

# Are the Emerging Legal Frontiers Weak to Curb the Trends and Patterns of Sexual and Gender Based Violence (SGBV) in Gombe State, Nigeria?

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## Abstract

The global community is increasingly concerned about the rising incidence of sexual and gender-based violence (SGBV). In developing countries like India, Nigeria, South Africa, etc., hardly a day passes without reported or rumored cases of SGBV. In response, Nigeria has enacted stricter laws, including the Violence Against Persons Prohibition Act (VAPP Act) 2015, which approximately 37 states of the federation have adopted, including Gombe State. Gombe State lawmakers passed the Gombe State Violence Against Person Prohibition Law, 2022 (GSVAPP) into law to curb the rising cases of SGBV. The GSVAPP Law has been examined in relation to the trends and patterns of SGBV in Gombe State, and using doctrinal method, the paper observed that the law is adequately fair in addressing the emerging trends and patterns of SGBV, which are not limited to domestic violence, sexual violence, Child Marriage, and human trafficking. This paper found that the provisions of the GSVAPP Law have broadened the scope of persons capable of committing the offense of rape. It additionally recognized other modes of committing rape. However, inconsistent provisions of the Penal Code Law and the GSVAPP Law hinder effective implementation of the law. To address this issue, the paper recommended that the lawmakers harmonize the provisions of the Penal Code Law and the Management Committee set up by law to ensure proper implementation be empowered to function.

**Keywords:** Sexual, Gender Based Violence, Gombe State VAPP Law.

## 1. Introduction

Globally, sexual and gender-based violence (SGBV) is a growing concern, with alarming rates reported in developing countries like India<sup>1</sup>, Nigeria, and South Africa.<sup>2</sup> Research highlights disturbing statistics as 1 in 3 women experience intimate partner violence or sexual violence from a non-partner. Similarly, international studies reveals that approximately 20% of women and 5–10% of men report being victims of sexual violence as children, hence, violence among young people, including dating violence, is also a major problem<sup>3</sup>.

Indeed, the alarming reality of sexual and gender-based violence (SGBV) is a widespread issue that affects millions worldwide, with far-reaching implications for public health and human rights. In many regions, particularly Africa and the West Pacific, prevalence rates exceed 50% in Africa and 60% respectively.<sup>4</sup>

In Nigeria, the situation is equally concerning. According to the National Bureau of Statistics (NBS), the incidents of sexual and gender-based violence (SGBV) are escalating, exacerbated by socio-economic challenges, regional conflicts,<sup>5</sup> cultural practices and weak legal framework. Report of Sexual Violence Against Women, Girls and even Boys are rampant, with intimate partner and sexual violence predominantly perpetrated by men. Statistically, 13.2% of Nigerian

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<sup>1</sup> J Simister, 'Gender-Based Violence is a Growing Problem in India', *Medical Research Archives*, Vol. 6, Issue 1 (2018) p 1.

<sup>2</sup> Afro Barometer, 'AD738: South Africans see Gender-Based Violence as Most Important Women's Rights Issue to Address', available at <https://www.afrobarometer.org/publication/ad738-south-africans-see-gender-based-violence-as-most-womens-rights-issue-to-address/> accessed on December 28, 2024.

<sup>3</sup> L Hanmer, 'Gender Based Sexual Violence Against Women in Nigeria', 9.1 (2020).

<sup>4</sup> J U Ovenaone, and Y D Fwa, 'Effective Implementation of the Violence Against Persons Prohibition (VAPP) Act, Curbing the Impunity of Perpetrators of Gender Based Violence (GBV) and Promoting Socio-Economic Development in Nigeria', *International Journal of Management, Social Sciences, Peace and Conflict Studies (IJMSSPCS)*, 4.2 (2021), 195–208.

<sup>5</sup> (NBS, 2023).

women aged 15 – 49 years have experienced physical violence,<sup>6</sup> with this number varying across states. In a bid to curb the increasing cases of SGBV, Nigeria lawmakers enacted Violence Against Persons Prohibition Act (VAPP ACT) 2015. As of Today, 37 states in Nigeria, including Gombe State, have domesticated the VAPP Act 2015.<sup>7</sup>

Thus, Gombe state forms part of the North-eastern states in Nigeria with population of about 620,000 as at 2025,<sup>8</sup> and particularly affected with an alarming rate of Sexual and Gender-Based Violence. Statistics reveals that about 59.3% of Gombe women are experiencing physical violence since age 15.<sup>9</sup> In the year 2023, the Gombe State Police Command received at least 43 rape cases reports between January and July, with victims including minors and perpetrators often being family members.<sup>10</sup> Gombe State is witnessing a disturbing trend of increasing gender violence, with reports of assault, rape, and spousal harm becoming common, perpetrated by acquaintances, such as neighbors or local shopkeepers. It also includes Child abuse cases, where employers, including older women, physically harm their domestic workers.

During the launch of the 2024 16 Days of Activism Against Gender-Based Violence held at Pantami Township Stadium, Dr. Habu Dahiru<sup>11</sup> while addressing participants on the rising cases of SGBV, reported 388 female survivors of gender-based violence in Gombe State from 2021 to 2024.<sup>12</sup> These statistics likely underestimate the true extent of SGBV, as emotional, psychological, and economic abuse often go unreported. Investigation report of non-governmental organizations and anecdotal evidence suggest that these forms of abuse may be even more prevalent than physical violence.<sup>13</sup>

These incidents highlight the pervasive nature of physical, sexual and domestic violence faced by women and girls in various places, including; local communities, places of worship, schools and workplaces.<sup>14</sup> In response, Gombe State lawmakers domesticated the Gombe State Violence Against Persons (Prohibition) Law<sup>15</sup>, signed into law on October 26, 2022. The law aims to provide maximum protection and effective remedies for survivors while prescribing punishment for offenders.

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<sup>6</sup> UN Women, 'Nigeria: Africa', Available at <https://data.unwomen.org/country/nigeria#>: accessed on January 12, 2025.

<sup>7</sup> Rule of Law and Empowerment Initiative also known as Partners West Africa Nigeria, 'VAPP Tracker', retrieved from <https://www.patnersnigeria.org/vapp-tracker/> accessed on January 17, 2025

<sup>8</sup> Macrotends, 'Gombe, Nigeria Metro Area Population 1950-2025', available at <https://www.macrotends.net/global-metrics/cities/21988/gombe/population> accessed on January 5, 2025

<sup>9</sup> Women & Girls' Centre, Ministry of Women Affairs, Gombe available at [https://nigeria.unfpa.org/sites/default/files/event-pdf/briefing\\_note-govt\\_reviewed](https://nigeria.unfpa.org/sites/default/files/event-pdf/briefing_note-govt_reviewed) accessed on January 17, 2025

<sup>10</sup> Punch, Gombe Recorded 43 Rape Cases in Seven Months – CP available at [punch.com/gombe-recorded-43-rape-cases-in-seven-months-cp%3famp](https://punch.com/gombe-recorded-43-rape-cases-in-seven-months-cp%3famp) accessed on January 2, 2025

<sup>11</sup> State Commissioner for Health, Gombe State, Nigeria since 2019.

<sup>12</sup> Punch NewsPaper, 'Gombe Records 388 Cases of Gender-Based Violence, Open Treatment Centre' (November 25, 2024) available at: [punchng.com/gombe-records-388-cases-of-gender-based-violence-opens-treatment-centre/](https://punchng.com/gombe-records-388-cases-of-gender-based-violence-opens-treatment-centre/) accessed on December 30, 2024

<sup>13</sup> C Onyemelukwe, Gender and the Law Legislating on Violence Against Women □: A Critical Analysis of Nigeria 's Recent Violence Against Persons ( Prohibition ) Act , 2015 Legislating on Violence Against Women, *DePaul Journal of Women*(2016), 5.2

<sup>14</sup> Ibid.

<sup>15</sup> Hereinafter referred to as "GSVAPP Law"



Despite this legislation, SGBV cases remain unabated, highlighting the need for innovative solutions and enhanced protection.

This article examines the efficacy of the GSVPP Law in addressing SGBV in Gombe state, discussing the relevance of the Constitution, Penal Code Law and the Administration of Criminal Justice Law of Gombe State.

## 2. Conceptual Clarification of Terms

### 2.1.1 Gender-Based Violence (GBV)

Gender-Based Violence (GBV) is a broader term, encompassing violence against women, girls, men, and boys. VAWG is a form of GBV- that is ‘violence directed against a person because of his or her gender and expectations of his or her role in a society or culture’ (UN Women). While the term ‘GBV’ tends to be used interchangeably with VAWG. Given the pervasiveness of gender inequality in the world, it should not be surprising that the vast majority of GBV is violence against women and girls<sup>16</sup>.

The World Bank’s Inter Agency Standing Committee defines GBV as “an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (gender) differences between males and females”. GBV affects both men and women, but women are much more vulnerable because violence reflects and reinforces existing gender inequalities<sup>17</sup>.

**2.1.2 Sexual and Gender-Based Violence (SGBV)** refers to any harmful act directed at individuals or groups based on their gender or sexual orientation. This includes,

- a. Rape and sexual assault: Non-consensual sexual acts, including penetration, touching or other forms of sexual violence.
- b. Physical assault: Harm or injury inflicted on a person’s physical body, including beating, kicking or other forms of physical violence.
- c. Emotional and Psychological Abuse: Harmful behavior that affects a person’s emotional or mental well-being, including threats, intimidation or manipulation.
- d. Sexual harassment: unwanted or unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature

### 2.1.3 Violence:

The Gombe State Violence Against Persons Prohibition Law defines violence as any act or attempted act which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic injury whether the act occurs in private or public life, in peace time and in conflict situations.<sup>18</sup>

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<sup>16</sup>Ibid.

<sup>17</sup>World Bank, ‘Gender-Based Violence: An Analysis of the Implications for the Nigeria for Women Project’, *International Bank for Reconstruction and Development/The World Bank*, 2019, 1–48 <[www.worldbank.org](http://www.worldbank.org)>. accessed on 1<sup>st</sup> January 2025.

<sup>18</sup> Part 1, Section 2 of the GSVAPP Law

### 3. Classification of Violence

#### a. Self-Directed Violence (SDV)

Self-directed violence (analogous to self-injurious behavior) refers to violent acts a person inflicts upon himself or herself. In other words, it is a behavior that is self-directed and deliberately results in injury or the potential for injury to oneself. This does not include behaviors such as parachuting, gambling, substance abuse, tobacco use or other risk-taking activities, such as excessive speeding in motor vehicles. These are complex behaviors some of which are risk factors for SDV but are defined as behavior that while likely to be life-threatening is not recognized by the individual as behavior intended to destroy or injure the self. These behaviors may have a high probability of injury or death as an outcome but the injury or death is usually considered unintentional<sup>19</sup>.

#### b. Interpersonal Violence

Interpersonal violence refers to violence between individuals. This type of violence can be subdivided into<sup>20</sup>:

- **Family and intimate partner violence:** This type of violence takes place between people who are related or know each other well and can include child abuse, violence between romantic partners, abuse of elderly.
- **Community violence:** This type of violence takes place between people who might not know each other or people who are unrelated and can include sexual assault, assault, abuse or even murder, in locations like a school, workplace, prison or public space.

The combination of the above definition is what the GSVAPP Law referred to as “Violence in the Private sphere or life”. Similarly, the GSVAPP Law further discuss ‘Violence in the Public sphere’ to mean any act or attempted act perpetrated by the State or non-State actors before, during and after elections, in conflict or war situations, which threatens peace, security and well-being of any person or the State as a whole. The GSVAPP Law additional state Violence perpetrated by State or non-state actors to includes; wrongful arrest and detention, assault, use of force without lawful authority, unlawful entry into the premise and demolition of property without due processes.<sup>21</sup>

#### c. Collective Violence

Collective violence can be defined as the instrumental use of violence by people who identify themselves as members of a group – whether this group is temporary or has a more permanent identity – against another group or set of individuals, to achieve political, economic or social objectives<sup>22</sup>.

#### d. Physical Violence or Physical Abuse

Physical violence is also referred to as Physical abuse under the GSVAPP Law. It occurs when someone uses a part of their body or an object to control a person’s actions,<sup>23</sup> often inflicting injury on the victim<sup>24</sup>. It is the intentional use of physical force (such as) with the potential for causing

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<sup>19</sup>A E Crosby, *et al*, ‘Self - Directed Violence Surveillance’, *Centers for Disease Control and Prevention, National Center for Injury Prevention and Control*, 2011, 91.

<sup>20</sup>Ibid

<sup>21</sup> Section 2 GSVAPP Law

<sup>22</sup>Ibid

<sup>23</sup>NFL, ‘Violence Prevention Initiative (2014)’.

<sup>24</sup>Ibid



death, disability, injury, or physical harm<sup>25</sup>. This usually involves shoving, choking, shaking, punching, burning, or use of a weapon, restraints, or one's size and strength against another person; hitting- slapping, kicking, pushing, biting, shoving, throwing objects, or threats thereof, intimidation, stalking, kidnapping, unlawful imprisonment, trespassing, harassment, including sexual harassment<sup>26</sup>.

#### **e. Psychological Violence**

Section 2 recognized Psychological Violence as psychological abuse.<sup>27</sup> It occurs when someone uses threats and causes fear in an individual to gain control<sup>28</sup>. Inhuman and degrading treatment and torture often lead to the death, injury and incapacitation of the victims. In the prison institution for example, prison officials, on the other hand, and other perpetrators of violence usually attribute the death and injuries sustained by the inmates to "natural causes" and "accidents." Terrible working conditions exist for the staff of the prisons and so the disgruntled warders often express their displeasure at the system by unleashing violence on the inmates who in turn would prefer to lie low to avoid staking their necks<sup>29</sup>.

#### **f. Sexual Violence**

Sexual violence occurs when a person is forced to unwillingly take part in sexual activity<sup>30</sup>. This involves forcing a person to participate in unwanted, unsafe, or degrading sexual activity, forcing sex on you even though you do have consensual sex. The interpretation section of GSVAPP Law sees it as Sexual assault. This pattern of violence may also be called marital rape if it takes place between a married couple, though it is not yet recognized by Nigerian law<sup>31</sup>.

#### **g. Emotional Violence**

Emotional violence occurs when someone says or does something to make a person feel stupid or worthless<sup>32</sup>. For example, constant belittling of the other person, his actions and decisions; constant blaming or bringing up past sins and secretes in order to shame; isolation, intimidation, treating the person as a child; emotional neglect, withholding of affection, etc. This is quite destructive as the other forms of abuse but often overlooked<sup>33</sup>.

#### **h. Cultural Violence**

Cultural violence occurs when an individual is harmed as a result of practices that are part of her or his culture, religion or tradition<sup>34</sup>. The GSV Law recognize cultural violence as Harmful traditional practices: forms of violence which have been committed primarily against women and

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<sup>25</sup>T Jomidoyin, 'Violence against Persons (Prohibition) Act 2015: A Positive Step to the Eradication of Domestic Violence in Nigeria', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 9.1 (2018), 100–103.

<sup>26</sup>IP Enemo, 'Effectiveness of Nigeria's International Obligations in Curbing Domestic Violence', *Naujilj*, 9.1 (2018), 1–13.

<sup>27</sup> GSVAPP Law

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Ibid

girls in certain communities and societies for so long that they are considered, or presented by perpetrators, as part of accepted cultural practice.<sup>35</sup>

#### 4. Patterns of Sexual and Gender Based Violence

##### a. Domestic Violence

Domestic violence is a common pattern of SGBV involving an act perpetrated on any person in a domestic relationship where such act causes harm or may cause imminent harm to the safety, health or well-being of any person.<sup>36</sup> It is also called domestic abuse or intimate partner violence and can also mean any pattern of behavior that is used to gain or maintain power and control over an intimate partner. It encompasses all physical, sexual, emotional, economic and psychological actions or threats of actions that influence another person. This is one of the most common forms of violence experienced by women globally<sup>37</sup>, including Gombe. According to Mal. Bashir Musa, Senior Manager, Health System Straitening and Quality lamented the state of domestic violence during an interview with newsmen where he stated thus: ‘we also have issues of domestic violence which is more prevalent and instances of male victims of domestic violence which could lead to fatality’<sup>38</sup>

The above expression captured the general experience of indigenous members of Gombe State on the alarming spate of domestic violence. It is therefore, correct that the rating of women protection is low. This is amidst a robust legal and regulatory regime for the protection of gender, which include women.

##### b. Femicide

Femicide is a term used to describe the killing of women and girls, often by men, due to their gender. It is a form of gender-based violence and a violation of human rights. Femicide differs from male homicide in specific ways. For example, most cases of femicide are committed by partners or ex-partners, and involve ongoing abuse in the home, threats or intimidation, sexual violence or situations where women have less power or fewer resources than their partner<sup>39</sup>. Femicide may be caused due to cultural belief leading to the killing of innocent female baby. Some, upon discovery of the gender, even kill the baby from the womb. This pattern of practices has in some cases, not only resulted to the death of the unborn baby but has, in cases where the womb carrier survived the process of aborting, affect her womb, thereby, preventing the womb carrier from giving birth for life. It also may involve killing of either unborn or born female baby due to financial constrain. The failure of a woman to give birth to a male child may also lead to femicide. However, these practices happen in many families silently and when the man eventually unleash his intentional act of femicide, it will be painted to the world like a natural death took her. Thus, this pattern of violence has not only resulted to the death of the mother of the killed female baby but has either caused damage to her womb, which will cause her life time emotional trauma. Other forms of femicide include; intimate partner violence, honour killings, sex trafficking, rape, murder and dowry related death. It is observed that femicide is not explicitly recognized as a distinct crime in Gombe state and Nigeria in general. This lack of recognition makes it challenging for

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<sup>35</sup> FTH, Gombe, ‘Gender Based Violence Committee and Response Team’ available at <https://fthgombe.gov.ng/gbvc/> accessed on January 11, 2025

<sup>36</sup> Section 2, GSVAPP Law

<sup>37</sup> Ibid

<sup>38</sup> Hotpen, ‘Organisation Decries Rising Cases of GBV in Gombe’, available at <https://hotpen.net/2023/12/07/organisation-decries-rising-cases-of-ofgbv-in-gombe> accessed on January 2, 2025

<sup>39</sup> Ibid



prosecutors to address the unique aspects of femicide cases but often relying on homicide charges. Although, it is doubtful whether incidence of femicide has been occurring in Gombe State to have enable this article call on the Gombe State Government to amend this GSVAPP Law with a view to recognize femicide as a crime.

### c. Sexual Violence

Sexual violence is any sexual act committed against the will of another person, either when this person does not give consent or when consent cannot be given because the person is a child, has a mental disability, or is severely intoxicated or unconscious as a result of alcohol or drugs<sup>40</sup>. Sexual violence cases in Gombe State are unfortunately on the rise. Recent report reveal that Gombe State has recorded 388 cases of violence against women and 144 cases against men between 2021 and 2024<sup>41</sup>

### d. Human Trafficking

Human trafficking is the acquisition and exploitation of people, through means such as force, fraud, coercion, or deception. This heinous crime ensnares millions of women and girls worldwide, many of whom are sexually exploited<sup>42</sup>. Gombe has recently recorded high increase in Human trafficking, particularly in local government areas like Kumo.<sup>43</sup> The Gombe State Commandant of the National Agency for the Prohibition of Trafficking in Persons, Aminu Shira gave report of how they recovered two children (minors) trafficked to Abuja and Lagos state. Investigation revealed that it is a case of trafficking, sale of babies and sexual exploitation.<sup>44</sup>

### e. Female Genital Mutilation (FGM)

Female Genital Mutilation (FGM) also known as Female circumcision. It includes procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons. FGM is a social norm, often considered a necessary step in preparing girls for adulthood, marriage and typically driven by beliefs about gender and its relation to appropriate sexual expression. It was first classified as violence in 1997 via a joint statement issued by WHO, UNICEF AND UNFPA<sup>45</sup>

In Nigeria, subjection of girls and women to obscure traditional practices is legendary. FGM is an unhealthy traditional practice inflicted on girls and women worldwide.

### f. Child Marriage

In Nigeria, child marriage refers to any marriage where one or both of the spouses are below the age of 18. Gombe State has witness rising cases of child marriages across the local government,

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<sup>40</sup>Ibid

<sup>41</sup>Ibid (n 13)

<sup>42</sup>Ibid

<sup>43</sup> The effectiveness of public relations on Anti-Human Trafficking Campaigns: A Case Study of Kumo LGA, Gombe State, available at <https://www.dataprojectng.com/project/13163/The%20Effectiveness%20of%20Public%20Relations%20on%20Anti-Human%20Trafficking%20Campaigns:%20A%20Case%20Study%20of%20Kumo%20LGA,%20Gombe%20State> accessed on January 14, 2025

<sup>44</sup> Periscope Nigeria, 'How Gombe NAPTIP Recovered Two Children Trafficked to Abuja, Lagos' available at <https://periscopenga.com/2024/04/how-gombe-naptip-recovered-two-children-trafficked-to-abuja-lagos/> accessed on January 13, 2025

<sup>45</sup>Ibid

particularly in Konfulata community within Kwani Local Government Area of the State. By implication girls under 18 are currently living as wives and such high numbers are primarily because the laws forbidding such practices are not properly enforced or are inadequate to curb the menace of child marriage, therefore, perpetrators of such acts feel comfortable about continuing those practices. Child marriage is a cultural practice that has been and still in existence in Gombe state, early marriage of the girl-child is allowed. Scholars reveal that the basis for acceptance of early marriages in the North eastern region is to preserve the value of virginity, fears of pre-marital sexual activity, to reduce promiscuity of the girl-child, and other socio-cultural and religious norms.<sup>46</sup> It is however unfortunate, disturbing and worrisome that the girl-child in most circumstances has no power to resist the offer.

#### **g. Online or Digital Violence**

Online or Digital violence against women, also known as online gender-based violence or technology-facilitated gender-based violence, refers to the use of digital technologies to harass, intimidate, threaten, or harm women. Digital violence as Technologically-Facilitated Gender-Based Violence and defined it to mean an action by one or more people that harms others based on their sexual or gender identity or by enforcing harmful gender norms. This action is carried out by using the internet or mobile technology and includes stalking, bullying, sexual harassment, defamation, hate speech and exploitation.<sup>47</sup> Other acts of digital violence include, online revenge porn and image-based abuse, misogyny, and sextortion. This pattern of violence can result to emotional distress and mental health impacts. It can also lead to social isolation and loss of online opportunities. In addition, it causes damage to reputation and livelihood. However, there is no record of such practice in Gombe State as at the time of conducting this research.

### **5. Examination of the Emerging Legal Frontiers for Sexual and Gender Based Violence in Gombe State**

Sexual and Gender Base Violence against women is the most surreptitious form of violation of human rights of women, in particular right to personal security, liberty and bodily integrity<sup>48</sup>. Before now there was no specific national legislation that addressed comprehensively the issue of domestic violence, especially against women, in Gombe state. What was in place was a regime of disarticulated pockets of legislation aimed at addressing some aspects of the problem.<sup>49</sup> The Gombe State Violence Against Persons Prohibition Law (GSVAPPL) 2022 domesticated The VAPP Act, 2015 in Gombe State. The state has other anti-VAWG laws which includes; the 1999 Constitution (as amended), the Penal Code Law (PCL), the Gombe State Child Protection Law, 2022, the Administration of Criminal Justice Law (ACJL), etcetera. However, for the purpose of this article, focus will be made on the Constitution, Penal Code, ACJL, and Gombe State Violence Against Persons Prohibition Law, 2022<sup>50</sup>.

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<sup>46</sup>Ibid

<sup>47</sup>FTH, (ibid, n 40)

<sup>48</sup>Ibid

<sup>49</sup>J Odion, and E Eboigbe, 'Eliminating Harmful Practices against Women in Nigeria: An Examination of the Violence against Women Persons (Prohibition) Act, 2015', *International Journal of Human Rights*, 22.7 (2018), 933–45 <<https://doi.org/10.1080/13642987.2018.1492913>>. accessed on 5<sup>th</sup> January 2025

<sup>50</sup>Hereinafter referred to as GSVAPP Law



### 5.1 The 1999 Constitution (As amended)

Domestic violence constitutes a violation of fundamental human rights as enshrined in the 1999 Constitution of Nigeria<sup>51</sup>. Chapter IV, Section 33 of the constitution provides for the fundamental rights of every human being, which includes women. Section 34 provides for the right to life of every human being, including women, and any act of domestic violence that deprives a woman of her life or threatens her life is criminalised under this section. Women can go to court to seek protection where the acts of their partners are such that they can deny them of the continuous enjoyment of this right. Section 35 clearly provides for the dignity of every individual including women. Any woman who suffers any form of inhuman or degrading treatment, or is being treated as a slave or held in servitude or is forced against her will to perform forced or compulsory labour by her partner or spouse, has the right to seek legal redress in a court of competent jurisdiction. Section 42 clearly provides that except in circumstances permitted by law no individual has the right to deprive any person of his liberty even within the domestic sphere, and an individual (including women) has the right to seek legal redress if her right to personal liberty is being infringed upon. This section provides protection for every individual including women from any form of deprivation, discrimination or disability merely by reason of the circumstances of their birth, sex, etc. The relevance of the constitution to the protection of women against violence in Nigeria can be seen from the perspective that the constitution, being the grund- norm highest law in the country, sets the standard for other laws to follow.

### 5.2 The Penal Code Law

The Penal Code Act which is applicable in the northern States of Nigeria excludes acts of assaults or battery done by a husband for the purpose of correcting his wife.<sup>52</sup> It is clear that the Penal Code does not capture the issue of violence in its entirety. Moreover, its provisions are not in tandem with current realities especially regarding issues relating to the various patterns of Sexual and Gender-Based Violence, particularly on rape.<sup>53</sup> For instance, Section 282<sup>54</sup> provide thus:

“(1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-

- against her will;
- without her consent
- with her consent, when her consent has been obtained by putting her in fear of death or of hurt;
- with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she believes herself to be lawfully married;
- with or without her consent, when she is under fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.”

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<sup>51</sup>The Constitution of Federal Republic of Nigeria, 1999 (as Amended).

<sup>52</sup>Ibid

<sup>53</sup>Ibid

<sup>54</sup> Penal Code Law

**Section 283 of the Penal Code;**

*“Whoever commits rape shall be punished with imprisonment for life or for any less term and shall also be liable to fine.”*

The Penal Code’s provision for rape is alarmingly inadequate, permitting lenient or inadequate punishment, rendering it outdated and misaligned with contemporary understandings of consent, sexual violence and trauma. This inadequate punishment can hinder victims’ healing and pursuit of justice. In fact, it can contribute to a culture of violence, increasing sexual assault and exploitation. It is submitted that the extant provision of the Penal Code can erode trust in the justice system, making it less likely for victims to report crimes and seek help.

**5.3 The Administration of Criminal Justice Law (ACJL) 2018**

The ACJL is a procedural law and not substantive as it provides guidance in initiating the process of litigation.<sup>55</sup>

**5.4 X-Ray on the Notable Provisions of the Gombe State Violence Against Persons Prohibition Law, 2022**

The Law has 57 Sections divided into 8 parts as follows: part 1 of Section 1 contains citation and commencement. The Act is to be cited as the Gombe State Violence Against Persons Prohibition Act, 2022. Presented and passed by the Gombe State House of Assembly as an Executive Bill, it domesticates the Violence Against Persons (prohibition) Act which the National Assembly passed for application to the Federal Capital Territory FCT Abuja, in 2015. Interestingly, the law, in its bid to meet the emerging trends and patterns of sexual and gender based violence, captured or widen the interpretation of certain acts, such as; abandonment of women, children and other persons, circumcision, domestic relationship, domestic violence, economic abuse, emergence monetary relief, emotional, verbal and psychological abuse, forced isolation from family and friends, harmful traditional practices, indecent exposure, sexual exploitation, spousal battery, stalking, substance attack, victim, vulnerable group, etcetera.

It is a specialized piece of Legislation that seeks to prevent violence against persons (VAP), by prohibiting certain acts and prescribing penalties for violation. While some of the offences are known to our Criminal Statutes such as the Penal Code Law of Gombe State many of the violent acts against persons sought to be contained are new.

Among some of the major acts of violence against person which the Law prohibits and which are to be found in Part II of Sections of the Law are:

1. Rape – Section 3. A person is said to commit the offence of rape, save in the case referred to in subsection (2), if:
  - a) He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or with anything else against the will of the other person; or
  - b) The other person does not consent to the penetration; or
  - c) The consent is obtained by force or by means of threat or by putting the person in fear of death or of hurt of any kind; or
  - d) By means of false and fraudulent representation as to the nature of the act; or
  - e) The use of any substance or additive capable of taking away the will of such person; or

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<sup>55</sup>Ibid



- f) In the case of a married person by impersonating his or her spouse; or
  - g) With or without the consent of the person when he or she is under sixteen years of age or of unsound mind or mentally retarded.
- (2) Sexual intercourse by a man with his own wife is not rape (if she has attained puberty)
  - (3) A male adult convicted of the offence of rape shall be punished with imprisonment for life and the removal of his testicles (castration).
  - (4) A female adult convicted of the offence of rape shall be punished with imprisonment for life (and the surgical removal of her fallopian tubes 'salpingectomy')
  - (5) Where the offender is less than 14 years of age, the offender shall be committed to custody in a place of detention provided under the Children and Young Persons Law and or any other relevant Law for a period of not less than 14 years.
  - (6) Where rape is committed by a group of persons, on conviction each of the offenders shall be punished with imprisonment for life and the removal of his testicles (castration) in case of a male and with imprisonment for life (*sic*) and the removal of her fallopian tubes (salpingectomy) and with imprisonment for life in case of a female.

The above provisions of GSVL clearly captures and aim to curb the new trends and patterns of rape in Gombe state. However, a comparative analysis of Section 3 of the GSVVP Law and sections 283 of Penal Code law reveals a disparity in the punishment provisions for rape, granting the court discretion to impose a lesser sentence. This inconsistency can lead to a sense of injustice, potentially leaving the complainant feeling dissatisfied that true justice has not been served. Notably, despite the coexistence of the Penal Code and GSVVPL, cases of SGBV continue to rise in Gombe. Statistically, more victims (60.7%) who were less than 5 were raped in the perpetrator's home or office compared to 43.6% of those who were between 15-24 years. Also, 50% of those with tertiary educational qualifications were raped in their homes compared to 10% of those with primary educational qualifications. Rape was carried out in uncompleted building/ bush by the perpetrators who were known to the victim prior to occurrence compared to 6.3% of those who the victims did not know prior to the rape.<sup>56</sup> However, it falls short of other trends which includes forceful video sex which does not require the physical penetration into the vagina or any part of the body of another but capable of arousing the sexual desire of another person, thereby giving room to question his or her character in court. Section 210 of the Evidence Act, 2023 allows Complainant's character to be brought in during proceedings to allow evidence of the complainants' previous sexual dealings with the accused and with other men. Although, the rationale behind this has been questioned and is thought to be an attempt to draw attention away from the real issues at hand. Thus, the effect of forceful video sex on any person(s) cannot be overemphasize as it has the likelihood of arousing the desire of another for sex and in a bid to satisfy the sexual urge, resort to rape. There is therefore, a need to curtail forceful video sex bearing in mind that Section 210 of the Evidence Act can also be used to show that the complainant is of a general immoral character because she previously consented to sexual intercourse with other men and the accused previously notwithstanding the fact that he or she was under the influence of forceful video sex.

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<sup>56</sup> H L Christopher, *et al*, 'Predictors of Location of Rape: A Survey of Victim's Location in Gombe state, North-East Nigeria'

In addition, the law omitted to specifically state when consent is deemed to have been obtained. The lack of consent is vital and key to the definition of rape in other words, the absence of consent during any intercourse, is called rape. Consent is affirmative, “informed approval, indicating a freely given agreement” to sexual activity. In our world of today, consent is not necessarily expressed verbally, and may not necessarily expressed verbally, and may instead be overtly implied from actions, but the absence of objection does not constitute consent. Lack of definite or express consent may result from either forcible compulsion by the perpetrator or an inability, to consent on the part of the victim (such as persons who are asleep, intoxicated or otherwise mentally compromised). Lack of consent can take the form of duress, a situation when the person is threatened by force or violence, and may result in the absence of an objection to sexual activity. This can lead to the presumption of consent. Duress may be actual or threatened force or violence against the victim or someone close to the victim. Even blackmail may constitute duress. Abuse of power may constitute duress.<sup>57</sup> There is no typical profile of a rapist. A rapist can come from any background and be of various racial ethnicities and economic classes. A person who is under the influence of drugs or alcohol is unable to give full consent, therefore rape is never their fault.

In a bid to capture all forms of rape, the law needs to be amended to recognize a situation when consent is deemed to have been obtained. It is submitted that the courts, the law enforcement agents and the public, particularly the men, must learn to recognize and accept that when a woman says “No” to an unwanted sexual interference, it means “No” and it does not mean “Yes” in any way.

Other notable provisions of the law include:

2. **Incest – Section 4:** Any person who knowingly and willfully has carnal knowledge of another within the prohibited Degrees of consanguinity and affinity with or without consent, commits incest and shall be liable on conviction to a minimum term of – (a) ten years imprisonment without an option of fine; (b) where the two parties consent to commit incest, provided that the consent was not obtained by fraud or threat, five years imprisonment without an option of fine each
3. **Inflicting Physical Injury – Section 5:** Any person who willfully causes or inflicts physical injury on another person by means of any weapon, substance or object commits an offence and is liable on conviction to imprisonment of not less than 5 years or an option of fine of not less than N500,000 or to both such fine and imprisonment.
4. **Willfully Placing a Person in Fear of Physical Injury – Clause 6.** A convicted offender risks imprisonment for a term not less than two years or fine not less than N200,000 or to both fine and imprisonment.
5. **Harmful Traditional Practices – Section 8.** Female circumcision or genital mutilation of a girl child or a woman is prohibited and anyone convicted risks imprisonment for a term not exceeding four (4) years or a fine not exceeding N400,000 or to both.
6. **Forceful Ejection from Home – Section 11.** A marriage partner who forcefully evicts his or her partner from his or her home or refuses him or her access commits an offence and is liable on conviction to imprisonment for a term not exceeding two (2) years or fine not exceeding N200,000 or to both.
7. **Forced Financial Dependent and Economic Abuse – Section 14.** Any person who causes forced financial dependent or economic abuse of another commits an offence and is liable on conviction to imprisonment for a term not exceeding two (2) years or a fine

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<sup>57</sup> *ibid*



- not exceeding N200,000 or to both. Forced isolation or separation from family and Friends. Any person who forcefully isolates another from family and friends commits an offence and is liable on conviction to imprisonment for a term not less than 6 months or a fine not exceeding N200,000 or to both.
8. **Emotional, Verbal and Psychological Abuse – Section 16.** Any person who causes emotional, verbal and psychological abuse on another commits an offence and is liable on conviction to imprisonment for a term of not exceeding one (1) year or a fine not exceeding N100,000 or to both.
  9. **Abandonment of Family, without Sustenance – Section 17.** Any person who abandons his wife, children or other dependent without any means of sustenance commits an offence and is liable on conviction to imprisonment for a term not exceeding three (3) years or a fine not exceeding N300,000 or to both
  10. **Stalking – Section 18.** Any person who stalks another commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding N200,000 or to both
  11. **Intimidation of a Person – Section 19:** Any person who intimidates another commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or a fine not exceeding N100,000.00 or to both.
  12. **Spousal Battery – Section 20:** Any person who batters his or her spouse commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or a fine not exceeding N300,000 or to both
  13. **Substance Attack – Section 21:** Any person who uses chemical, biological or any other harmful liquid or material on another commits an offence and is liable on conviction to a term of life imprisonment without an option of fine
  14. **Administering a Substance with Intent – Section 22:** Any person who intentionally administers a substance to, or causes a substance to be administered to or taken by another person with the intention of stupefying or overpowering that person so as to enable any person to engage in a sexual activity with that person commits an offence and liable on conviction to imprisonment for a term of not less than ten years with no option of fine.
  15. **Indecent Exposure – Section 24:** Any person who intentionally exposes his or her genital organs, or a substantial part thereof with the intention of causing distress to the other party or that another person seeing it may be tempted or induced to commit an offence under this Law, commits an offence of indecent exposure and shall be liable on conviction to a term of imprisonment of not less than three years or to a fine not exceeding N300,000 or with both.
  16. **Political Violence – Section 25:** Any person who commits political violence is liable on conviction to imprisonment for a term of not less than four years or a fine not exceeding N400,000 or with both.
  17. **Right of Victims of Violence - Section 43:** This includes:
    - (a) Receive the necessary materials, medical, psychological, social and legal assistance through governmental agencies or non-governmental agencies providing such assistance;
    - (b) Be informed of the availability of legal, health and social services and other relevant assistance and be readily afforded access to them; and

- (c) Rehabilitation and re-integration programme of the State to enable victims to acquire, where applicable and necessary, prerequisite skills in any vocation of the victim's choice and also in necessary formal education or access to micro credit facilities.

## **PART VI – VIOLENCE AGAINST PERSONS MANAGEMENT COMMITTEE**

18. **Section 44 (1)** There is established by this Law, a Violence Against Persons Management Committee (hereinafter referred to as “the Management Committee”).

19. **Section 45** mandates the Committee to –

- (a) Make recommendations for a Gombe State Plan of Actions for Violence Against Persons, monitor and report on the progress of the Plan of Action;
- (b) Advise the State Government on policy matters under this Law;
- (c) Propose and promote strategies to prevent and combat violence against persons;
- (d) Liase with government agencies and organizations to promote the rehabilitation and re-integration of victims of violence;
- (e) Prepare guidelines for disbursement from the Support Fund for Victim of Violence;
- (f) Manage the Support Fund;
- (g) Conduct research on national, international and regional development into standards for dealing with matters of violence against persons; and
- (h) Deal with any matter concerned with violence against persons

The Violence Against Person Management Committee established by Section 44 of the GSVAPPL is responsible for coordinating and overseeing the implementation of the law. The committee is chaired by the Attorney General, with the Commissioner of Women Affair serving as the Vice Chairperson.<sup>58</sup> The Committee's mandate includes coordinating and overseeing the implementation of the GSVAPPL. This involves ensuring that the law is enforced effectively, and that victims of violence receive the support and protection they need.

### **Challenges to the Implementation of the Anti-VAWG Laws in Gombe State**

- a. Inconsistent Sanctioning provisions:** The inconsistent sanctioning provisions for rape under the Penal Code Law and the GSVAPPL are causing problems. For instance, the Penal Code provides for life imprisonment or a lesser term for rape, while the GSVAPPL stipulates life imprisonment, castration, or removal of fallopian tubes. This conflict is giving courts, particularly the magistrate courts in Gombe state the flexibility to impose lighter sentences, including options of fines, for rape convictions in Gombe State. The issue arises from the fact that the two laws have different provisions for the same offense. This discrepancy can lead to confusion and inconsistent application of the law and has defeat the essence of the provision of Section 3 of the GSVAPP law. As a result, perpetrators of rape may receive inadequate punishment, effectively turning the entire regulatory framework into a “paper tiger”, which further undermine the severity of the crime and perpetuate a culture of impunity.

- b. Non-Reporting by Victims (Culture of Silence)**

There is a disturbing culture of silence (which is the attitude of keeping quiet in the face of adversity), prevalent in Gombe State and in many parts of the country. Many Nigerians regard the reporting of domestic violence or seeking help as washing of one's dirty linen in public. For

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<sup>58</sup> Section 44 (2) of GSVVPL



example, in many Gombe communities and Nigerian as a whole, the first advice that is usually given to young couples by their parents and elder relatives at the time of their getting married is to “always keep your marital issues within” and endeavor to resolve them without the assistance of outsiders. To some extent, it is good advice, but where to draw the line between trying to resolve marital issues within and seeking outside intervention is the puzzle.<sup>59</sup> It is a matter of common sense that not every issue that arises between couples may require the intervention of outsiders to resolve it. Similarly, not every trivial marital issue should be blown out of proportion, as there needs to be an element of tolerance in every marital engagement.<sup>60</sup>

The culture of silence and shame do not affect women alone in relation to domestic violence<sup>61</sup>. Due to the upbringing and cultural expectation of men to be macho, enduring and domineering, many men suffer in silence in situations of domestic abuse perpetuated by their wives/partners. Men feel ashamed to acknowledge, report, or seek help when abused by their wives. Hence, they often fall victim to the culture of silence and shame with the potential consequences to either become depressed, develop high blood pressure, or battered to death by their abusive wives.

#### **c. Fear of Stigmatization (Negative Cultural Beliefs)**

The publicity given to criminal trials makes it unattractive for a woman to go to court and testify in cases of violence against her person, for fear of being stigmatized and laughed at.<sup>62</sup> Fear of being ostracized and shamed by communities that tend to blame victims of violence for the abuses they have suffered; lack of protective mechanisms for women who come forward to seek justice<sup>63</sup>. Similarly, Nigeria is a culturally dominated society where such culture largely upholds male dominance and supremacy over the female. Hence, violence against women by their male counterparts is widely accepted by both male and female Nigerians as a norm, provided it does not cause grievous bodily harm<sup>64</sup>.

#### **d. Low Level of Education**

The low level of education among female Nigerians is another bane to the elimination of violence against women in the country. A large percentage of the women in Gombe State are not educated, especially the women in rural communities; this is largely because it is believed by some people that ‘a woman’s education ends up in the kitchen’. Hence, it is a waste of money and resources to educate a girl child. An uneducated woman lacks the means to defend and protect herself from violence, mostly in the domestic sphere; she will not even know her rights within the provisions of the law, and neither will she know the proper procedure for getting help when her rights are being infringed upon<sup>65</sup>.

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<sup>59</sup>B O Igwe, ‘Overcoming Cultural , Traditional and Religious Beliefs and Practices in Understanding and Combating Domestic Violence in Nigeria’, 4.13 (2015), 115–25.

<sup>60</sup>Ibid

<sup>61</sup>Ibid

<sup>62</sup>Ibid

<sup>63</sup>E A Bature, ‘Gender , Culture and Domestic Violence□: Interrogating the Criminal and Penal Code in Nigeria’, 4.4 (2019), 145–54.

<sup>64</sup>Ibid

<sup>65</sup>Ibid

#### **e. Poverty**

Overdependence of women on their male partners is another bane to the elimination of domestic violence against women in Nigeria; this is particularly so because a large percentage of the women folk in Nigeria are not working, and are uneducated with no viable work skills – hence the need to rely on their male partners for their sustenance and upkeep.<sup>66</sup>

Poverty is now a way of life in Nigeria, due to economic hardship, unemployment, high cost of living, inflation and low-income earnings. Many households cannot afford three square meals a day. In these situations of lack and want it becomes impossible for women to enforce any of their fundamental human rights when they are being infringed upon. Also, their access to justice in these situations is very slim, because in Nigeria today one can hardly get anything done without having to spend some money<sup>67</sup>

#### **f. Lack of Implementation Mechanism**

The lack of implementation of GSVAPP Law is a significant concern. One of the key mechanisms for implementing the law is the establishment of a VAP Law Management Committee. However, the failure to establish this committee has hindered effective oversight and implementation of the law. The established conceptions regarding gender roles, spousal control of their partners, and the supposed private nature of violence as between husbands and wives remain unaddressed. While the judges may not have adequate training or understanding of the GSVAPP Law, leading to incorrect applications as well as allowing personal biases and prejudices to influence their decisions. Other factors include the law enforcement and practice. Law enforcement officials, like officials of other male-dominated institutions, are not sensitized on the issue of domestic violence or trained on how to respond to such complains. They also operate from the prejudices and stereotypes of the male-dominated customs and traditions in the society<sup>68</sup>.

In a country, such as Nigeria, with historic gaps in the enforcement of legislation, there is need to have the VAP law Management Committee, without which the entire provisions of GSVAPP Law may effectively turn into a mere piece of paper and amount to an effort in futility.

### **6 Conclusion**

The GSVAPP Law is a groundbreaking legislation, born out of the tireless efforts of activists from diverse backgrounds over several years. This comprehensive law breaks new ground, particularly in its modernized definition of rape, aligning with current trends and patterns. However, despite its progressiveness, the law requires further amendments to address emerging issues in sexual and gender-based violence (SGBV) and ensure effective administration in the future. The law provides robust remedies, including assistance for victims, as outlined in Section 43 of GSVAPP Law. Victims are entitled to access legal, health, and social services, as well as re-integration and rehabilitation programs. These programs aim to equip victims with essential skills, formal education, and micro credit facilities, empowering them to rebuild their lives.

Generally, the GSVAPP Law marks a significant milestone but its continued evolution is crucial to addressing the complexities of GBV and ensuring justice for victim.

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<sup>66</sup>Ibid

<sup>67</sup>Ibid

<sup>68</sup>Ibid



## 7 Recommendations

1. To ensure the effective implementation of the Law, it is crucial that institutions responsible for its execution, such as Ministry of Justice, Women Affairs, Ministries of Health, and other stakeholders, must understand their roles and responsibilities, which can be achieved by identifying key stakeholders, providing training and capacity building for public officials, particularly the police and judiciary and fostering active engagement among all stakeholders.
2. The stated key stakeholders should broaden GBV education initiatives, transitioning from urban-focused programs to inclusive, rural-centric campaigns conducted in local languages and dialects including through periodic enlightenment campaigns, multilingual publications and targeted outreach. This will empower indigenous members of Gombe State to stand for their rights against all forms of violence and when contravened, enforce it at the appropriate quarter.
3. Empowering the various offices appointed by this law to serve as Management Committee is crucial for effective monitoring, complaint handling and enforcement of the GSVAPP Law.
4. It is essential for the Gombe State lawmakers to urgently harmonize the provisions of the Penal Code Law and the GSVAPP law. This could involve introducing Regulations, amending certain provisions of the Penal Code Law to align with the more severe penalties outlined in the GSVAPP law.
5. To strengthen GSVAPP Law, an amendment is proposed to address the issue of forced video or online sex, which can lead to unwanted sexual urges. This update will recognize the calculated and non-consensual video or online sex as a form of rape, where explicit content is strategically used to manipulate and coerce an individual into non-consensual sexual activity, exploiting their sexual urges for the perpetrator's gain
6. The issue of consent is a thorny one which has provoked controversy and therefore calls for a clear interpretation. It is recommended that the courts, the law enforcement agents and the public, particularly the men, must learn to recognize and accept that when a woman says "No" to an unwanted sexual interference, it means "No" and it does not mean "Yes" in any way.