

AGAINST VIOLENCE AGAINST WOMEN

Baobab Legal Literacy Leaflet No 1

Baobab For Women's Human Rights is a non-profit, non-governmental organization working on women's human and legal rights in religious laws, statutory laws and customary laws.

Baobab works with women, legal professionals and paralegals, policy makers, women's groups and human rights NGOs and members of the general public

- To promote Human Rights education, particularly regarding Women's Human Rights
- To sponsor training and education programs that further the appreciation and observance of Women's Human Rights, and
- To enhance the knowledge and understanding of Women's and human rights with a view to determining policies which can best promote all human rights.

This is one of a series of leaflets aimed at enabling people to know what their rights are and how to get them.

The topics of the leaflets include: Divorce, Child Custody and Guardianship, Violence Against Women, Early Marriage, Inheritance, Maintenance, Rights and Responsibilities of Spouses, Rights of Widows, Economic Rights, Female Genital Mutilation, Citizenship, Voting and Politics, Marriage.

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WHAT IS VIOLENCE AGAINST WOMEN?

Both men and women are victims of violence. However, women suffer both from the same sorts of violence as men, as well other forms of violence that happen only or mostly to women, because they are women.

Violence is using or threatening force, causing injury. It may be physical, emotional or mental and is caused by a person (or people) against others. It results in pain, injury, humiliation and/or degradation.

In Nigeria women suffer many forms of violence. Some of these are listed below.

Violence against women is any act of violence that is committed against a woman or girl simply because she was born female. These acts are likely to result in physical, sexual or emotional suffering to the women. Violence includes threats as well as use of force.

The first thing to know about violence against women is that ***It is not your fault if you are beaten or abused or sexually harassed or raped or have some other act of violence committed against you!***
The guilt and responsibility are on the part of your attacker.

SOME TYPES OF VIOLENCE

- **Domestic Violence:** this is violence within the home. It is carried out mostly by male members of the family i.e. the husband and his relatives, against women and children. These acts include marital rape (forced sex); beating; verbal abuse; incest; FGM (female genital mutilation); forced marriage and child marriage; femicide; not being allowed your rights (e.g. to choose a husband, or to choose the number of children you wish to have); denial of food even during pregnancy as culture might forbid it (e.g. Guyuk in Adamawa State, chicken is not allowed a pregnant woman); denial of time for relaxation; and denial of right to accumulate wealth even when women actually do most of the work (e.g. in Gembu, Mambilla Plateau of Taraba State). It also includes refusal to permit women to work, to control their own income, to go to school.
- **Emotional and Psychological Abuse:** these are acts of violence that are not necessarily physical. They are acts that cannot normally be seen. These include all forms of cruelty, e.g. denigrating a woman by treating her as if she was a

child, by ignoring her, by refusing to give her any affection or sexual satisfaction. It includes forcing a woman (married or not) to have sex when she doesn't feel like it. Also, it includes lack of moral support and the effects of sharing a husband. It also includes attempting to control a woman's relationships with the wider community, friends, colleagues or relatives. In addition, it includes telling someone they are incompetent, or worthless, or inferior.

- **Sexual Harassment:** this act of violence usually takes place in the workplace. It may also be in a public or private place - the streets, at parties, in schools. It happens to domestic workers, office workers etc. Sexual harassment may include refusal to employ; threat of sack; lack of job security; slow promotion because you are born a woman or you refuse sexual acts! It can also be seen in acts such as jeering; talking about sex in front of women, and treating women as sex objects in any way making sexist jokes, whistling; or touching the buttocks or breasts...
- **Rape:** defined as any form of sexual intercourse without free mutual consent between those involved. Sexual intercourse that involves force, threat, blackmail, deceit or coercion is rape - even when there is no penetration. Sexual intercourse with a child is always rape, as children cannot consent freely in full knowledge of what they are doing. A woman is raped if sexual intercourse takes place without her consent. Rape can happen anywhere- in the home, in the work place, on the street or on the farm, in schools and universities, at social occasions. Most rapes are committed by someone we know and trust!
- **Trafficking:** this involves the procuring and transfer of women and girls with or without their consent for commercial sex work, forced domestic labour or other slave-like practices both within and outside the country. For example girls are taken from their communities to cities and the male (husband and sons) members of the household rape them.
- **Forced Prostitution:** this is when women (including wives, daughters, female wards and house girls) are forced into prostitution. Women are forced to use their bodies to get gain for their male relatives or for their bosses in many ways, e.g. giving sex in order to get jobs for their husbands, or to secure contracts for their employers.
- **Some widowhood rites:** these are the acts against women who have just lost their husbands which make widows suffer even more. In some cultures, a widow is forced to drink the water that is used to wash the corpse. She is not allowed to keep any of the husband's property. Too often widows are not allowed to keep their own property or joint property they have contributed to acquiring. A widow is frequently accused of being the cause of her husband's death. Some cultures treat widows as an inheritable part of the husband's property. In some places there is also physical assault by shaving the hair and

forcing the woman to look as unattractive as possible. In some places widows may also be forced to marry some relative of her deceased husband, especially her husband's brother.

WHERE DOES VIOLENCE OCCUR?

Violence against women cuts across all cultures and traditions, across class, ethnic, and religious barriers. In fact one thing that is universal is acts of violence against women! Muslim, Christian and Animist men have been known to abuse their wives and daughters or sons. Violence against women often takes place privately, within the household, as well as publicly.

Violence against women is usually worse in situations where women have little or no power against the abuser. For e.g. where women are dependent on their father or husband and have no means of their own.

HOW DO YOU RECOGNISE VIOLENCE?

- Perpetrators of violence are often very difficult to identify because they seem like normal people to us. Most violent men are not violent anywhere else but in the home.
- Thus it is very difficult to recognize violence has occurred unless the victim can admit it has happened. Unfortunately, often a woman will deny, even when asked, that she has been beaten. That she has had violence committed against her may be denied or internalized. This explains the cases of apparently happy woman later going mad due to the stress and injury of being battered and abused.
- Signs of violence can present themselves in various ways. These include being too quiet, ulcers, hypertension, emotional disturbance, black eyes, stiff walk, limping and other forms of illnesses, a tendency to have too many "accidents", as well as the obvious bruises, swellings and broken limbs.
- The behaviour of members of the household towards a violent father/husband may show in extreme deference (i.e. fear). For instance, the house becomes unnaturally quiet upon his appearance, no joyous screams of "Baba oyoyo!"
- An increase in the mother's violence against her own children: a battered woman may also batter her children.
- Children who are sexually abused often withdraw and become quiet. Frequently they have learning and behavioural disorders (e.g. wetting the bed, refusal to leave the mother). They may also develop a fear of strangers or dislike of a previously liked person (like an uncle or family friend).
- Violence reduces efficiency in the workplace, which results in lack of promotion or loss of job or frequent queries.

WHY DO WOMEN NOT SEEK HELP FASTER?

- Women often blame themselves for acts committed against them instead of recognizing that no one deserves violence.
- Because of the social belief that is culturally permissible for a husband to beat up his wife or a father to beat his children. In this view women ought not to complain.

- Too often society (including relatives and friends who should know better) assumes that a woman who has been violently abused has done something to 'deserve' it, despite the fact that the huge majority of violent acts are triggered by very trivial things. Violence should never be justified!
- After a long time of being abused, women may become accustomed to it and fearful and therefore unable to take steps to leave the situation of abuse.
- Sometimes there is a cycle of beatings, followed by remorse and promises never to do it again, followed by yet more beatings. Continual abusers often say they are sorry, they didn't mean it, and it will never happen again. Until the next time.
- Women may also fear being stigmatized; or divorced; or a future inability to find a husband.
- Most women do not know that there is sometimes a possibility of getting justice from the police or the courts.
- There is a (justifiable) fear that the police or other authorities will not take a woman seriously when she complains about being abused, whether physically or emotionally.
- Women are usually branded as troublesome and blamed for having invited the violence.
- Religious text are misquoted and taken out of context to justify violence.
- A woman may fear that if she complains, the person abusing her may abuse her or some one she cares about even more than before for having dared to complain.
- Women may fear that they will lose their children if they complain.
- Women may fear that they will be destitute as a result of complaining.

WHAT YOU CAN DO TO STOP VIOLENCE AGAINST YOU AND WHERE TO GO TO GET HELP

These are some possible actions you can take. What you choose to do depends on your own situations.

- Hospitals and clinics are the first place to go if there is injury or illness from violence.
- Find a sympathetic ear, e.g. relatives (like your mother, sister, aunt, grandmother, brother) or friends, or even colleagues etc. to talk with. You may wish to ask them to intervene and raise the issue with your abuser.
- Where available, go to counseling centers run by social welfare department of Government, or in your school or university or workplace.
- Go to NGOs (Non-Governmental Organisations), CBO's (Community Based Organisations) that have been set up for that purpose or are sympathetic.
- Tell your abuser that you have told people about him, or that you have reported him, or that you may charge him to court. This is sometimes sufficient to stop him.
- Report the matter to the Traditional Council, Family or the Police.
- Leave and take the children. You do not have to stay and suffer abuse. You will most likely be protecting the children by removing them. If you have to, get a divorce on the grounds of abuse, then you will also have a good chance at keeping custody of the children. The courts are supposed to consider the welfare of the child above anything else.

- Seek redress in court.

Above all take someone with you to give moral support and practical help.

WHAT DOES THE LAW SAY ABOUT VIOLENCE

The following states the position of some of the laws applicable in Nigeria vis-à-vis the different aspects of violence against women. These laws include the Criminal Code¹ and the Penal Code², Sharia (Muslim Personal Laws in Nigeria) after the Maliki School, and Customary Laws. Customary Laws vary from place to place in Nigeria. However, on the issue of violence against women the various customary laws in Nigeria tend to agree in many respects.

The Constitution of the Federal Republic of Nigeria (1999) states discrimination against women is not allowed. The section on Fundamental Human Rights says that a citizen of Nigeria of a particular community, ethnic group, place of origin, circumstances of birth, sex, religion or political opinion shall not, by reason only that he or she is such a person, be discriminated against.

Violence against women includes “any act of gender violence which discriminates against women. Violence against women is thus unconstitutional in Nigeria and should be illegal in any of its forms.

Violence may also be a violation of several fundamental human rights. These include the right to life, the right not to be subject 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. These rights are declared in the United Nations Universal Declaration on Human Rights (UDHR), The African Charter on Peoples’ and Human Rights (the Banjul Declaration), and The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Nigeria is a party to all these international legal documents.

The **Criminal Code** and the **Penal Code** punish several offences of violence, whether directed at women or at men. This includes assaults (like slapping or beating), manslaughter and murder.

Assault is when any person either threatens or strikes, touches or otherwise applies force of any kind to someone else, whether directly or indirectly, without their consent. If consent is obtained by threat or deceit, it is assault. Applying force includes any substance or thing whatsoever, if it leads to injury or personal discomfort.

If the application of force leads to grievous bodily harm or is against public policy, then it is assault whether or not the victim consented.

Unlawful Assault refers to where there is application of force by one person to another which is unlawful, although it may be done with the consent of that other person.

The punishments for assault range from imprisonment for one year to three years. If severe (grievous bodily) harm was caused, the punishment may be up to 7 years of imprisonment.

Assault with intent to commit an unnatural offence carries a penalty of up to 14 years imprisonment. This refers to an assault where sodomy (anal intercourse) is intended.

There are also some provisions specifically to protect women from violence.

Rape is defined as unlawful carnal knowledge of a woman or girl without her consent.

- ❖ Under section 357 of the Criminal Code, if consent is obtained by threats or force of any kind, that is still rape. Section 282 of the Penal Code states that there must be a threat of death or hurt, before it is considered rape.
- ❖ It is also rape if consent is obtained through deceit as to the nature of the act or by impersonating the woman's husband
- ❖ Under section 282(e) the Penal Code sexual intercourse with children under the age of puberty is rape.
- ❖ Where in a divorce or separation proceeding in court, the court makes an order that the couple separate and that the wife be no longer bound to live together with her husband or where the husband has agreed in court that he would not molest or otherwise interfere with his wife, he is guilty of rape if he forces his wife to have sex with him.
- ❖ To constitute rape, there must be evidence of carnal knowledge. Carnal knowledge, and therefore rape, is complete upon proof of penetration. Even the slightest penetration will be sufficient; neither rupture of the hymen nor emission of semen need be proved.
- ❖ The crucial point to prove is lack of consent. Force does not have to be proved.
- ❖ The fact that the victim is a commercial sex worker (sometimes referred to as prostitute) is no excuse, although in such cases a court may be unwilling to believe that she did not give her consent.
- ❖ Rape carries a sentence of life imprisonment under section 358 of the Criminal Code, with or without whipping. Under section 283 of the Penal Code the sentence for rape may be life imprisonment or any lesser term to be determined by court with a fine.

A woman married under Muslim Personal Law (Sharia) who is assaulted by her husband may seek a divorce in court. Beating would be an example of "injury and discord" between husband and wife. She would need to prove assault (usually by having witnesses). A divorce granted by the court in this manner is called *Fasq* or *Tafriq*, and the woman does not have to repay the *mahr* (dower), or make any other payment or "ransom"

A woman married under Igbo Customary law who has been "excessively chastised" by her husband may be able to use this as a ground of divorce. The "chastisement" would need to be fairly severe.

A woman married under statutory law (i.e. by civil law in a registry office) who has reasonable fear of danger to her life, body or health from her husband may seek a divorce. The husband must have already been convicted of attempted murder or

intentional affliction of grievous bodily harm. However physical violence is not necessary - reasonable fear of danger is enough.

Under the Criminal Code, **it is a crime for a husband to beat his wife**. He may be convicted of assault, wounding, or grievous harm for his action depending on the degree and effect of the force he used on his wife and sentenced to imprisonment for 2, 3, or 7 years, respectively.

Under the Penal Code, any **Verbal Abuse** which is intended to insult the modesty of a woman or any intrusion on her privacy is an offence. The offender may be sentenced to up to one-year imprisonment or fine or both.

In Muslim Personal Laws where a husband insults his wife or her family, the wife is entitled to divorce him, in which case she is not required to return her *mahr* (marriage gift) or any present the husband bought for her in the course of the marriage.

Concerning **Trafficking in Females** and other related offences, Chapter 21 of the Criminal Code contains a wide variety of offences including causing or encouraging the seduction of a girl under sixteen; abduction of girls under eighteen with intent to have carnal knowledge and persons trading in prostitution. The penalties range from two to seven years.

Section 276-279 of the Penal Code forbids trafficking in females either for prostitution or any immoral or illegal purpose. The penalty ranges up to 10 years imprisonment.

Some Widowhood Rites, such as shaving widows with broken bottles, constitute criminal assault if the widow is forced to undergo them and is punishable under both the Criminal and Penal codes like any other assault (see section on assault above).

Widowhood rites under some customs constitute **Trial by Ordeal**, such as where a widow is required to drink from the water used in washing her late husband's corpse while swearing to an oath that she is not responsible for his death. Under Chapter 20 of the Criminal Code, those present at a trial by ordeal are liable to imprisonment for one year respectively while any person who directs or controls it is liable to 10 years imprisonment. Where the trial by ordeal results in death, the person or persons controlling or directing the trial by ordeal is liable to a death sentence.

Under Chapter 17 of the Penal Code, those presiding as well as those present at a trial by ordeal shall be liable to imprisonment. If death occurs as a result (as in the case of the widow who contracted Lassa fever after drinking the corpse water and died), those present at the trial by ordeal as well as those directing or controlling it shall be liable to death.

Nigeria is a signatory to several international instruments that specifically deal with the attempts to stop Violence Against Women. These include:

- The Universal Declaration of Human Rights (1948)
- The African Charter on Human and Peoples Rights (1981)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1981)
- Nairobi Forward Looking Strategies (1985)
- Vienna Declaration (1993)

- Beijing Platform for Action (1995).

By becoming a signatory, the government of Nigeria is committed to changing any laws, practices or policies that do not fulfill the rights agreed upon and expressed in those documents. This includes changing all laws (statutory, customary or religious), practices and policies that discriminates against women or fail to protect women from violence.

WHAT TO DO IF YOU WANT TO REPORT AN OFFENCE OR GO TO COURT

Going to court is the very last step to take. Sometimes, however, beginning the process of making a complaint can make your abuser see the error of his ways.

When violence is committed against you or someone you know:-

1. Save physical evidence of abuse. Put things in a paper bag, rather than a plastic bag. Evidence can include any or all of the following:
 - Report from a doctor of medical treatment. A report from a government hospital may be taken more seriously in court, but private hospitals may also be used.
 - Photographs of injuries. These should be signed and dated.
 - Torn or bloody clothing.
 - If you have been raped or sexually assaulted do not bathe or wash yourself before seeing a doctor and making a report. This will be hard as your first inclination is to want to wash, but sometimes-crucial evidence may be washed away.
2. Make a note of the date of the beating or other violence.
3. Make a note of any witnesses. Get their names and addresses.
4. If you are badly hurt seek medical attention. Tell the doctor the truth about how you got hurt. Ask the doctor to write you a medical report. (If you are considering prosecution try to go to a government recognized clinic or hospital. However, private clinic reports should also be acceptable). However, if you can, try to report the violence to the police first.
5. Make a complaint at the police station as soon as possible after the violence. The police often have a helpful attitude so take the following precautions.
 - Take someone with you for support. It is often helpful if the person with you is a man, or a lawyer, or an NGO activist.
 - Insist on speaking to a senior officer. The lower ranks of policemen often do not take complaints of violence against women seriously.
 - Usually the police will ask you questions and write down your answers. Make sure that you read the written statement and sign it yourself

before you leave the police station. This is called filing a complaint. Insist on filing a complaint. Ask for a copy of the complaint.

- If you need medical attention, the police should normally give you a form to take with you and give to the doctor. Sometimes, they will also send an officer to accompany you to the hospital.

6. When the case reaches the court:

- Tell what happened in simple language.
- Present your evidence.
- Address the judges and lawyers.
- Keep Calm. Do not quarrel with your husband or abuser.
- Answer all questions.
- You should be in court each and every day the case is heard.

7. You will need to be patient. The law is a very slow process. Do not lose interest.

8. You will probably find it helpful to seek the aid of a lawyer, or an NGO that supports women or human rights. Some NGOs also have free legal consultations, advice or representation, or they may be able to tell you where to find help.

Where the Law or Practice Does Not Sufficiently Protect Women Against Violence

Unfortunately, despite all this, Nigerian law still has many omissions or contradictions that mean women are not properly protected against violence. Some of them are mentioned below

By defining **Rape** as vaginal penetration, no matter how slight, Nigerian Law does not protect those who are sexually abused with instruments other than a penis. Things like hands, knives, bottles or sticks have been used in some cases. In situations like these, or in the case of anal rape, the attacker may be found guilty of **indecent assault**, or **indecent treatment**, but this has a much lower punishment than rape (2 to 3 years imprisonment only).

The burden of proof of lack of consent in rape allegations is with the prosecution. This means that the victim herself has to prove she did not consent. This is often difficult to do, especially as these offences frequently take place where there are no witnesses. Furthermore, the alleged rapist is allowed to bring information about the woman's past life in order to argue that she was not a virgin (i.e. that if a woman has ever had sex she could never refuse to have sex again?). Thus often women or girls are forced to live through their own rape twice (once in life and once in court) without having the rapist punished.

In some countries there are rape shield laws. For instance the victim's identity is protected so that people do not gossip about her. Another example is that the alleged rapist is not allowed to make any reference to the victim's past sexual life, except if

she has had intercourse with him before. However, in Nigeria, there is no such protection for a woman who has been sexually abused or raped.

Rape Within Marriage (i.e. forced or coerced sexual intercourse between wife and husband) is not recognized as a crime by Nigerian Law yet. At best, a husband who forces his wife to have sex may be found guilty of assault, wounding, or grievous harm depending on the degree and effect of the force he used on his wife, and could be sentenced to imprisonment for up to 2, 3, or 7 years, respectively. But this is usually limited to situations where the couple have separated (i.e. they are not living together or co-habiting).

The Sharia generally forbids marital rape. However the husband may withdraw maintenance to his wife if she refuses him sexual intercourse.

Rape of a wife is generally not recognized as an offence by customary laws in Nigeria and is not penalized even where the wife is wounded in the course of the husband forcing sex on her.

Wife Beating In Customary Law Marriage. Section 55 of the Penal Code, condones this by stating: “nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a husband for the purpose of correcting his wife, such husband or wife being subject to any native law or custom in which such correction is recognized as lawful”.

For instance, in Igbo Customary Law, a husband has the right to chastise his wife for “failing to perform her duties”, “laziness”, “wastefulness” and “destructiveness”.

Similarly in Muslim Personal Law (Sharia) a husband has the right to admonish his wife, although the instrument used must be symbolic with a toothbrush or chewing stick and must not leave a mark on her body.

Thus while the law protects strangers from being assaulted by a man, it does not protect that man’s wife.

Child Sexual Abuse is condoned in Nigerian law because although individuals are not recognized as adults until they are 18, protection from sexual abuse stops before adulthood. Children are protected only until they are 14 years old, according to the Penal Code (Northern Nigeria). Under the Criminal Code (Southern Nigeria) sexual abuse of children between the ages of 13-16 is known as defilement and may be punished, but not as severely as for rape. In Lagos State sexual abuse of a child under 11 years old is a felony with a punishment of life imprisonment. However sexual abuse of a girl child between the ages of 11-13 years is merely a misdemeanour or indecent treatment, with a punishment of 2 years imprisonment. Boys are protected a little longer, but to the age of 14 years only in east, and west Nigeria and in Edo. Furthermore, prosecution must be started within two months of the offence and there is no conviction on uncorroborated evidence.

There is no protection from **Sexual Abuse Resulting From The Marriage of a Child.** The Marriage Act refers to marriageable age, but there is no precise definition of marriageable age. Thus it falls back on customary laws and often ‘marriageable age’ is defined as the age of puberty and assumed to be 12 years for girls and 14 years for boys, rather than actual legal adulthood.

In Eastern Nigeria, 'marriageable age' is set by law at 16 years of age. However the punishment is limited to a N200 fine or 6 months imprisonment. Furthermore, although the marriage may be deemed invalid, it will still prevent a prosecution for defilement.

Sexual Harassment has no legal protection - although extreme forms of sexual harassment may amount to assault.

Maltreatment of Widows is condoned in many customary laws in Nigeria, especially in the south east.

It is questionable whether the law gives protection against **Female Genital Mutilation**. Under the Criminal Code surgical operations are permissible, provided that the operation is performed in good faith and with reasonable care and skill, for the benefit of the person on whom the operation is performed. The Penal Code has a similar provision. However, the question of what is "for the benefit of the person operated on" is left open.

There is no legal protection from **emotional or psychological abuse**. You can only remove yourself from the situation.

In all of these areas where there is lack of protection for violence against women and girls, Nigeria is in contravention of the Nigerian Constitution, as well as international treaties it has signed or ratified. Nigeria is also in breach of international Human Rights Law.

HOW TO STOP VIOLENCE AGAINST WOMEN

- Enlighten the public about violence against women.
- Encourage women to talk about it.
- Support and encourage women to go to counselors.
- Report cases to authorities that are supposed to guarantee our safety.
- Lobby Government to enact stricter laws against violence against women.
- Empower women by allowing them access to education and giving them legal literacy.
- Give men proper education to what it means being a man. Show them that culture has to change and it is already changing in all other issues except those that affect women.
- Actively involve Men in stopping violence against women!
- Sensitise religious leaders about violence against women.
- Document and publicise cases of violence against women and girls.
- Undertake education of youth about violence through schools, youth clubs and so on.
- Develop support services for women who suffer from different kinds of violence.
- Work to enlighten people who deal with victims of violence (like the police, social workers, health workers and others).

- Lobby the government to provide more social workers, health providers, police and other professionals who are specifically trained to deal with violence against women.
- Speak about and document violence and abuses. Do not let it be hidden and forgotten.

Overleaf is a page for notes and useful addresses of places to go if you need help.

If you want further information, or
Just to tell us what you think about this booklet,
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