

# **Examining the Effects of Domestic Violence Against Women In Nigeria\***

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## **ABSTRACT**

This article seeks to examine the various acts that are referred as customary or socio-cultural perspective of violence against women in Nigeria and how same vicariously affects the family setting and the society at large. In tackling this, the article first evaluates the forms of domestic violence with the negative effects they have on the health of women and children. These include physical violence or physical injury (that is Acid bath, woman batterer), some harmful traditional practices, (such as female genital mutilation, which is also known as female circumcision), forced marriage or child early marriage, inheritance against women, trafficking in women, widowhood rites against women and sexual violence even at home. Significantly, it among others, examines different ways in which these forms of violence affect the lives of women and children in Nigeria. The article also considers case law in other jurisdictions with a view to buttressing the fact that domestic violence against women constitutes fragrant violation of human rights and therefore, enforceable. The article recommends constitutional amendment to cater for express reflection of the right of women in chapter IV of the 1999 constitution (as amended) so as to resolve dilemma of domestic violence against women in Nigeria. Beyond constitutional amendments, the article advocates for an active and purposeful as opposed to conservative, interpretation of domestic violence to include right to be safe from acid bath and other cultural practices that are harmful to women, taking clue from other developed countries. The article is with a view to achieving at least a significant reduction in the rate of domestic violence directed against women whether in its physical, psychological, emotional or economic in its domestic dimension.

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## **I. INTRODUCTION**

### **1.0. EFFECTS OF DOMESTIC VIOLENCE AGAINST WOMEN IN NIGERIA\***

The protest against violation of human rights is based on the United Nation Charter of 1945, which recognizes the need to stop mistreating all citizens.<sup>1</sup> The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on December 10, 1948 at Paris. In compliance with that standard, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted in 1979 by the United Nation General Assembly which Nigeria is a signatory to, it described discrimination as;<sup>2</sup> any distinction or exclusion made on the basis of sex, which has an effect of or done for the purpose of impairing or nullifying the recognition of rights exercised by women, irrespective of their mental status, on a basis of equality of men and women; of human rights and fundamental freedom in the political, economic, social, cultural, civil or any field.

Garner,<sup>3</sup> defines violence as unlawful exercise of physical force. Violence has also been defined as the intentional use of force or power threatened or actual against oneself or another person or against a group or community that either result in or has a high likely-hood of resulting in injury, death, psychological harm, mal-

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1.B E Unameiye and F E Iserameiya., "Gender based Violence Against Women, its Implication on the Girl Child Education", International Journal of Academic Research in Progressive Education and Development 2018, vol2, No.1, pp219-226.

2.The Universal Declaration of Human Rights, 1948, UN G. A, Res.217A (111) of December,1948 (hereafter the UDHR or Declaration).

3.B A Garner., Black's Law Dictionary 11<sup>th</sup> edition (2019) Thomson Reuter, St Paul, MN. P975. See also Oxford Advance Learner's Dictionary (New 7<sup>th</sup> edition). p352.

development or deprivation<sup>4</sup>. The violence is not limited to physical, but also to sexual and psychological violence which include battery, sexual abuse of female, mental rape, female genital mutilation, beating, verbal abuse, force marriage, child marriage, denial of the right to own a property. Violence related to exploitation, sexual harassment and intimidation at work and most recently women trafficking are inclusive. Violence can occur during any phase of a woman's life such as in childhood, adolescence and even as an adult. Domestic Violence is a pattern of behavior which involves violence or other abuse by one person against another in a family setting, such as between family members, members of a household, usually spouses, it is also an assault or other violent acts committed by one member of a household against another usually a woman.<sup>5</sup>

Effect of domestic violence against women is wide ranging, it is felt on their health, children, families, and the society at large, failure to address this type of violence against women has grievous economic and developmental effects as well. Many states have developed policies to prevent or respond to violence against women; which include legal measures, service provision, policies and prevention strategies. However, the number and rate of occurrence of domestic violence against women is alarming and overwhelming.<sup>6</sup> Its elimination requires a comprehensive and systematic response by individual, religious bodies, legal institution, local communities and State, National and International bodies. Domestic violence is violation of several fundamental human rights. These include the right to life, the right not to be subjected to torture, the right to equal protection before the law, the right to liberty and security of the person, the right to equality in the family and the right to the highest attainable standard of physical and mental health<sup>7</sup>. It also restricts their labour force and participation in development and can make them to maintain silence when they should speak publicly.<sup>8</sup> Families or individuals who have experienced domestic violence usually suffer physical, emotional, mental or spiritual traumas and these traumas can have various effects on the mind, body and even spirit of the victim. The effects of domestic violence can endure and worsen if they are not addressed. Victims may experience similar types of violence; however, the response to trauma differs from person to person. Esmina, asserts that many factors can influence how a person responds to short and long term effects of violence. Frequency of the violence, degree of the severity and the effects on physical health of the victim should be considered.<sup>9</sup> The overall effect of domestic violence also depends on the individual's natural reactions to stress and ways of coping with stressful situations. Robert,<sup>10</sup> factors which can influence how a person responds to the effect of domestic violence includes age in which the trauma occurred, previous exposure to related traumatic incidents and the extent of therapy or timing of intervention. The effects of domestic violence against women are enormous. It includes health hazards, human rights and socio economic impacts on affected women, their children, their families and society at large<sup>11</sup>. Furthermore, women who fall victim of domestic violence suffer a range of health problems such as severe injury, mental health problems, stress, depression, anxiety and psychosomatic symptoms, eating problems, and sexual dysfunctions. Victims may have gynecological

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4. World Health Organization (WHO) Prevention of Violence: A Public Health Priority Resolution 49025 WHO Report on violence and Health, 2015.

<sup>5</sup> Garner *ibid*(n3).

<sup>6</sup> For instance, P Lalita., discussed "Battered Wife 's Syndrome: Some Socio-'Legal Aspect" in Sushma Sooh. *Violence Against Women in Indian (1989)*.<sup>35</sup>, There is also Protection of Women Against Domestic Violence Act, of Indian at Glance, (a-d) lists the acts which constitute domestic violence. A Semina and S Osiman., also discussed "the Consequences of Domestic Violence on Women's Mental Health in Bosnia & Herzegovina." *Croatian Medical Journal, University Clinical Center, Tuzia., Bosnia(2011)* and H A Amelie., discussed "Gender Mutilations in Middle East": The Study revealed that in June 2011, Iraqi Krdirasim Passed a Landmark Law that Criminalized Female Circumcision and Domestic Violence Against Women in Iraqi. See also N N Uche and N J Eboh., (2012), *Domestic Violence: When the Law Fails to Protect*, E Azinge., and N Uche., (ed) *Nigerian Institute of Advanced Legal Studies, Lagos, p.273*.

<sup>7</sup> Sections 33-51 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>8</sup> A Elmina. and S Oman., "Consequences of Domestic Violence on Women's Health in Bosnia and Herzegovina." *Journal of Obstetrics' and Gynecologist Vol. 05 No. 11, (2011)* p 115. See also UNDFP (2012) United Nations Development Fund for Population Activities ' *Widespread Violence Against Women in Africa., Available at <http://www.affo.l.com/categories/wom003violence.unfpa.htm> (. Accessed August 11, 2015.)*

<sup>9</sup> *ibid*

<sup>10</sup> G L., Roberts *et-al.* "The Impact of Domestic Violence on Women's Mental Health", *Aust. Public Health*, vol. 22 No. 796 (2013) p. 801

<sup>11</sup> See O Obinna, O., ' As Sexual Violence Center Opens in Lagos, I can't understand why a man should beat his "Vanguard July23, 2015. Vol. '23, No.46235.

problems, unplanned pregnancies, miscarriages, sexually transmitted infectious diseases and it could be very fatal, as to lead to suicide or sudden death.<sup>12</sup>

### **1.1. PHYSICAL VIOLENCE/ PERSONAL INJURY**

This form of violence refers to negative or harmful acts carried out by a person against another which resulted in bodily pains or harm.<sup>13</sup> This may include: slapping, grabbing, pinching, biting, beating, shouting, choking, stabbing, strangling. Others are, acid burning, kicking out, locking out, restraining, murder and other acts designed to injure, hurt, endanger, or cause physical pain to an intimate person. This form of violence, in most cases is perpetrated by a father, husband, boyfriend, stepfather, brother, uncle, son, other male relation in the home or other members of the family.<sup>14</sup> This sort of violence inflicted on a woman is not discriminatory on grounds of age, class or even social status. For a woman, whatever her position in life and however old she may be, can be subjected to violence by partner, brother or other male relative.

Fawole,<sup>15</sup> maintains that women can also be violent; however, there is hardly report on pages of dailies about violence against men. Therefore, one will be right to align with the writer that Men can also be violated against but on rare cases.

### **1.2 Acid Bath.**

This is a form of violence where the victim is poured chemical substance by her spouse, boyfriend or even a relation in order to disfigure the person. Like the case of Ladi Moses, a 27 years old lady who was reported to have died from her boyfriend's 'acid attack.'<sup>16</sup> The report gathered from eye witnesses that the deceased was called by her boyfriend popularly called Baba in the old Nigerian prison service premise at Wadata Area of Makurdi town, where she was living with her parents. The eye witness said, he called her because he had something to discuss with her. When the lady approached him, Baba brought out a bottle containing a substance suspected to be acid and poured it on the lady who screamed and fell on the ground. As neighbors trooped out to see what was happening, Baba fled, subsequently he was arrested at a motor park where he was trying to board a taxi out of Makurdi town, the victim was reported to have died. Acid burnt is another form of violence against women that is prevalent in Nigeria today. The unfortunate aspect of acid burns is that in Nigeria, there is little or no control in the sale of acid to the public or adequate punishment for perpetrators, often times the police prosecutor will report that investigations is yet to be completed and the matter will die without prosecution.

## **II. SOME HARMFUL TRADITIONAL PRACTICES**

The United Nations Charter includes among its basic principle, the achievement of International Cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without discrimination as to race, sex, language and religion.<sup>17</sup> Also in 1948, after the adoption of the Charter, the General Assembly adopted the Universal Declaration of Human Rights which has served as a guiding principle on human rights and fundamental freedoms in the constitutions and laws of many of the member states of the United Nations. The Universal Declaration prohibits all forms of discrimination based on sex and ensures the right to life, liberty and security of persons; it further recognizes equality before the law and equal protection

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<sup>12</sup> I Campbell, *et-el* "Prevalence and Risk Factors for Intimate Partner Violence in China," *Journal of Public Health*, vol. 96 No.78 (2010) p. 86 in A Esnima., and S Osma., "Consequences of Domestic Violence on Women's Mental Health" in *Bosnia and Herzegovina (Roatian Medical Journal* October, 2015) p. 64.

<sup>13</sup> L U Onyinyechi., *Effects of Domestic Violence on Children: A Nigerian Syndrome*. Law on Domestic Violence in Nigeria, E Azinge., & L Uche., (ed) (NIALS Lagos) (2012) p.236.

<sup>14</sup> O Bamgbose., "Teenage Prostitution and the Future of the Female Adolescent in Nigeria". *International Journal of Offender Therapy, & Comparative Criminology* vol. 46 (2012) pp. 469-585.

<sup>15</sup> O L Fawole., *Domestic Violence Against Women and Girls; Is It Receiving the Necessary Attention?* The Nigeria Law Journal vol 17. No.3 (2015) pp. 167-177 see also O Abifarin., 'An Appraisal of Domestic Violence against men in Africa' *Confluence Journal of Public Law* vol 2No.5 (CJPL).2012..) P.25. and the case of Oyewande Oyediran., a Lawyer who Stabs her Husband Oyewole Oyediran to Death in Ibadan in February 3, 2016, reported by Idowu, A., "A Lawyer Brutally Stabs Her Husband to Death in Ibadan." *Tribune Newspaper (Nig)* Vol. 7, No.12 2016) p.8

<sup>16</sup> D Abel, "27 Years-old Lady Died from Boy Friend's Acid Attack." in Makurdi Town, State Capital Benue State. Reported in *Vanguard Newspaper (Nig)*, Wednesday November 11, 2019. Vol 25. No.62625, See also M Abubakar., "A Lady,27, Died of Acid Bath by Her Boy Friend". *Guardian Newspapers (Nig)*, November 11, 2015.vol. 32, No.13466.

<sup>16</sup>.Article 1 paragraph 31 of the United Nations Charter,

against any discrimination or violation of the Declaration.<sup>18</sup> Many International Legal Instruments on human rights further reinforce individual rights and also protect and exhibit discrimination against specific groups, in particular women. The Convention on the Elimination of all Forms of Discrimination against Women, for example, had been ratified by 138 States as at January, 1995. The Convention obliges state parties to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.<sup>19</sup> It also reaffirms the equality of human rights for women and men in society and in the family. It further obliges state parties to take action against the social cause of women's inequality and call for the elimination of laws, practices, and prejudice that impair women's well-being. Traditional or cultural practices reflect values and beliefs held by members of a community for periods often last for generation. Every social grouping in the world has specific traditional/cultural practices and beliefs, some of which are beneficial to all members, while others are harmful to specific group such as women and girls. These harmful traditional practices include female genital mutilation (FGM), which is also known as female circumcision, forced and child early marriage, inheritance, Trafficking in women and widowhood rites. The various traditional practices or taboos which prevent women from controlling their own fertility and nutrition as well as Taboos and traditional birth practices, son preference and its implication for the status of the girl child are also included as will be discussed. Despite the harmful nature of these practices and their violation of international women's rights law, such practices persist because they are not questioned and take on an aura of morality in the eyes of those practicing them.

### 2.1. Early Child and Forced Marriage

Early Child and Forced marriage is another serious problem which some girls, as opposed to boys must face. Early child marriage is the act of giving out a female child for marriage at a very tender age.<sup>20</sup> Mostly, when the girl knows nothing about her rights and this practice, of giving away girls for marriage at the age of 10, 11, 12 or 13 after which they must start producing children is prevalent among certain ethnic groups in Nigeria. Early child and forced marriage is said to entrap women and young girls in relationships that deprive them of their basic human rights. It constitutes a human rights violation in itself.

The Convention on Consent to Marriage states that:

No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person publically and in the presence of the authority competent to solemnize the marriage and of witness as prescribed by law.<sup>21</sup>

Therefore, Early Child and Forced Marriage are not only a violation of the girl's right but also a violation of the law. Furthermore, it is interesting to note that in Nigeria and indeed some parts of Africa, early marriage comes in form of child betrothal. This involves marrying out of a girl child immediately she is delivered.<sup>22</sup> Forced marriage on the other hand is marrying out a girl child against her wish. It could also be referred to as induced marriage in some cases; the girl is withdrawn from school or even denied access to education.<sup>23</sup> In forced marriage, one or both of the partners cannot give free consent to the marriage; forced marriage involves varying degrees of force, coercion or deception, ranging from emotional pressure by family or community members to abduction and imprisonment. Emotional pressures from victim's family includes repeatedly telling the victim, that the family's social standing and reputation are at stake as well as isolating the victim or refusing to speak to her. In more severe cases, the victim can be subjected to physical abuse. Forced and child marriage mainly affects women and girls, but, there are cases of young men and boys being forced to

<sup>18</sup> Article 5 (a) of the. Convention on the Elimination of All Forms of Discrimination Against Women., adopted by the General Assembly Resolution 34/1180 of 18<sup>th</sup> December 1979.

<sup>19</sup> Article 21 *ibid.* see also *United Nations Agency for International Development (1993) A Frame for Advocacy. Series 5. No.49 Vol.2 .and N Oby., (2014) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).*

<sup>20</sup> Aaron, S., "Beast of Burden.", *Action Women Quarterly* 1 WACO 1 Enugu (2010). See also Zambia Report, *Preventing and Eliminating Child, Early and Forced Marriage.* By the Zambia Chapter of 'Girls Not Brides.' (2007) p.12

<sup>21</sup> The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages UN General Assembly, 7 November 1962.

<sup>22</sup> Coker, A.L. & Richer, D Violence Against Women in Sierra Leone; Frequency and Correlates of Intimate Partner Violence and Forced Sexual Intercourse" *African Journal on Reproductive Health*, April, 21 (2005)) p61. See also Lourdes, C.A; and Torres, M.R.B., Third "World Women and the Politics of Feminism. Indian, (University Press), 1999) p. 52.

<sup>23</sup> UNICEF *Report on Children and Women's Rights in Nigeria; A wake up Call: Assessment and Analysis.* WRAPA NewsLetter.) (2012) p.25. also the Case of *Hawa Abubakar a 9-Year-Old Girl Whom Her Father Gave Her Out to Mallam Garuba a 40 Years Old Man in Bauchi Town*, (2001) UN Report.

marry, if there are concerns about his sexual orientation. However, reliable statistics on forced marriage are difficult to compile due to the difficult and undocumented nature of most forced marriage. In 2013, the International Center for Research on Women estimated that more than 51 million girls under 18 years were married and expected to rise to above 100 million within the next ten years. Similarly, experts estimated that thirty-eight percent of young women aged 15 and 18 in fifty least developed countries were married before the age of 18.<sup>24</sup> Report also reviewed that, no major world religion sanction forced marriage. It is a cultural practice. However, no culture exclusively practices forced marriage. Victims are forced into marriage for many reasons<sup>25</sup>.

One of the reasons is that in Countries that have plural legal systems, statutory and customary laws run parallel together with the traditional practices of the people and most people will prefer marrying under the customary law where there is no minimum age for marriage. Again most people live their lives according to their customary laws and traditional practices, especially in rural areas and even urban areas. In United Kingdom, the working group on forced marriage found that most cases of forced marriage is as a result of loving manipulation where parents genuinely felt they were acting in their children and family's best interest<sup>26</sup>. Also registration of birth for ages of girls to be known is not mandatory unless someone gives birth at a clinic or Hospital. However, a lot of children are born in homes by traditional birth attendant, and not mandated to register those births. Another reason is lack of knowledge about the law on marriage, not information about the fact that child, early and forced marriage is a crime. Furthermore, families living in poverty or economic instability, a daughter may be seen as an "economic burden" who must be married as soon as possible to take financial strain off the family. A girl child, who became an orphan as a result of HIV/AIDS, is vulnerable. This could also contribute to early child and forced marriage, of the girls in those families. The country may not have social security mechanism, for such families and extended family system is almost nonexistent due to the high cost of living. Most families are unlikely to take in any orphans. Marriage can also be used to settle debt and to strengthen family or caste status through social alliances, fear about sexual activities before marriage or fear of rumor about such activity ruining a daughter of opportunity to marry, will also contribute to early and forced marriage.

The principal reasons for this practice are the girl's virginity and the pride price; young girls are less likely to have had sexual contact and thus are believed to be virgins upon marriage. The condition raises the family status as well as the dowry to be paid by the husband. In some cases, virginity is verified by female relatives before the marriage. Early child marriage robs a girl of her childhood-time necessary to develop physically, emotionally and psychologically. It also inflicts great emotional stress on the girl as the young girl is removed from her parent home to that of her husband and in-laws, her husband who will invariably be many years her senior, will have little in common with the young bride. Unfortunately, it is with this strange man that she has to develop an intimate, emotional and physical relationship. She is also obliged to have intercourse; even physically she might not be fully developed. Girls from communities where early child marriages occur are also found to be victims of son preferential treatment and will probably be malnourished and consequently have stunted physical growth<sup>27</sup>. In most parts of the country, there is no law that streamlines the rightful age for marriage and the ones available are usually overlooked<sup>28</sup>. However, Bauchi state Government and others few states must be commended for their intervention to enact law banning child marriage after the pathetic case of Hauwa Abubakar a 9-year-old girl who was married off to one Mallam Shehu Garuba Kiniwa a 40-year-old cattle dealer.<sup>29</sup> Her father who was indebted to the Husband forcefully gave Hauwa as wife to Shehu at the age of

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<sup>24</sup> United Nations Children Fund, *Women in Transition*, "Regional Monitoring Report No.6. Florence UNICEF International Child Development Center & UN Report (2013), United Nations Reports on Child early /and Forced Marriage (2013) & Nasha Oxfan GB., 'Campaign on Early Child Marriage "June 2010.

<sup>25</sup> "Evaluation Report on *General situation of Women in Afghanistan*". Afghanistan Independent Human Rights Commission.2012

<sup>26</sup> UN Report " Child Early and Forced Marriage," Thursday December19,2013. See also United Nations Population Division2010.Child Marriage Fact Sheet, Press Release in England and Wales, New Legislation Outlaws Forced and Child Early Marriage, March 28, 2014.

<sup>27</sup> Zambia chapter of "Girls Not Brides" Report on Preventing and Eliminating Child Early And Forced Marriage, UNICEF Report of the *World's Children 2014*, accessed [http://www.girlsnotbrides.org/./zambia/.](http://www.girlsnotbrides.org/./zambia/)

<sup>28</sup> Numerous International Legal instruments prohibits forced and Child Early Marriage including the Universal Declaration of Human Rights, the United Nations Convention on Consent to Marriage, & Minimum Age and Registration of Marriages, the Convention on the Elimination of All Forms of Discrimination Against Women. Although, most countries have signed onto these Documents, many countries are yet to taken sufficient step to implement these treaties. In 2005, the council of Europe adopted Resolution "468 on Forced and Child marriage. however, only few countries have criminalized forced marriage.

<sup>29</sup> Patience Akpan -Obong Omojuwa "The Second Killingof Hauwa Abubakar, Available at <Omojuwa.com/2013/7/the-second-killing-of-hauwa> see also UNICEF Report, "*Children and Women's Rights in Nigeria;*" a Wakeup Call Assessment and Analysis". WRAPA Newsletter (2012) p 5

9 years. She ran away from the husband's house on two occasions and was forcefully brought back to his house on the third occasion, when she ran away and was brought back by her parents. The husband pinned her down and chopped off her legs with a cutlass. The government of Bauchi state should be commended for their reaction by enacting a decree empowering Government to prosecute any parent who withdraws a child from school for marriage. It is the opinion of this researcher that other states which have not enacted the child's Right Law should follow the bold step taken by Bauchi State government to enact a law on forced marriage.

The 1999 constitution of the Federal Republic of Nigeria has complicated matters on early marriage, by deeming a child to be an adult in so far as that child is married,<sup>30</sup> this provision of the constitution gave support to violence against girl child contrary to the provision of (CEDAW)<sup>31</sup>, which prohibits the Betrothal and marriage of the girl child. Child early and forced marriage is a gross human rights violation which put girls at risk of violence and ill health; it denies them the opportunity to fully contribute to their societies and keeps them locked in a state of poverty. However, in the past years, child early and forced marriage which is now a global problem that impedes the development, wellbeing and life option of the victims, has emerged as one of the neglected human rights violation and only recently it started to receive new attention. Nigeria, particularly the northern part of the country is among the areas with the highest prevalence of child and forced marriages.<sup>32</sup> Despite the difficulties in getting reliable data on early child and Forced marriage, it is estimated that almost half of women from the northern part of Nigeria are married at age 13 while the legal age of marriage is 18 years.<sup>33</sup> Most of these girls are driven into abusive relationships which end up in divorce due to emotional and physical abuse. Girls living in poverty and those in the rural areas face a big risk of early child and forced marriages, most especially those without access to education. Due to early child and forced marriage, the rights to education of many young girls are affected as they are taken out of school every year.<sup>34</sup> Utolu also discussed in his article that there are Cases where parents have forced their grown up daughters into marriages that were against their wishes either due to cultural, social, economic or political reasons.<sup>35</sup>

Early Child marriage of girls is also common in sub-saharan Africa and South Asia:<sup>36</sup> official data on very early marriage under age (13) are limited but studies indicate that in parts of East and West Africa, for example marriage at age 7 or 8 are not uncommon<sup>37</sup>. In some parts of northern Nigeria also the average age is 11 years as against the minimum aged of 18 years.<sup>38</sup> The National Demographic Health Survey and other reports show that in 26.5% of couple, there is an age difference of 15 years between husband and wife;<sup>39</sup> this contributes to a woman's powerlessness with respect to sexuality, reproductive health decision and

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<sup>30</sup> Section 29 (4) (b), Constitution of the Federal Republic of Nigeria, 1999(as amended) see also UN Report (2013) on *Child Early and Forced Marriage, Nigerian Constitution takes away Protection from Child Marriage*. And see also Safe World International. (2012). *Nigerian Women Urge Government Intervention in Domestic Violence*. Retrieved from, <<http://www.asafeworldforwomen.org/domestic-violence/dv-africa/dv.nigeria>> accessed on November 20, 2015.

<sup>31</sup> Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)). And the provision of the United Nations Convention on Consent to Marriage and minimum age Registration.

<sup>32</sup> Case of *Hauwa Abubakar supra (note)* 45. and many other children who were given for marriage at a very tender age. See also the case of former Zamfara state Governor and senator, Sanni Yerima who married a 13 yr old girl. On April 27,2012.

<sup>33</sup> Marriage Act (cap.m6) Laws of Federation of Nigeria (2004), Article 24, (CEDAW), Marriage Act 2013 and UN 'Convention on Consent to Marriage; minimum Age for marriage and Registration senator of Marriage'. and The Zambia Charter of Girls Not Brides" Report on Preventing and Eliminating Child Early and Forced Marriage on March, 12 2014.

<sup>34</sup> UNICEF," *Children and Women's Right in Nigeria.*" A Wakeup Call: Assessment and Analysis. WRAPA Newsletter (2018). P. 5.

<sup>35</sup> Utolu R.E." *The Impact of Traditional l Practices on the Psychological and Educational Development of the Girl-Child in Nigeria*. Seminar organized by Federation of International Women Lawyers, Lagos Mainland Chapter Makoko, Lagos 27-28 April., (2013) p.5.

<sup>36</sup> UN Copyright: *Shattering the Silence of Violence Against Women*. In Nigeria Vvol.1. No.1 UN Chronicles vol.35.issues (2012) p.7.

<sup>37</sup>"Our two-year Strategy" Forced Marriage Unit; Foreign & Commonwealth Office, may 2012.see also "Reconcile to Violence" Human Rights watch, September, 2012.) p.10

<sup>38</sup> Article 5 (a) of the Convention on the Elimination of All Forms of Discrimination Against Women. Adopted by the General Assembly Resolution 34/1180 of 18 December,1979. See also UNICEF (2014) *Children's and Women's Right in Nigeria*. A Wakeup Call. Assessment and Analysis. WRAPA Newsletter.

<sup>39</sup> NDHS, Nigeria Demographic Health Survey. J Schsselman., (ed)) *A Case Control Studies; Design, Conduct, Analysis*. Oxford University Press, Lagos (2019) & UNICEF (2010) "Forced Marriage; the Oversees Dimension" Foreign & Commonwealth Office 2010.

disagreement that may lead to violence. Adolescent girls are much less likely to participate in decisions about when to have children or be able to negotiate the use of birth control and less able to protect herself from HIV/AIDS.<sup>40</sup>

Early and forced marriage limits girl's educational and other opportunities for girls, it often leads to increased health risks. Girls under 13 years of age are five times more likely to die in child birth than women in their twenties<sup>41</sup>. They are also higher risk of obstetrical fistula, which can result from prolong and obstructed labor. In addition, sexually transmitted infectious diseases and even HIV/AIDS complications of early motherhood affect the social wellbeing of a girl who goes through child birth early and forced marriage denies them the right to enjoy their childhood.<sup>42</sup>

Study further indicates that early child marriages are one of the factors that trigger off maternal mortality in the worldwide.<sup>43</sup> It is estimated that 38 mothers die each month due to complications relating to early pregnancy and child birth.<sup>44</sup> Report in Zambia shows that, the case is not different; mothers die each month due to complications relating to pregnancy and child birth.<sup>45</sup> This acts have direct and indirect effect on a child and should be eradicated.

## 2.2 Female Genital Mutilation (known as female circumcision).

Female Genital Mutilation (FGM) also known as female circumcision is another form of traditional practice that violates the rights of women. It involves surgical removal of parts or all of the most sensitive female genital organs.<sup>46</sup> It is an age-old practice which is perpetrated in many communities around the world including some Nigerian tribes simply because it is customary and some practice it on religious ground. Female genital mutilation (FGM) forms an important part of the rites of passage ceremony for some communities, making the coming of ages of the female child<sup>47</sup>. It is believed that by mutilating the female's genital organs, her sexuality will be controlled, but above all it is to ensure a woman's virginity before marriage and chastity thereafter.

It's a broad term applied to a range of practices involving the removal of all or parts of the clitoris and other external genitalia.<sup>48</sup> The mystical reasons behind the harmful practice are that it prevents promiscuity in women, it controls female sexuality and to preserve the virginity of young girls until her marriage. However, there is no truth in these myths; it is rather, a gross violation of women rights to dignity of persons as contained in the constitution of the Federal Republic of Nigeria and other International Instruments.<sup>49</sup> Nahid, opined that there are no definite studies that have been conducted on the prevalence of female genital mutilation (FGM) in

<sup>40</sup> United Nations Population Fund (UNFPA 2012) *People, Poverty and Possibilities*, New York.

<sup>41</sup> G Wrong., "Seeking Women's Voice: Setting the Contact for Women's Health Intervention in two Rural Countries in Yuman, China. *Social Science and Medicine*. (2010) 41(8).1147-1157.

<sup>42</sup> Achanya, D., *'Seeking Women's Voice: Setting the Contact for Women's Health Interventions in Rural Communities*. 6<sup>th</sup> Annual Scientific Conference. Nigeria Institute of Medical Research, Yaba, Lagos 9-12 November 2015.

<sup>43</sup> Gbenga, O., *Effect of Child, Early and Forced Marriage on Nigeria Child*. Paper delivered at the Anniversary of Nigeria Federation of women Lawyers (FIDA) Yaba Lagos, 7<sup>th</sup>-9<sup>th</sup> July, 2015.

<sup>44</sup> A E Agbaji., *"Ending the Communicable and Non-Communicable Disease Divide in Nigeria*. "National Conference of the (SOGON) Society of Gynecologist and Obstetrician of Nigeria 24-27<sup>th</sup> November, 2019 Abuja.

<sup>45</sup> Zambia Report (2013.) *Preventing and Eliminating Child, Early and Forced Marriage Report (Zambia)* by the Zambia Chapter of Girls Not Brides submitted in Nigeria 4890 of girls are married out before their women and law in southern Africa (WLSA) <http://www.stopyou.org/forcedandchildmarriageunitedon30thDecember,2015>.

<sup>46</sup> Abdula., R., haj, Daulah. *Sisters in Affliction; Circumcision and infibulations of Women in Africa*. London., Zed press (1998) p.22. Article 21. see also Inter- American Committee on Traditional Practices Affecting the Health of Women and Children. Report on the regional seminar on Traditional practices affecting the health of women and children in Africa, 2012, Addis -Ababa, Ethiopia, 6-10. April,

<sup>47</sup> F P Hosken., The Hosken Report; *Genital and Sexual Mutilation of Females*, 4<sup>th</sup> revised edition (Lexington(mass), Women's International Network 2015).

<sup>48</sup> J A A Agbonika., "An Appraisal of Legal and Human Rights Implication of Female Circumcision in Nigeria. *Ebonyi State University Law Journal Vol.3 No.4(2009)* pp252-263.

<sup>49</sup> See Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), also the United Nations Doc, 2004 and United Nations Doc, 2006) respectively. The committee recommends that Female Genital Mutilation was both a domestic and sexual violence against women and girls and it denounced it as torture and cruel, inhuman and degrading treatment. This is also contained in U Rayoal, College of Nursing (RCN); *Females Genital Mutilations* (London, RCN 2010).3

Africa and Middle East.<sup>50</sup> However, based on Hosken's report; there are estimated figures of 69.96 percent (80 million) of mutilated females in the world today.<sup>51</sup>

Asen, also cited instances of the overwhelming incidence of female genital practices in Nigeria, which according to UNICEF is one of the highest in the world and out of 150 million circumcised women in the world, about a great percentage are Nigerians.<sup>52</sup> The medical implications from these are far reaching. Examples are: severe pain, shock, miscarriage, tetanus, retention, ulceration of the genital region and injury to adjacent tissue.<sup>53</sup> Female genital mutilation is a custom or tradition developed over time from various values especially religious and cultural values and the reasons for maintaining the practices include religion, custom, decreasing the sexual desire of women, hygiene, and fertility. Studies also shows that those who preserve the practice are largely women who live in traditional society in rural areas and most of these women follow tradition passively.<sup>54</sup> Reports also show that, in countries where the practice exists, most women believe that as believers of their religion, for example, they have to undergo the operations in order to be clean and properly fit for marriage<sup>55</sup> Female Genital Mutilation is a precondition for marriage in some countries.<sup>56</sup> Among the Bambara in Mali, it is believed that if the clitoris touches the head of a baby being born, the child will die<sup>57</sup>. The clitoris is seen as the male characteristics of the woman, in order to enhance her femininity, this male part of her has to be removed<sup>58</sup>. Among women in Djibouti, Ethiopia, Somalia and Sudan, circumcision is performed to reduce sexual desire and also to maintain virginity until marriage.<sup>59</sup> Circumcised women are considered to be clean.<sup>60</sup> There are several other reasons why female genital mutilation is practiced, most practitioners see the practice as an act of love, for their girls and daughter and also rites of passage of infancy to adulthood.<sup>61</sup> It is also believe to be a religious rite and obligation especially to Muslims.<sup>62</sup> It states further that Almighty Allah ordered Prophet Muhammad to follow the religion of Ibrahim when Allah says, "Then we inspired you; follow the religion of Ibrahim, the upright in faith,"<sup>63</sup> and part of the religion of Ibrahim, there is no specific verse which clearly commands the

<sup>50</sup> Nahid, T., *Female Genital Mutilation (; A call for Global Action, New York. Women's link. United States Plaza. (2012)*

<sup>51</sup> Hosken F P., The Hosken report (2019) *Genital and Sexual Mutilation of Female 4<sup>th</sup>*, Rev.edn. Lexington (Nass) Women's International Network) p.44., k John., "Female Circumcision in Africa is Largely Based on Taboo and ignorant". Mount Kenya(ed) New York, Vintage Books (1996) p.25 see also Borokini, A.A., *Female Genital Mutilation the Nexus Between Anthropology, Law and Medicine*.3<sup>rd</sup> Inaugural Lecture, Benson Idahosa University. Benin City, (2015 may 19).

<sup>52</sup> R D Asen., A Critique of the Socio- Cultural Themes in specified plays of Zulu Sofola", *Tess Onweneand & I Clark.*, Faculty of Education Journal Makurdi (2008). See also M A Dite., (et al). The Risk of Medical Complication after Female circumcision, *East African Medical Journal* Vol. 69, 2010, pp 4 79-482.

<sup>53</sup> F EOleomutua., (et al)." *Female Cutting and Correlate of sexual and Gynecological Morbidity* in Edo State Nigeria *British Journal of Gynecological and Obstetrics* (Vol. 109) (2013) pp.1084-1096.

<sup>54</sup> O Nwankwo., *Female Genital Mutilation* (RDDCC Publication Education Series No.25 Enugu Fourth Dimension Pub. Co. Ltd) (2009) p.15

<sup>55</sup> World Health Organization (WHO) Regional Plan Action to accelerate the Elimination of Female Genital Mutilation (Geneva), WHO 2010., <<http://www.mutilation/un.org.women>>

<sup>56</sup> Nahid,T., "Caring for Women with Circumcision" *A Technical Manual for Health Providers. New York,London*(1919)p17. See also. Ministry of Health, Kenya Management of Complication in Pregnancy, Childbirth and Postpartum Period in the Presence of Females, Genital Circumcision. Reference Manual for Health Services Providers Naitobi (MOH Kenya, Section 2).

<sup>57</sup> Though, there is no medical evidence to support this. See M Sarkis., "Female Genital Cutting (FGC), An Introduction. The FCC. Education and Networking Project, ><http://www.org.intro.fgmintro.html> >. (accessed on December 12, 2015).

<sup>58</sup> *ibid*

<sup>59</sup> N Aguguai., (et al) "Female Circumcision; Management of Urinary Complication, *Journal of Tropical Paediatrics* Vol. 28 (2012) pp. 242-253.

<sup>60</sup> *Ibid.* see also F A Azizi., "Gynecological and Obstetrics Complications of Female Circumcision" *International Journal of Gynecology and Obstetrics* (2013) Vol. 5, pp. 178-212.

<sup>61</sup> Shanda,l A., A, "Circumcision and Infibulations of Female. A General Consequences of the Problem and its Clinical Study of the Complication in Sudanese Women *Sudan Medical Journal* Vol. 5 (2014), pp. 187-225.

<sup>62</sup> Sunnah at tin. 95.4. it is practice by Muslim all over the world as was approved by Prophet Muhammad. see also Dokenno, E., (2007) *Cutting the Nose, Female Genital Mutilation; the Practice and its Consequences* London' Minority Rights Publication) 0178.

<sup>63</sup> Qur'an 16:123. It was reported by Ahmed, I.H., that the Prophet Muhammad stated that Circumcision was a Law for Man and a Preservation of Honour for Woman. Aisha (Muhammad 's wife) quotes Muhammad advised Female Circumcisers not to Cut Off the Entire Clitoris During Female Circumcision.



circumcision but it was done by Prophet Ibrahim who was the father of the believers. Prophet Muhammad also said: "The Prophet Ibrahim circumcised himself with an axe when he was eighty years old."<sup>64</sup> Most Islamic Jurist said that circumcision is obligatory upon the men and they buttress their views with the fact that if it was not obligatory, the Prophet Ibrahim would not have troubled himself at such a later age of his life to circumcise himself. To the operators and those carrying out excisions it provides financial security. For some people it is a symbol of purification and hygiene. While to some people the female genital is impure and it must be trimmed to rectify and purify it<sup>65</sup>. Some people also believe circumcision makes conception easier, prevents vaginal discharges, and prevent sickness and vaginal parasites or contamination of mother's mire<sup>66</sup>. In some society, it makes the transition to puberty and womanhood.<sup>67</sup> It is also, a symbol of purity, honour, chastity and virginity. Circumcision is seen as an evidence of virginity which serves two purposes; firstly, virgin brides command high bride price and this is connected to marriageable age Secondly, virginity commands respect and most men love virgins.<sup>68</sup> Effects of Female Genital Mutilation on girls and women are alarming. It has health, medical and psychological effect and the effect of female genital mutilation have both short and long-term implications. And apart from the crude operation which causes human suffering, it is also a dangerous health hazard to the victims. Hemorrhage infection and acute pain, urine retention, damages to adjoining organs, and death are known to be the immediate consequence<sup>69</sup>. Also Hemorrhage may be due to cutting of clitoral artery or cutting of a vein under which victim bleeds to death.<sup>70</sup> Other effects are Infection due to the unhygienic nature of the practice and the use of the unsterilized implements and the wound may take a long time to heal if not properly taken care of.<sup>71</sup> Most International Health Organization has condemned the practice of female Genital mutilation especially the WHO. According to them, female circumcision has health consequences which can be both short term gynecological and obstetrical consequences as well as the long term gynecological and obstetrical effects.<sup>72</sup> The long term effects may depend on the type of circumcision which can also include bleeding and pain,<sup>73</sup> reoccurring urinary tract infections, incontinence vulvas abscesses, keloid formations, vulva ulcer, dermoid cysts, tenderness and sensitivity in vulva, difficult and painful menstruation.<sup>74</sup>

<sup>64</sup> Bulahani, M.A., "Khitan (Circumcision) of Boys." Religion, Ethics, and Islam. BBC 800603-24 Retrieved > <http://www.circumcision.com/islam.html>. On 19 03 2016.

<sup>65</sup> M B Assaid., "Female Circumcision in Egypt: Social Implications, Current Research and Prospect for Change, Studies in Family Planning No 11, vol.1 (2008). p3-6.

<sup>66</sup> A Rushvan., *Female Circumcision: A Reproductive Health Problem*. In K G Matins., (et-al) (ed). Reproductive Health in Africa. Bathimore, JHPEGO (2009) pp.178-180.

<sup>67</sup> L Morisn, (etal;) (2011) "*The Long Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambains*. A Country Based Survey. Tropical Medicine and International Health. Vol. 6, (2011) pp. 11.

<sup>68</sup> Ismail. N.H.A.; "*Urinary Leakage and other Complication of Female Genital Mutilation Among Somali Girls in Sudan* Upsola Sweden.in Shandddi T.A., "Circumcision and Infibulations of Female; A General Consequences of the Problem and its Clinical Study of the Complication in Sudaness Women" Sudan Medical Journal.Vol.5 (2014) p.225.

<sup>69</sup> WHO, Management of Pregnancy, Childbirth and postnatal period in the presence of Female Genital Mutilation. Geneva (1997)

<sup>70</sup> H K Omer., "Female Genital Mutilation; Overview and Obstula Care.". The Canadian Journal of Obstetricians & Gyneacology and women Health Care. Vol.5, (2014). Opposes. Also some Organization in USA are Opposing to

<sup>71</sup>T A Shanddin., *ibid* note 54. See also Hoshen Fan P. "Stop Female Genital Mutilations" Women Speak, Facts and Action. Charlotte, Bunch and Samatha Frost, Women Human Right and Introduction in Ruthledge International Encyclopedia of Women Issues and Knowledge (2010), p. 1

<sup>72</sup> F E Okomutilia., (et al) "The Relationship Between Female cutting and Correlate of sexual and Gynecological Morbidity in Edo State, Nigeria" International Journal of Obstetrical & Gynecology (2013) Vol. 9p.17. See also Preamble to the UN Charter which was Established in 1945, it boldly Proclaims Respect for Human Rights in its Preamble. For these reasons some Organization in USA are opposing circumcision generally and Doctors too are opposing circumcision. National Organization of Circumcision Information Resource Center

<sup>73</sup> See the provision of the Universal Declaration of Human Rights was Proclaimed in 1948 by the United Nations, its Preamble Provide for the Recognition of Inherent Dignity and of the Equal and Inalienable Rights of Freedom, Justice and Peace of World.

<sup>74</sup>. Ruswan, H., (2004) "*Female Circumcision; A Reproductive Health Problem*" in J G Matt., and R.T Ladipo. (eds) Reproductive Health in Africa. Bilmore, JHPEGO) p178-180. The Committee on Economic Social and

There is male circumcision which is also a global phenomenon, though it is commonly practiced by Jews, Christian, Muslims and people of other faith which is traceable to the covenant between God and the Israelites.<sup>75</sup> To the Muslims, it is a religious rite and obligatory. The Arabic word for Female Genital Mutilation is “Taher that is purity and cleanliness. Male circumcisions also have its effects; it is a violation of human rights of male children due to the pain inflicted on the male child as contain on the Convention on Rights of the Child (CRC) as well as Convention Against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment (CAT).<sup>76</sup> However, it is not as complicated as female circumcision. It is mostly done with sterilized instruments in hygienic circumstances unlike the female circumcision. Male circumcision is not destructive to the organ as it is only the fore skin of the penis that is removed. Again, it is done for therapeutic purposes and for healing a disease called phimosis<sup>77</sup>. Female circumcision or female genital mutilation on the other hand has no divine origin; it has no therapeutic value and is mutilated or distractive.<sup>78</sup>

Female genital mutilation is a violation of human rights of women and human rights is a badge of humanity; it is a universal moral entitlement. It is a right they have when they are born as human being and a right is violated. it is an affront to justice and humanity, women’s right is a proclamation that women are human beings and they have rights: it is sacred and it is codified by the supreme law of the land, its violation is also an affirmation that, women are being denied their rights. Therefore, women deserve to be given dignity, honor decency and respect which they deserve as guaranteed under the United Nations and other International Instruments.<sup>79</sup>

Since Female genital mutilation (FGM) is a violation of women’s right, therefore, there is need for the enforcement of these laws which seem to protect women’s rights under the United Nations Charter,<sup>80</sup> Universal Declaration of Human Rights,<sup>81</sup> International Covenant and Civil and Political Rights.<sup>82</sup> The International Covenant on Economic, Social and Cultural Rights,<sup>83</sup> Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW).<sup>84</sup> Convention on the Right of a Child (CRC)<sup>85</sup> and other

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Cultural Rights in its General Comment 14, Prescribes that Human Beings under Article 12 are Entitled to the Rights to the Highest Attainable Standard of Health.

<sup>75</sup> Genesis chapter 7 verses 9-10 and Joshua chapter 6 verses 2-3, New living Translation Bible.

<sup>76</sup> Convention on the Rights of the Child prohibits torture, cruel and inhuman Treatment of Children Article 18, while Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment defines torture to mean any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purpose-

<sup>77</sup> S Ragheh., & E Smith., (2007) “A Study of Knowledge and Attitude of Nurses” in Alexander towards Female Circumcision. Bulletin of the High Institute of Inter –African Committee (AIC) Lagos, Nigeria

<sup>78</sup> N Touhia., “Female Genital Mutilation; A call for Global Action New York. women ink & Article 5 of (CEDAD). (2003) CEDAN Committee is the only Treaty Monitoring Body to Adopt a General Recommendation Solely Addressing Female Genital Mutilation, see its General Recommendation 24 on Women and Health, UN DOC.ART. 54/23 /Res, (1999). Article 5 Provide that all State Parties shall take Appropriate measure to Modify the Social and Cultural Pattern with a view to Addressing the Elimination of Customary practices based on Inferiority of the Sex, While Article 12, Provide that State Parties shall take all appropriate measure to Eliminate Discrimination Against Women in order to ensure on a bases of Equality, Accessed to Health Care Service and safe Motherhood, it also Libeled Female Genital Mutilation as Violence to Women as well as its Dangerous Consequences.

<sup>79</sup> A Rahaman., *Female Genital Mutilation...A guide to Law and policies Worldwide*. London & New York, Zed Book. (2010) p.4 see also The Convention on the Rights of the Child (CRC) which is the most Authenticated Document or Treaty that Codifying Children’s Right. See Article 5 & 18, the Committee’s Report on Australia and Bukinafaso UN.DOC.CRC/C 15 add 225 (2005) and UN.DOC.CRC 1571 add 95/2012.

<sup>80</sup> The Convention Defines Torture to Mean any Act by which Severe Pain or Suffering which be Physical or Mental is Intentionally Inflicted on a Person. See also Manfred- Nouak UN Spread Reported on Torture made its Statement in Europe. Fire Fan Concrete EU Action Against Female Genital Mutilation.

<sup>81</sup> Article 18 The Plan is prepared by the 2<sup>nd</sup> UN Regional Seminar on Traditional Practices Affecting the Health of Women and Children Held in Colombian 4<sup>th</sup> – 8<sup>th</sup>, July 1994.

<sup>82</sup> The 4<sup>th</sup> World Conference on Women Rights was Held in Beijing, China 1995, the Mission and Objective of the Conference is the Promotion of Human Rights of Girls and Women. See also Paragraph 12-16 of the Platform of Action.

<sup>83</sup> General Assembly Reg. 34/180 of December 18, 1979.

<sup>84</sup> See it’s General Recommendation 24 on Women and Health, UNDCO.A/54/3& Rev.1 (1999) &. Article 5 (a) of the Convention adopted by the General Assembly resolution 34/1180 of December 18, 1979.S

International Instruments including Beijing Declaration and platform of action of the UN world conference on women<sup>86</sup> and other Regional Instruments should be ratified and implemented in Nigeria. However, there are new developments with the enactment of the Violence against Persons, (Prohibition) Act, which was passed into law in May 26, 2015.<sup>87</sup> The Act specifically prohibits female genital mutilation and punishment for violators was provided, therefore, it should have enforced with stiffer punishment.

### III. INHERITANCE

The concept of Inheritance is another dimension of violence which has put women in disadvantage and has generated a lot of controversies among academic scholars of jurisprudence and the public at large. The way and manner in which the inheritance is carried out creates avenue for conflict among many families and different groups. Communities have been in conflict situation and the issue of inheritance among ethnic groups in Africa and their counterparts, in other parts of the world tends to look at the practice with high level of skepticism.

The universal Declaration of Human Rights affirms the principle of inadmissibility of dissemination and proclaims that all human beings are born free and have equal dignity and rights<sup>88</sup>. It further provides that everyone is entitled to all rights and freedoms set forth therein, without dissemination of any kind including gender base violence, likewise, the General Assembly Resolutions 34/80 on women which were rectified by Nigeria provide to the same effect.<sup>89</sup> The position of women generally in Nigeria has not witness any meaningful changes from the former status and the issue is accompanied by diverse socio-cultural background of Nigeria. Law regarding inheritance is believed to be closely linked with the normative, social structure and principles of family organization and functions<sup>90</sup>. The ancient period was characterized by family worship and family property. In the Hebrew's inheritance law usually followed the times of descent within the family, while the pre-Islamic Arabia inheritance was based on family sharing<sup>91</sup>. In the Roman law adopting husband's religion and renunciation of the father's name made married daughter not to inherit from their father.<sup>92</sup>

In India among the Hindus, a wife is forced to commit suicide on the day of funeral prayer of the late husband to prove her love for the late husband.<sup>93</sup> Nwogwugu, asserts that, in the modern times, inheritance law is based on the principles of struggle between individualism and collectivism and this has affected the Inheritance Law of many societies even in Nigeria.<sup>94</sup> Some cultural groups believe that inheritance should be traced to the root of the father while others perceived it to be on the side of the mother. But from whatever angle, one may view inheritance; it is an act that has, to do with receiving or benefiting from the property of the deceased. It becomes customary when the act of receiving or benefiting is carried out under the tutelage of customs and traditions. However, in this article, inheritance is regarded as the exclusion of female or women from benefiting their parent's property or a widow from inheriting the deceased's husband's property along with the male children. Such properties are shared among the male children only irrespective of the marriage or

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<sup>85</sup> Article,18 of the Convention. see also the Committee report on Australia & Bukinafaso. UN. DOC., /15/Add.2512005) and UN. Doc CRC/Add193(2002) &The Plan of Action Prepared by the 2nd UN regional Seminar on Traditional Practices Affecting the Health of Women and Children in Colombo, St. Luke. 1941.. S.

<sup>86</sup> Paragraph 4.4.22 of the programmed of Action of the Conference & paragraph 112 116 of the platform of Action.

<sup>87</sup> The Violence against Persons (prohibition) Act No. 2, 2015. was passed into Law in May,2015. Section 1 and other provisions clearly criminalized various forms of violence which has become an endemic in Nigeria homes.

<sup>88</sup> The preamble of the United Nation Declaration of Human Rights which was established in 1948.see also the Plan of Action prepared by the UN regional seminar on Women and children in Colombo.4<sup>th</sup>-8<sup>th</sup> july,1994.

<sup>89</sup> General Assembly Resolution 34/180 of December 18, 1979.it also provides for the recognition of inherent, dignity and equal and inalienable rights of freedom, Justice and Peace of the world. See also, S B Okolo, (1997). A Panoramic view of Widowhood in Nigeria in B Owasanoye; and C. Ayo (ed). Widowhood in Nigeria; Issues, Problems and Prospect. Lagos, Frederich Ebert Foundation 2003, p. 15

<sup>90</sup> Uwar, S.T “*Women and Inheritance Law in Nigeria; Bachama perspective, in Adamawa State.*” Lagos Legal Research and Development (2005, p.242,

<sup>91</sup> A Emiola., *The principle of African Customary Law* (2997) Emiola Publisher, Ogbomosop.22 in J Ezirigwe., Customary Law Perspective of Violence against Women: The Position under the Nigeria Legal System. Law of Domestic Violence in Nigeria.Azinge, E., and L Uche., (ed. Nigeria Institute of Advance Legal Studies, Lagos. 2012). p287.

<sup>92</sup> *ibid*

<sup>93</sup> Nsirinwowo, A; (2001) “*Culture and Tradition: Women Legal Status and Enrolment of Human Rights*”. Paper delivered at the One-day Conference on Engendering Legislative Issues, June 22.

101 E I Nwogugu., *Family Law in Nigeria. 3<sup>rd</sup> edition Ibadan ((HEBN)publisher, (2004)* <[http://books.google.cabook.id/family %20law%20nigeria](http://books.google.cabook.id/family%20law%20nigeria) (Accessed on October 11,2015).

economic status of the female children.<sup>95</sup> The practice exist among almost all tribes in Nigeria especially Tiv, Iggede Etiilo, in Benue state, Igala particularly among Ogugu community of Kogi State of Nigeria, Some parts of Delta and Edo state, Northern parts of Nigeria and even some parts of Yorubas of western Nigeria. A woman is traded as a chattel or part of a man's moveable property and cannot inherit him at death.<sup>96</sup> These have implications on the economic, emotional and psychological wellbeing of the women who are most helpless and indeed vulnerable. Agbonika, corroborated this when he posits that, "The right of a woman under customary law of inheritance in Nigeria is characterized by discrimination against women."<sup>97</sup>

The scholar reiterated, that most customary Laws in Nigeria are discriminatory with the exception of Islamic Law which made provision for woman to inherit; they also deny women of their basic rights, it also aligned that the custom offends the principle of natural justice, equity and good conscience.<sup>98</sup> It is pertinent to state, that where a woman during her marriage with the deceased husband in his life-time had contributed towards the acquisition of such property; it was not only repugnant to natural justice but also morally wrong to deny the woman ownership of such property which she suffered for. Although, in the recent case of *Ukeje v. Ukeje*<sup>99</sup> The Supreme Court voided the Igbo Law and custom which disentitled a female child the right from inheriting her father's property. The Supreme Court voided discrimination against female inheritance that is contrary to the rights of a child. It is the humble view of this writer, that other ethnic groups in other states should take bold steps to amend the various customary laws which disentitle female children and widows from inheriting their deceased husband's property. In *Majeku v. Thomas*<sup>100</sup> The Supreme Court held "No matter the circumstance of the birth of a female child, such a child is entitled to inherit from her late father's property and a widow also is entitled to inherit her late husband's property. It is again the view of this writer, that with the decision in the above cases, the inhuman treatment suffered by Nigeria women occasioned by archaic, obnoxious native laws and custom would be drastically reduced if not totally eliminated

#### IV. WIDOWHOOD PRACTICES

This is another aspect of harmful traditional practice common in Nigeria that violates the rights of women. A widow is a woman whose husband has died and has not remarried<sup>101</sup>. Widowhood practices are those customary rites that a widow is made to undergo on the death of her husband by members of the husband's family or community. Widowhood practice differs from one community to another some of such practices are obnoxious, dehumanizing and diminishing the personality of the woman, therefore violates her rights as a human being. This form of violence against women is noted in societies which have little regard for the role and place of women when the husband dies. Here she is deprived of all family property immediately her husband dies. In some societies, she is expected to mourn her husband through acts that inflict physical and psychological violence and torture. For example, violent shaving of her head, making her to drink the water used to bath the corpse of her deceased husband or sleep with the corpse alone in a locked room overnight, all in an attempt to prove her innocence.<sup>102</sup> Kendirim, reports that:

Among the Igbos of Eastern part of Nigeria, women are subjected to the performance of some dehumanizing rites on the death of her husband. In some cases, the woman affected is not allowed to take bath,

<sup>95</sup> These use to be the practice in some communities before the Supreme Court Decision on the Case Filed by Gladys Ukeje Delivered on 22/4/2014, when it was held that Female Child can Inherit her Father's Estate and voided the Customary Law of Oli-F Iekpe Custom in Ibo Land as Unconstitutional. In the Case of *Majekwu vs Majekwu*, (1997) (NWLR) 7 p. 1 & *Nwake vs Anakwe*, (1997) shows there is improvement in our Judiciary.

<sup>96</sup> T Ige., *Women and Inheritance Law in Nigeria*. Legal Research and Resources Development Center, Lagos) (1999) p 54.

<sup>97</sup> J A M Agbonika., "The Right of a Woman to Succession and Inheritance under Native Law and Custom in Nigeria: The Need to Reform." *Kogi State University BI-Annual Journal of Public Law. (KSU BJPL*", VOL.5, NO.1, 2013.

<sup>98</sup> This he referred to Quran chapter 4 verses11-12. see also M O Yakubu., "Property Inheritance and Discrimination of Estate under Customary Law: In towards Restatement of Nigeria Customary Laws" (1991) p.236. in Agbonika., *ibid*.

<sup>99</sup> Supreme Court decision of 22<sup>nd</sup> April, 2014 filed by mrs Lois Ukeje. the Judgment was given in a family dispute between Gladys Ada Ukeje who was disinherited from the father's property. Women have won the right to inherit their parent's property after that dramatic supreme court decision of Gladys Ada Ukeje the daughter of the late Lazarus Ogbonaa Ukeje brought the matter to rest in igbo custom.

<sup>100</sup> (1997) NWLR (part 582 p.2830.and Supreme Court decision of April 24, 2014.

<sup>101</sup> Garner, B. A., *Black's Law Dictionary*; (9<sup>th</sup> edn) West Thomson, Reuter Business Minnesota. (2009). p.1735.

<sup>102</sup> C Ike., *Scourge of Widowhood WACOL.Enugu* (2005) p.25.

comb her hair, change her dress or even leave her compound for a period ranging from forty days to six months.<sup>103</sup>

Niki-Tobi in a rare exhibition of extreme Judicial activism held in *Majekwu v Majekwu*<sup>104</sup>, that “Oli-ekpe” custom to be repugnant to natural justice, equity and good conscience. Again in *Theresa Onwo v Nwafor & 12 Ors.*<sup>105</sup> The Court of Appeal held ‘to decide the legality of the appellant’s traditions requiring her as a widow to shave her hair is repugnant to natural justice, equity and good conscience. In that case, Theresa Onwo was required by custom to share her hair, an act she rejected on the basis of her religion. She went to High Court to enforce her fundamental rights. The Court of Appeal held that she had a right to do so and gave judgment in her favour. The above judgment is commendable.

The plight of widows in Nigeria has remained a clear, example of man’s inhumanity to woman.<sup>106</sup> As discussed out earlier, the death of a husband has been seen to be more traumatic and disorganizing than the death of a wife. Widowhood rites as Owasanoye puts it are determined efforts to place the widow on the defensive by accusing her of killing her husband so that the in-laws can confiscate the late husband’s property.<sup>107</sup> This practice especially in the Eastern and Southern part of Nigeria include but not limited to scrapping her hair. She is not allowed to go out, she can only eat food cooked by other widows; forced to sleep on bare floor; she is forced to be inherited by her in-Law with the husband properties especially if she has no male child; her children are small or she has no child at all and She can be forced out of her matrimonial home.<sup>108</sup> On the other hand, the widower does not go through these rites and in some places, a woman is brought to keep him company and help him get over the death of his wife<sup>109</sup>. Before long, he is advised to get a new wife to help him take care of the children. These practice is repugnant to natural justices, equity and good conscience, it should be eradicated.

## V. TRAFFICKING IN WOMEN AND GIRLS

Trafficking in women is another form of domestic violence against women which is very disturbing in Nigeria and other African countries. This form of violence is growing fast, every day. Trafficking in women and girls:

Is the recruitment, transportation, transfer, harboring or receipt of women or girls, by means of threat, or use of force or other forms of coercion or abduction, fraud or deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a woman or girl having control over another person, for the purposes of exploitation.<sup>110</sup>

Reports revealed that in the last decade trafficking in women and children has reached on alarming rate in Nigeria.<sup>111</sup> Report also revealed that, Nigeria has also become a source, transit and destination country for both internal and external trafficking<sup>112</sup>. Human trafficking has affected most women, as it is among the fast growing criminal activity and most women involved are taken into forced prostitution. Sambe, corroborating this, posited that this commercial sex trafficking is induced by force, fraud or coercion .as most women involved are those who have not even attained the age of 18 years of age and in most cases, such girls are subjected to

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<sup>103</sup> P O Kendirin., “Practice of African Culture against Women; Critiques” International Journal of Violence and Related Studies.Vol02. No2. (Global Fund for Women) (2015) p.540.

<sup>104</sup> (1977), NWLR. Pt.512, p263.

<sup>105</sup>(1996) NWLR (part 456) p584.

<sup>106</sup> M Onwuka., *The Plight of Widows in Nigerian*. C Gwanto., (ed) (Fab Publication Jos, 1997) p.12. see also S B Oloko., A Panoramic view of Widowhood in Nigeria in B Abonsi., (ed) *Widowhood in Nigeria, Issues, Problems and Prospect*, (Fredric Ebert Foundation Lagos,2003) p.546.

<sup>107</sup> B Owasanoye., *Widowhood in Nigeria: Issues, Problems and Prospect*. (Frederic Ebert, Foundation Lagos,2003) p15.

<sup>108</sup> A Nsirinwowo., “Culture and Tradition: Women Legal Status and Enjoyment of Human Rights.” Paper delivered at a seminar on Engendering Legislative Issues, organized by Federation of International of Women Lawyers (FIDA) Lagos June,22, ,2010) p.8

<sup>109</sup> O O Fasoranti., (et-al) “A Cross- Cultural Comprise of Practices Relating to Widowhood and Widow – Inheritance, *Among the Igbo and Yoruba in Nigeria, Journal of World Anthropology; occasional papers vol.3. No.1 2010.*) p.23.

<sup>110</sup> Gbadamose, O; *International perspective and Nigeria on Human Trafficking: Network for Justice and Democracy*. First Edition (2006) p.23.

<sup>111</sup> UNESCO. Human Trafficking in Nigeria, Root Causes and Recommendation. Policy, Power, Poverty, Series 142(2010) < <http://unesdoc.unesco.org/images/0014/00/147/1444e>>. accessed on 10th, November, 2015

<sup>112</sup> USAID. Trafficking in Persons USAID Response. (USA Women in Development Publication). (2011) 310

involuntary servitude, debt bondage or slavery.<sup>113</sup> Agbu also aligned that most of the *young* person sold into child labour are girls and women<sup>114</sup>. Although, a new comprehensive law was passed by the National Assembly and assented to by the former President Goodluck Jonathan in May, 2015, the trafficking in persons (prohibition) law Enforcement and Administration Act commonly known as the (NAPTIP) Act<sup>115</sup>.

The provisions of the Criminal and Penal Code did not provide adequately for the crime in trafficking in women and children. The constitution of the Federal Republic of Nigeria Prohibit slavery and torture,<sup>116</sup> while the criminal Code<sup>117</sup> provides for sanctions against whosoever trades in prostitutions and facilitates the transport of human beings within or outside Nigeria for the purpose of commercial sexual exploitation and makes profit for it. The Penal Code<sup>118</sup> also sanctions this act. It provides for imprisonment for anyone who buys and sells minor for immoral purpose; Reports also revealed that most of the women and girls trafficked out of Nigeria to other parts of Europe are from Edo state, and other states in Nigeria.<sup>119</sup> This necessitated the passing of a law with stiffer penalties by the government of Edo state.<sup>120</sup> (Trafficking in women and girls involves involuntary servitude and is therefore often synonymously referred to as “Modern day slavery.” Human trafficking diminishes the status of women and brings down the reputation and shame to Nigeria.

Reports reveal that between 2013 and 2015, about 580, 946 trafficked persons out of the country were departed from different countries.<sup>121</sup> These women suffer emotional and physical abuse; they also suffer the risk of infectious diseases like HIV/AIDS and other sexually transmitted diseases which is common and alarming among commercial sex workers. And when they are sick and unable to work, they are abandoned or discarded by their abductors.<sup>122</sup>

This act of trafficking violates the constitutional guarantee rights of personal liberty, dignity, right to peaceful assembly and association, right to freedom of movement as is contained in the constitution of the federal republic of Nigeria 1999.<sup>123</sup>

## **VI. SEXUAL VIOLENCE AGAINST WOMEN (RAPE)**

Incidence of sexual violence especially rape is largely on the increase which constitutes a “gross violation and abuse of the Fundamental Human Rights of our women and girl child. It is the violation of the right to private and family life as guaranteed under the constitution of Federal Republic of Nigeria.<sup>124</sup> Sex which should be the most intimate act of love between two matured people, but for many, the joy and healing power of sex are not there especially when there is crisis between the two parties involved. Forced sexual initiation and

<sup>113</sup> J U Sambe; “The Role of Schools in Combating Human Trafficking and Child Labour”. Paper Presented at the Launching of the NGO *Women Trafficking and Child Labour Eradication Foundation*” (WOTCLEF) (2004) By the Wife of Former Vice President Mrs. Titi Abubakar at Makurdi April 22<sup>nd</sup>.

<sup>114</sup> D Agbu., *Corruption and women trafficking in the Nigeria. Case*” (Lagos West Publication) (2010)19

<sup>115</sup> Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003). Sections 11 to 24 of the act deals with a broad range of activities which constitute trafficking in persons.

<sup>116</sup> Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (amended}.

<sup>117</sup> Sections 223-225 of the Criminal Code of Southern, (Cap38) Laws of Federation of Nigeria.

<sup>118</sup> Sections 275- 280 of the Penal Code of Northern Nigeria. Madike, I; 2013 May 6,” Baby Factories “Why it is thriving in South East”. International Journal of Interdisciplinary Research Method Vol. 52, N0. 1. June 12, 2015. Retrieved from <http://national/niproronline.net/new/baby-factories-why-it-is-thriving-in-South-East-South-South>.

<sup>119</sup> Report of the special Rapporteur, “ Human Rights Aspect of the Victims of Trafficking in Persons, Especially Women and Children”,2007 January, 24. See also O Gbadamosi., *ibid*.

<sup>120</sup> Criminal Code. Laws (cap 38) Laws of Federation of Nigeria 2004. NDHS 2815. Nigeria Demographic Health Survey, J J Schsselman., (ed) A case control studies, Design, conduct, Analysis, (Oxford University press. The Guardian News Paper June 2, 2011; Nigerian Baby Farm Raided 32 Pregnant Girls Rescued, retrieved from <http://www.theguardian.com>world>human-trafficking>. See also Udoma K, 2011, July 30. How Child Trafficking Network Operates in South East. Retrieved from <http://www.vanguardngr.com/2011/07/how-child-trafficking-network-operates-in-south.east>.

<sup>121</sup> United Nations Office on Drug and Crime (2009) module 3, Psychological Reacting of Victims of Trafficking in Persons, and Human Trafficking Manual for Criminal Justice Practitioner. International Journal of Interdisciplinary Research Methods, Vol.2 No. 1, 2015, p. 12.

<sup>122</sup> UNSCO, “*Human Trafficking in Nigeria, Root Causes and Recommendation Policy*” Paper No. 142 (e) Paris. (2016) Author, retrieved from < <http://unesdoc.unesco.org/images/001400/478/147844e>> accessed on 10,8,2021.

<sup>123</sup> Sections 35, 40 and 41 of the Constitution of Federal Republic of Nigeria 1999 (as amended).

<sup>124</sup> Section 37 of the Constitution of the Federal Republic of Nigeria (1999 (as amended).

sexual abuse of children and women are common throughout the world. Cross-sectional studies show that 50 percent of girls and women in Nigeria reported that their first sexual intercourse was forced<sup>125</sup>. Women face various forms of sexual violence ranging from rape and indecent assault. Incest and defilement are some of the sexual violence that women and girls in Nigeria are confronted with. Several provisions contained in both Criminal Code<sup>126</sup> and the Penal Code<sup>127</sup> are against sexual violence against women. However, the provisions are not effectively implemented due to the technicalities and evidential rule in the proof of sexual offences, furthermore, women's silence in sexual offences against them so as to avoid stigmatization or protect the image of the perpetrators who are sometimes member of the same family do frustrates the enforcement.<sup>128</sup> Other instances, the prosecutor failed to proof his case, like the above of Bala Aliyu (Headmaster) His Lordship maintained that the prosecution has failed to produce the police statement that the accused person made when he was arrested in 2013. Furthermore, the prosecution failed to prove that the accused was at the premises of the school at the time it was said the act took place and accordingly the accused was discharged and acquitted. The case showed that the accused committed the offence of rape but was acquitted due to technicalities and evidential rules in the proof of sexual offences. In such a case the accused will go unpunished whereas the victim has suffered pain and shame which contravene her constitutional rights under the Constitution. Majority of cases of rape go unreported because of the social stigma it creates and the burden of proof, to ground a conviction on rape, the testimony of victim must be corroborated; indeed, a person cannot be convicted of any of the sexual offences upon the uncorroborated evidence of one witness.<sup>129</sup> Therefore, to proof cases of sexual violence could be very frustrating and many a time, criminal rapist get away with the offence they apparently committed on ground of technicalities due to lack of corroboration and for the victims they become traumatized. moreover, once a case makes it into Nigeria's corrupt and overstretched judicial system, it can drag on for years, survivors and families are often pressured into withdrawing their cases and accepting a financial settlement to preserve so-called family respect, rather than go a protracted public investigation. An investigation can go on for as long as it takes for you to forget the case. Sexual violence against women and girls is not only a violation of the rights of women but also has emotion, physical and psychological effects on women which may last for the rest of the victim's live.

## VII. CONCLUDING COMMENTS

This article has examined various customary or socio-cultural perspective of violence against women in Nigeria. The forms of domestic violence and how same affects families and society at large have equally been examined. The article revealed that the provisions of the instant law on violence against persons in Nigeria are grossly inadequate, there is imperative need for amendment to make it enforceable, jurisdiction of the Violence Against Persons Prohibition (and Other Related Matters) Act, should be extended to cover State High courts as well as magistrate courts within the rural areas. Courts should make active and purposeful interpretation of the Fundamental Rights provision under the 1999 Constitution and give unbiased judgment in such cases. If the perpetrator of the sexual offence is a member of the family, he should be exposed hence he has eaten the forbidden fruit, he must pay for the forbidden fruit, he should not be covered. Law enforcement officers should keep proper document of all reported cases of domestic violence against women especially cultural and traditional practices that infringes on the right of women. The judiciary also needs to put more efforts to nullify or declare customary laws that are repugnant as unconstitutional and should be repealed. The Civil Societies should intensify their efforts to enlightenment campaign against domestic violence domestic bearing in mind that domestic violence is not only against women but all members of the family.

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<sup>125</sup> Case of Ochanya Ogbanje who was raped by Andrew Obenga, Andrew, a lecturer with Benue State Polytechnic Ugbokolo with his son raped Ochanya until she became ill and later died at Federal Medical Center, Makurdi in 2018. Suit No.HC/ Mk/12/2021. O'Pen, R., (*et-al*) *Violence against Women increases the Risk of Infant and Child Mortality: A case referred study in Nicougua*, Bull World Health Organization No.8011 (2013) pp. 10.42. See also, Ezeilo, J.N.,) *A cry for Justice: the truth about sexual Violence against Women in Nigeria Enugu Fourth Dimension Pub. Co.Ltd.* (2013) p.52.

<sup>126</sup> Under the Criminal Code (Southern Nigeria) Sexual Abuse of Children between the Age of thirteen to sixteen is known as Defilement and may be Punished but not as severely as for Rape. In Lagos state sexual abuse of a child under eleven years is felony with a punishment of life imprisonment. However sexual abuse of a girl child between the age of eleven to thirteen is misdemeanor or indecent treatment with a punishment of two years. Furthermore, prosecution may be started within two of the offence and there is no conviction on uncorroborated evidence

<sup>127</sup> Section 283 of the Penal Code.

<sup>128</sup> M Abdulalhi., "*Headmaster Accused of Raping a 9-year-old pupil was Acquitted in Bauchi*" Daily Trust, Tuesday November 10 (2015), ( Vol.38.No62) (2015) p. 27

<sup>129</sup> Section 32 (1a) Evidence Act.2011(laws of Federation).