However, as the discussion above indicates, there remain gaps which will need to be addressed in future amendments. For instance, other offences are not included, in particular, offences related to sexual violence. Aside from these omissions or gaps, it is important to emphasise that implementation, often a weak point, is crucial to ensure that these provisions do not remain dead letters in the law books.

C. Integrate All Interventions

Another key best practice as indicated in international documents is the requirement for legislation to integrate interventions related to the prevention of violence against women. In this respect, such legislation should include provisions on the matters of protection,

support and care for victims and the empowerment, support and protection of survivors. It should also provide for educational interventions, awareness-raising activities, and professional training for those working to reduce violence against women. Interventions should be multidisciplinary, engaging the active involvement or participation of various sectors; namely, law enforcement, education, health, media and social services.⁸⁹

The role of law enforcement agencies, particularly the Police, is articulated in the Act. In this respect, the police are required to carry out their usual duties, including the investigation and filing of victims' complaints, as well as arresting respondents who either fail to appear at hearings or fail to comply with the provisions of courts orders. They are also required to assist victims with transportation to health facilities or provide an alternative residence when needed.⁹⁰ It is evident that the Police will be required to work with accredited service providers and other persons such as health workers to effectively carry out their duties under the Act.

Importantly, the Act recognises a victim's need to receive services for the purposes of rehabilitation and reintegration. Such services include necessary medical assistance, legal aid and other material assistance.⁹¹ The police, protection officers, health workers, teachers, social workers, accredited service providers, in addition to providing the aforementioned services, can also apply for a protection order on behalf of a victim of domestic violence.⁹² The recognition of the role of service providers legitimises many efforts made by these service providers over the years, and is an acknowledgement that the government cannot provide all the services by itself. It also draws on the support of organisations that have developed some expertise in this area.

⁸⁹ *Handbook for Legislation on Violence Against Women*, *supra* note 7, at 15.

⁹⁰ Violence Against Persons (Prohibition) Act (2015) §32 (Nigeria).

⁹¹ Violence Against Persons (Prohibition) Act (2015) §38 (Nigeria).

⁹² Violence Against Persons (Prohibition) Act (2015) §28 (Nigeria).

Further, the Act requires the registration and accreditation of these organisations.⁹³ This process will encourage the development of adequate standards for the operation of service providers. The Act does not yet specify the Ministry that will provide accreditation. At the present time, it would appear that the regulator, National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP),⁹⁴ may have to do the accreditation. Guidelines or regulations will also need to be developed in the near future, detailing the requirements, processes and procedures for accreditations. Some capacity-building and training requirements may be built into the regulations which will require accredited service providers to acquire a certain level of expertise.

The Act focuses on articulating offences and their penalties, while neglecting to address preventative measures that would help address violence against women from the roots and from a prevention perspective. Thus the VAPP Act does not deal directly with prevention, educational interventions, awareness-raising, or professional training for those working in the area of violence prevention. Clearly, provisions on these matters would have been ideal, given the practical difficulties that have existed in these areas for years. It is well-known that there is a need to raise awareness, as many people do not understand that behaviours ordinarily sanctioned by culture often constitute violence; additionally, many women are simply unaware of avenues for help, and the provisions of recent legislation. Although organizations have a genuine desire to assist victims, it is not unheard of for women to be sent back into dangerous situations, due to a lack of expertise on behalf of the organization.

It is not too late, however. These interventions can be built into any regulations or guidelines developed under the Act. Efforts would need to be made to ensure that resources are provided by the government, perhaps with input from international development partners

⁹³ Violence Against Persons (Prohibition) Act (2015) §40 (Nigeria).

⁹⁴ Violence Against Persons (Prohibition) Act (2015) §44 (Nigeria).

interested in this area, to develop a fund that will provide funding to assist survivors. Some of the interventions that will need to be in place for prevention and capacity building efforts. Other state legislation on violence against women, notably Ekiti State's Prohibition of Gender-Based Violence Law 2011 make provisions for such a fund. According to that law, the object of the Gender-Based Violence Fund is, amongst other things, to provide basic material support and shelters, and rehabilitate victims of and their dependents affected by gender-based.⁹⁵ Such funding mechanism is currently lacking at the national level and is not addressed in the VAPP Act.

D. Provide Sufficient Punishment For Perpetrators and Adequate Compensation

One of the key best practices that have developed on legislating on violence against women is the need to ensure that such legislation provides adequate punishment for perpetrators. The reason for this is not farfetched. Victims need to receive justice. Adequate punishment also serves as a form of deterrent against future violations. Society benefits from a sense of security from legislation that contains sufficient penal sanctions against the specified offences. How adequate are the penalties provided under the VAPP Act? A look at the very first section of the Act, which deals with rape, reveals a few problems. Section 1 states:

A person convicted of an offence under subsection 1 of this section is liable to imprisonment for life except:

(a) where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;

(b) in all other cases, to a maximum of 12 years imprisonment without an option of fine; or

(c) in the case of a gang rape by a group of persons, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.

⁹⁵ Ekiti State Gender-Based Violence (Prohibition) Law §32 (2011) (Nigeria).

An investigation of this provision reveals interesting issues. The first is that while the section appears to provide imprisonment for life with no option of fine, this typically means something different under Nigerian sentencing guidelines. Second, it appears to purport to provide a sentence for minors. It is doubtful if this will stand, given that the Child Rights Act⁹⁶ defines persons under the age of 18 as minors and provides different sentencing guidelines for such persons. I deal with this in a little more detail below. Third, it would appear that the judge or magistrate would be able to give a sentence of 12 years to any rape offender. This seemingly defeats the purpose of setting such a grave penalty (life imprisonment) under the law. Finally, and most problematic, in the case of gang rape, those who have committed such a heinous offense would be subject jointly to a minimum of 20 years – less than the minimum 12 years for a single offender. In other words, if there are ten offenders who have been convicted of gang rape, each would receive two years imprisonment. This is certainly unacceptable. In Nigeria, gang rapes appear to be getting more frequent with extremely damaging effects on women. It must be wondered if the wording in this provision is a result of a draftsman's error. Whatever the case, an immediate amendment is needed.

The provision on rape and penalties also provides that a register of convicted sexual offenders shall be made available to the public. In addition, a court may declare a person who has been convicted of a sexual offence a dangerous sexual offender. A public register is useful for the purposes of deterrence as well as protection of the public. However, it is not clear what the import of the court's declaration is. Will dangerous sexual offenders have a special register or be identified separately in the existing register?

Sexual offences, while rampant in Nigeria, are not offences under the Act and do not carry any punishments. Previous versions of the Act clearly identified these matters as

⁹⁶ Child Rights Act Cap. 50 Laws of the Federation of Nigeria (2004) (Nigeria).

offences. It is obvious that due to the haste to ensure that the previous administration enacted the law, several errors were made, and should be immediately rectified.

With respect to other offenses, the question remains whether the sentences provided are adequate under the Act. For example, it is debatable whether the punishments provided under the Act, “provided under the Act, ranging from a maximum of three years or a fine of 200,000 naira (1,000 USD) are sufficient punishment for spousal battery, to a six month term of imprisonment or a fine of 100,000 naira (500 USD) for forced isolation or separation from family.⁹⁷ Allowing the option of fines may remove the deterrent effect of punishments. With respect to other offences, it is not often clear why some attract greater penalties than others. For instance, the offence of coercion which requires a prosecutor to show that a person who coerces another to engage in any act to the detriment of that person’s physical or psychological well being attracts a three year term of imprisonment and no option of a fine.⁹⁸ On the other hand, the offence of offensive conduct, which requires a prosecutor to show that a person compelled another by force or threat to engage in any conduct or act, sexual or otherwise to the detriment of the victim’s physical or psychological well-being attracts a two year imprisonment or a fine of N500,000 about 2,000 US dollars.⁹⁹ There is no real difference between the two offences. It is thus unclear why there is a difference in penalty.

Apart from penal sanctions, it is recognised as best practice to acknowledge within legislation on violence against women a requirement for compensation and civil remedies. Typically, victims are harmed in many ways by violence, including physically, emotionally, psychologically and financially. The kinds of harm that can result from violence against women are well-documented and some of these result in permanent disability that affects every aspect of a woman’s life. Beyond penal sanctions, therefore, best practices also

⁹⁷ Violence Against Persons (Prohibition) Act (2015) §38 (Nigeria).

⁹⁸ Violence Against Persons (Prohibition) Act (2015) §3 (Nigeria).

⁹⁹ Violence Against Persons (Prohibition) Act (2015) §5 (Nigeria).

require that civil remedies and compensation should be provided for survivors by legislation. While Nigerian law, in general, recognises that a victim of any kind of violence can seek remedies under tort and human rights law, it is important to emphasise the idea of compensation, particularly when dealing with criminal matters. This would clarify the jurisdiction of the court to rule on compensation and criminal charges, help lawyers and survivors avert their minds to other remedies, and limit the number of fresh cases that would need to be commenced by separating the criminal matter completely from civil remedies.

Under the VAPP Act, section 1 that deals with rape, clearly recognises the requirement of compensation. It states that, [t]he Court shall also award appropriate compensation to the victim as it may deem fit in the circumstance.”¹⁰⁰ This is an innovative and progressive provision in the Nigerian context. Unfortunately, however, this is the only offence, which garners such remedy under the Act. It is not clear why this not a general provision applicable to every offence.

It is thus unclear whether or not the Act provides sufficient penalties for offenders and compensation for victims. While some types of violence against women are not made offences at all, some offences receive mild penalties. The concept of civil remedies is only minimally included in the Act. These are matters that would benefit from a re-consideration by the legislature in the future. It must be acknowledged, however, that these matters have not previously been considered offences and that the articulation of these matters as offences is a step in the right direction.

E. Consistent Legal Framework

A consistent legal framework is one of the key requirements of legislation on violence against woman. As the UN Handbook explains, this requires that all legislation, including legislation on family and divorce law, property law, housing rules and regulations, social

¹⁰⁰ Violence Against Persons (Prohibition) Act (2015) §1(3) (Nigeria).

security law, and employment law be reviewed and amended to bring them in line with the human rights and gender equality requirements. Accordingly, the VAPP Act should ordinarily, contain a savings and consequential amendments provision which should allow its provisions repeal any conflicting provisions. The Act contains a saving provision. However, creating a consistent legal framework throughout Nigeria would require more than a cursory look at the savings provision but also at the scope of the Act. However, the scope of the Act is limited. I begin first by looking at the savings provisions. I then address the geographic scope of the Act.

Section 45 of the Act provides that any offence committed or proceedings instituted before the commencement of the Act under the principal criminal legislation, that is, the Criminal Code, the Penal Code and the Criminal Procedure Code and any other law or regulation, which is applicable to violence, shall continue to be enforced under the Act. It thus removes the application of other legislation on offences, which it articulates. It goes further to provide in the same section that the Act shall supersede any other provisions in the principal criminal legislation that deal with similar offences under the VAPP Act. What this means, then, is that on matters relating to physical assault, which are described in the Criminal and Penal Code, those sections cease to apply and those matters will now be tried as if they were brought under the VAPP Act. This gives the Act extensive reach in respect of certain violent offences. However, this does not preclude the application of other legislation that deals with violence. VAPP Act does not cover some violent offences, including murder, manslaughter et cetera. Moreover, the Act specifies that matters in respect of protection orders that would best be dealt with under other legislation such as the Matrimonial Causes Act or the Child Rights Act, must be dealt with under those legislation. Although the Act recognises the existence and application of these Acts, it makes other provisions that may create problems, for instance, it provides a sentence for rape by a child offender, which

conflicts with the provisions of the Child Rights Act that deals with sexual offences against children and by child offenders.¹⁰¹

While the scope of offences to which the Act applies is wide, its geographic scope is narrow. The Act provides that only the High Court of the Federal Capital Territory empowered by an Act of Parliament shall have jurisdiction to hear and grant any application brought under the Act.¹⁰² This is a rather curious provision. The offences provided under the Act come within the ordinary jurisdiction of magistrate courts in Nigeria. It appears that one must distinguish between a charge for an offence and an application for a protection order or any other application. It is not clear why this provision is expressed in this way. It would create more work for the high courts, a court of superior jurisdiction, on matters that should ordinarily come within the purview of the magistrate court.

Furthermore, the Act specifies that it applies only to the Federal Capital Territory.¹⁰³ The reason for this provision is not difficult to decipher. Nigeria is a democracy with a federal system of government. Legislative responsibilities are outlined in the Constitution. In order to determine who bears the legislative responsibility on any particular issue in Nigeria, one must resort to the Constitution of the Federal Republic of Nigeria, 1999 and the division of powers amongst the different levels of government that operates in the Nigerian federal system – the federal government, the states and the local government. In order to understand legislative prerogatives in regard to violence therefore, one must understand the constitutional provisions regarding violence.

¹⁰¹ Compare Violence Against Persons (Prohibition) Act (2015) §1 (Nigeria) with Child's Right Act (2003) § 30-32 (Nigeria).

¹⁰² Violence Against Persons (Prohibition) Act (2015) §27 (Nigeria).

¹⁰³ Violence Against Persons (Prohibition) Act (2015) §47 (Nigeria).

Violence clearly falls into the realm of criminal law. It is important to note that criminal law is, largely,¹⁰⁴ a residual matter over which the states have power to make legislation exclusively. The VAPP Act is federal law. In this regard, Inegbedion and Omoregie observe the long-standing history of criminal matters as residual legislative matters:

Ever since Nigeria became a federation, the power to make laws for the creation of offences generally, as well as for providing for the procedure in criminal trials, has always been a matter usually reserved exclusively for the States. This was on the basis that it was a residual matter that was not contained in any of the legislative lists. The 1954, 1960, 1963 and 1979 Constitutions contained this arrangement, which was also adopted under the 1999 Constitution.¹⁰⁵

The VAPP Act legislates on a clearly criminal matter, providing criminal penalties for offences that border on violence. As such the VAPP Act currently applies only to the Federal Capital Territory (FCT). This is clearly stated in the Act itself.¹⁰⁶ It can therefore only be implemented, as things currently stand, in federal institutions throughout the country and in Abuja, the Federal Capital Territory. The doctrine of covering the field, which allows the federal legislature to make a law to cover the field where it is a subject on which the federal and state governments can legislate, would be of little assistance in this regard. This is because the matter sought to be covered by the federal legislature is not a concurrent matter but a residual matter and, more importantly, the Act states that it applies only in the FCT. Instead, several pieces of criminal legislation which are operative in the States continue to be in force namely: the Criminal Code Act, the Criminal Procedure Act, the Criminal Code Laws and Criminal Procedure Laws apply in the Southern States of Nigeria except Lagos State (which has recently revised its criminal laws) while the Penal Code (Federal Provisions)

¹⁰⁴ There are certainly aspects of criminal law that are clearly only within the legislative competence of the National Assembly. Akeem Olajide Bello, *Criminal Law in Nigeria in the Last 53 Years: Trends and Prospects for the Future*, 9 ACTA UNIVERSITATIS DANUBIUS JURIDICA 15 (2013).

¹⁰⁵ N. A. Inegbedion & E. Omoregie, Federalism in Nigeria: A Re-Appraisal, 4 JOURNAL OF COMMONWEALTH LAW AND LEGAL EDUC. 69, 76 (2006).

¹⁰⁶ Violence Against Persons (Prohibition) Act (2015) §47 (Nigeria).

Act and the Criminal Procedure Code apply as federal legislation in the Federal Capital Territory and the Penal Code Laws of the States.¹⁰⁷

This would appear to make the VAPP Act of very limited relevance for the nationwide fight against violence against women in Nigeria. One could begin to wonder why women and civil society groups fought so hard for over a decade to see the Act passed into law if it would only apply to limited area and institutions in the country. However, the VAPP Act has the potential to apply widely if and when the VAPP Act is adopted by States. In this regard, where a matter falls into the residual list on which states have exclusive authority to make law, the states can adopt it. Should it be adopted by States, it will override any existing laws on violence, including extant criminal law, as provided by the as provided by the consequential amendment sections of the Act. As I discuss in my conclusion, adoption by states would be the next frontier for advocacy efforts.

For the full effect of the Act to be felt in Nigeria, therefore, a new frontier for advocacy must be exploited: adoption by States. If adopted by states as is hoped, the VAPP Act's provisions have the potential to extend overarching protection against violence throughout the country. This is a significant development because of the currently patchwork, fragmented nature of the law against violence, particularly gender-based violence. The VAPP Act provides more comprehensive provisions, which align more closely with international best practices. If adopted by the States, it would provide more uniform legislative coverage against the different types of violence that women in Nigeria encounter on account of their gender.

However, the current situation remains that the VAPP, at the present time, joins the present reality of a variety of laws covering various acts of violence against women, all operating within limited geographical areas. For instance, only five states have specifically

¹⁰⁷ Inegbedion & Omoregie, *supra* note 105, at 69.

legislated against domestic violence in the past: Ebonyi, Lagos, Jigawa, Ekiti, and Cross Rivers. About twelve states have states have legislated against female genital mutilation, including Edo and Cross Rivers. A few others have developed legislation prohibiting traditional harmful widowhood practices, for example, Anambra and Cross Rivers, while Ekiti and Imo States have developed legislation prohibiting all gender-based violence. The Criminal Code with its antiquated notions and definitions of various acts of violence including rape, defilement et cetera remains law in most states around the country, with the notable exception of Lagos State which has revised its criminal law. Adoption of the VAPP Act by other states may prove helpful to eliminate still-present archaic notions, improve uniformity, cover any loopholes in any existing law, and provide more comprehensive protections than is currently available in many states in the country. Without such adoption, the VAPP Act simply joins a pantheon of patchy, inchoate laws governing violence against women across the country. If the VAPP is to be adopted in States that have some legislation, there would be need to compare the provisions of existing laws in order to ensure that States have the best possible legislation. For instance, Ekiti's State Gender-based Violence Prohibition law clearly recognises gender-based violence as a specific offence, which the VAPP Act clearly avoids doing. It would be appropriate to ensure that any variant of the VAPP Act adopted there does not lose its gender sensitivity.

It is clear that some work still needs to be done to ensure that the VAPP Act is adopted across the country. It will also be essential to consider and remedy any weaknesses when advocating for adoption in the States.

F. Legislation Should Contain Provisions For Its Effective Implementation, Evaluation, and Monitoring

Enacting legislation that protects women from violence is one step. Just as important is to the need to ensure that the legislation is implemented. Such implementation would include organic linkages to an institutional framework for implementation, elaboration of

relevant rules and regulations, articulation of policies and strategy. The latter would include the setting of achievable targets and deadlines. Ideally, the legislation should mandate a budget. Establishing a budget line in the legislation would ensure sustainability. Further as noted in the *UN Handbook on Legislation on Violence against Women*, legislation should:

[E]mphasize the critical importance of monitoring the implementation of the law and recommends that legislation establish institutional mechanisms, such as multi-sectoral task forces or committees, or national rapporteurs, to undertake this task. It also recommends that legislation require the regular collection of statistical data and research to ensure an adequate knowledge base for effective implementation and monitoring.¹⁰⁸

The VAPP Act contains provisions on several of these matters. It makes provision for a Coordinator for the prevention of domestic violence. This person is to be appointed by NAPTIP. By the provisions of the Act, the Coordinator will provide an annual report on domestic violence and present this to the NAPTIP and also to the National Bureau of Statistics.¹⁰⁹ This creates a specific office for data collection, a vacuum that has existed for a very long time. It will be recalled that, although the term is defined in the Act, there is currently no offence of domestic violence in the Act. It will fall on the Coordinator to sieve through matters reported to the police and through other avenues identify cases of domestic violence. It is not clear why, nor is it ideal, that the Coordinator will only focus on domestic violence. What about other matters, which are actually offences in the Act, for example, rape? Presumably, these other matters will be coordinated by the NAPTIP. This may raise other questions, the key one being whether the Act, which established NAPTIP, permits NAPTIP to take on other responsibilities outside the main function of enforcing anti-trafficking legislation and whether there is any conflict between that legislation and the VAPP Act. This would require us to consider the Act establishing NAPTIP - the Trafficking in Persons Act 2015. The Act in section 27 specifies NAPTIP's main remit under the Act.

¹⁰⁸ *Handbook for Legislation on Violence Against Women*, *supra* note 7,1.

¹⁰⁹ Violence Against Persons (Prohibition) Act (2015) §42 (Nigeria).

The functions of NAPTIP are, in sum, to enforce all legislation on trafficking in persons and to do all things that are necessary to prevent trafficking in persons, prosecute offenders, and protect victims of trafficking. While trafficking is also violence, it is clearly distinguished from the crimes provided for under the VAPP Act. Although many of the offences covered under the VAPP Act can also be committed in the context of trafficking, thereby bringing those offences under the Trafficking in Persons Act, those offences when committed outside the trafficking context, do not constitute trafficking. In my view, I do not see any legal impediment, after careful scrutiny of the provisions of NAPTIP's establishing Act that prevents NAPTIP from enforcing the VAPP Act. However, practically speaking, it would have been better to have a body created specifically to enforce the VAPP Act. The myriad of offences that are captured under the VAPP Act may be burdensome for NAPTIP to carry out effectively. Notably, it was for practical reasons that NAPTIP was considered as a good choice for institutional framework. Previous versions of the VAPP Bill had included a new institution to be established for the purpose of enforcing the Act. The previous versions of the Bill included the creation of a National Commission on Violence Against Women to be fully funded by the Government, which was to, inter alia, monitor and supervise the implementation of the provisions of the Act. However, given the costs of establishing another agency, in the process of enacting the Act, it was thought that to reduce cost, it would be best to employ an already existing institution with some capacity (including shelters, some trained personnel) in handling issues related to violence, albeit a specific area.¹¹⁰ It is interesting that the National Human Rights Commission was not considered for this role, given its encompassing remit. In my view, this is an issue that should be revisited after a few years, to evaluate whether NAPTIP's capabilities have stood up to the challenges of regulating a very broad area of violence.

¹¹⁰ OVIawe, *supra* note 21 at 3.

Processes are being set in motion at this time to develop implementation strategies. A technical working committee has been set up to articulate steps towards operationalizing the Act. It is hoped that this committee will, as part of its work, develop a clear action plan or strategy for implementing the Act. This plan should include linking the Act to various existing policies, which have set targets on different aspects of issues contained in the Act. For instance, the National Policy on Female Genital Mutilation 2013-2017 sets specific targets that merge with eliminating the practice of FGM in Nigeria. Other existing policies include the National Policy on Gender and the National Policy on Reproductive Health. It would be useful, indeed crucial, that regulations drawn up under the Act take these policies into account. The result would be holistic, and would effectively manage issues of violence against women. Furthermore, it is necessary for this Committee to identify key stakeholders – the justice sector, law enforcement, civil society, health professions regulators such as the Medical and Dental Council of Nigeria, and engage them to ensure that they are abreast of all of the issues and understand their role in the national plan to eliminate violence against women (and other persons). In this regard, protocols, guidelines and regulations would need to be developed to address arising issues. For instance, medical practitioners would need guidance on what constitutes necessary medical care in the context of violence against women. Would this include screening for domestic violence, first aid, post exposure prophylaxis to prevent infection with HIV? These are issues, which have not been clearly dealt with prior to now.

While the Act establishes an institutional framework, it does not address certain aspects that would permit effective implementation. For instance, the Act does not mandate the establishment of rape crisis centres. Given the paucity of these centres and the acute need for them, it would have been helpful for the Act to mandate the enforcement agency to

establish such a centre with some basic requirements.¹¹¹ Similarly, the Act does not provide for a compensation fund. Such a fund was provided in earlier versions of the Act. The aim of a compensation fund as envisaged by previous versions of the Act was to provide a means for rehabilitating survivors. Where perpetrators are not persons of means, and this is so in a significant number of cases, it is essential for there to be resources for rehabilitation and treatment, as necessary and appropriate. Unfortunately, the Act does not provide for this, relying instead on the goodwill of service providers. This may not be a sustainable or effective approach in the long run, given that these service providers themselves often lack the means to assist victims and survivors. The Act does not specify a budget and source of funding for implementing the Act. This would have been helpful as it would give legal force to such budget. The insertion of clear sources of financing is not unknown to Nigerian legislation. Indeed, the National Health Act, which was signed only a few months before the VAPP Act makes clear provisions for funding from specific sources including government revenue. Be that as it may, it is critical for the Action Plan to clearly articulate a budget and the sources of funding for implementing the Act.

In conclusion, it is important that a strategy be developed as soon as practicable to begin implementation of the Act. This action plan must include a strategy for capacity development for justice sector operatives, including law enforcement and judicial officers. But it is important to go beyond obvious stakeholders such as law enforcement to others that have much influence on women and survivors, including faith-based organisations, civil society organisations, health professionals et cetera. NAPTIP must take up its responsibilities under the Act. It remains to be seen how effective they will be in view of the heavy tasks they currently have under the anti-trafficking legislation.

¹¹¹ The *Handbook for Legislation on Violence Against Women*, *supra* note 7, at 29 suggests one rape crisis centre for every 200,000 women.

V. CONCLUSION: GOING FORWARD

The VAPP Act is a ground-breaking effort to provide Nigerians the protection of law against many aspects of violence. Despite its deficiencies, it is a wide-ranging and covers offences not previously known to Nigerian law. Moreover, the enactment of the legislation has allowed for a renewed focus on and attention to violence against women. It is evident that the groups that fought and advocated for the enactment of the Act cannot afford now to relax their efforts. All effort must be made to grasp the opportunity provided by the passage of the Act and embed its provisions in common consciousness and in the operations of the key stakeholders. Workshops and symposia are being held by women's groups and government departments to discuss the Act and implementation mechanisms.¹¹²

In analysing the provisions of the Act, I have placed them within the context of best practices drawn from the international context. As I have argued in the foregoing sections, while this Act does many good things, it does not go far enough in being gender sensitive. In other words, it does not go far enough in acknowledging the impact of gender-based violence. Indeed, the deliberate gender blindness is reminiscent of the marginalisation that women suffer in other areas of life. It remains to be seen how the Act will be interpreted to take gender into account. Even so, there are many positive aspects of the Act and it is hoped that the relevant stakeholders will employ the Act effectively by instituting test cases as soon as practicable and by advocating for the utilisation of the Act.

The most immediate matter, going forward, is ensuring that the institutions that will implement the Act, including but not limited the Federal Ministries of Health, Women Affairs, Justice and many other federal institutions understand their responsibilities under the Act. Active engagement of all key stakeholders is crucial. As I mentioned earlier, the Technical Working Committee must ensure that it forms a suitable umbrella for key

¹¹² I have participated in several of these recently.

stakeholders, beginning by identifying these key stakeholders. Training and capacity building of the key public officials, in particular the police and the judiciary should be commenced immediately.¹¹³

The development of an action plan or strategy to implement the Act should be undertaken soon. The action plan must include an identification of the areas of the Act requiring the development of regulations, guidelines, protocols and standards. The development of these regulations and guidelines, and their subsequent uptake and entry into force, must take place as soon as practicable to enable full and practical operationalisation of the Act.¹¹⁴ Effort must be made to address outstanding issues in these regulations, including the provision of rape crisis centres, a budget, a fund, et cetera. For other stakeholders, particularly in the justice sector, capacity-building is essential. A training program to be undertaken at specific intervals would be a valuable provision in such regulations. At the moment, UN agencies, civil society organisations conduct trainings. These tend to be patchy, inchoate, fragmentary, inconsistent and irregular.

The regulations will also specify some of NAPTIP's duty as primary regulator. At this time, it is not clear how sensitive NAPTIP is to its role as the primary regulatory institution. It must take on the challenge of leading the process of implementing the Act. This would include interactions with organisations that work with victims and survivors to truly understand the issues. NAPTIP's role should be reviewed periodically, in order to provide consistent monitoring over the effectiveness of the implementation of the Act, and ensure other responsibilities under anti-trafficking legislation do not hinder such implementation. It may well be that amendments to the law might prove necessary to establish a specific body to monitor the implementation of the Act. Further, more of NAPTIP's responsibilities in regard

¹¹³ Some civil society organisations have begun this process. I was a facilitator for FIDA (International Federation of Women Lawyers) Nigeria for a lawyer's workshop in November 2015. Much more needs to be done in this regard.

¹¹⁴ See *Handbook for Legislation on Violence Against Women*, *supra* note 7, at 17.

to monitoring the provisions of the Act need to be specified in regulations including responsibilities to victims and survivors, to provide data on violence in general, and any reporting responsibilities it may have to the legislature.

Moreover, the limited geographic scope of the Act to the Federal Capital Territory is an issue that must be addressed. As things stand, the protections available under the VAPP Act are not extended to many women across the country. Advocacy to states to adopt the Act needs to commence in order to ensure country-wide implementation. As the experience of the Child Rights Act which was passed in 2003 and which only 26 states have adopted thirteen years after indicates, this is likely to be a prolonged and tedious process. The sooner the advocacy for adoption by states begins the better. The advocacy efforts must begin with the process of mapping existing legislation on violence against women (and other persons) in Nigeria. As discussed in the foregoing pages, several states have laws on different aspects of violence, including gender-based violence. A process of comparison and understanding of state legislation and the existing gaps and inadequacies is a necessary prerequisite to ensuring that advocacy efforts are effective and achieve the goals of giving the best protections to women. In this respect, advocacy efforts should seek to address the weaknesses in the VAPP Act and, as much as possible, include advocacy for the recognition of violence against women as an existing and important variant of violence generally. Where states already recognise this effort must be made to keep such acknowledgement on the legally binding.

Enforcement of the legislation must be taken seriously. Nigeria has a poor record on enforcement of extant law. Law enforcement officials must be consistently reminded of their obligations. Issues of domestic violence must no longer be termed private matters. With particular emphasis on enforcement, not only has this been limited, there is a lack of awareness about existing legislation and accompanying requirements, including about the most recent legislation. Thus awareness creation amongst different stakeholders is essential.

Unfortunately, the Act does not contain much on prevention. Raising awareness on the Act can be used as an opportunity to promote prevention as well as highlight remedies provided under the Act. These efforts would include making the Act publicly available, including in accessible language such as the pidgin language. It would be helpful to use different forms of media, print media, including newspapers, electronic media, including the development of a website with all information about the Act, new media, including social media platforms, Nollywood, Nigeria's cinematic platform. It would also be helpful to incorporate the Act in educational curriculums at all levels in an appropriate manner. It would be helpful to use different forms of media, and to incorporate the Act in education curriculums at all levels in an appropriate manner. Furthermore, regulations under the Act can mandate an annual forum which will address amongst other things, gender-based violence.

Finally, although there is much to applaud about the VAPP Act, it is far from perfect legislation. Thus, amendments to address outstanding issues of importance must be considered in the near future. Areas of weaknesses should also be addressed by States during the adoption process. Moreover, it is important to recognise that legislation is only one instrument amongst others in eliminating violence against women. Legislation alone will not be sufficient to eradicate longstanding practices which are deeply rooted in customs. The practical difficulties encountered in the area of gender-based violence, including underreporting, stigmatisation and re-victimisation, poor follow-through and lack of political will, inadequate support services, poor referral systems, and limited availability of information on existing and available support and services, are not all solvable by reliance only on the enactment of legislation. Education and enlightenment are key to making laws like the VAPP Act truly effective. The VAPP Act is more likely to have a fuller effect on eliminating violence against women when taking a holistic approach: that recognises key stakeholders, seeks to change attitudes forged over many years, addresses the key

determinants of violence including patriarchy, combats the feminisation of poverty and the limitations imposed on women by poor economic circumstances and limited education, acknowledges and tackles the challenges of resourcing, poor attitudes and other systemic issues in law enforcement, provides the material resources that are necessary for supporting victims and survivors, and empowers civil society organisations to advocate for the rights of women and utilise existing law, alongside enforcing legal provisions such as the VAPP Act is more likely to have a fuller effect on eliminating violence against women.

This Act has the potential to change the way women are treated in Nigeria. Effective implementation is crucial for its success. The lives of Nigerian women that have been lost and those that are still enduring gender-based violence demand this.