

Gender, Culture and Domestic Violence: Interrogating the Criminal and Penal Code in Nigeria

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Abstract. Domestic violence affects women as a gendered group across all racial, national, social and economic groups. The state of the world's population estimates that 33% of women worldwide suffer different forms of violence in different methods by various means. Domestic violence is not only an under reported crime; but when reported it is more often treated inconsequentially. Cultural rules or expectations of behaviour and norms within a cultural or social group can encourage violence. Cultural acceptance of violence either as a “normal” method of resolving conflict is a risk factor for all types of inter-personal violence. The Penal Code of Northern Nigeria Section 55 (1)(d) provides that an assault on a woman by her spouse is legal as much as that assault is for corrective purposes being that the woman is the said property of the man. The Criminal Code in Section 357 exempts husbands from spousal rape, while the Violence against Persons (Prohibition) Act (2015) seeks to eliminate violence in private and public life and to ensure maximum protection and effective remedies for victims. Clearly, there are contradictions in these acts. The paper intends to bring out this incongruencies and to advocate for a revision of the acts that unwittingly encourage the continued violence acts against Nigerian women.

Keywords: Penal Code, Criminal Code, Gender, Culture, Domestic Violence

1. Introduction

Women have suffered various forms of gender-induced violence from pre-colonial, colonial and post – colonial times. Civilisation and western education have not changed men's perception about women as someone deserving respect and dignity. In some quarters, women are still regarded as inferior. In Nigeria and Africa generally, women are considered as tools to be used by men. They are regarded as objects to be used for pleasure, temptation and elimination. Cultural violence against the woman and the female gender is a ubiquitous plague that has continually beleaguered societies in Nigeria, Africa and the world at large. Majority of women in Nigeria and Africa in general suffer one form of violence or another. Often, this violence takes physical or psychological forms also imbued with emotional violence which assumes a universal applicability and acceptance.

It is indeed disturbing; rather melancholic that women have unfortunately and helplessly come to accept these mistreatments as the norm rather than the exception. Most of these women are raised in the belief that their identity is subsumed or attached to the man's and that they can't have dignity of their own. This fallacious belief is rooted in most African cultures and the African women born and raised in these disquieting cultures know nothing other than the system and way of life they are used to. Thus, they are blind to the aberrations of these cultures. It is commonly argued in sociology that

no culture is vice and none would promote evil or antisocial behaviours. Certain cultures in Nigeria are repugnant to natural justice (Arisi and Oromareghake, 2011: 371-372).

Domestic violence is an act with the intent to cause grievous bodily harm on a spouse. This “grievous” bodily harm lies within the context of psychological, emotionally and physical injury. The method of violence can be all encompassing on the individual and can result into suicidal thoughts, depression or abandonment. This form has a negative impact on the children in that relationship. This paper is specific to culturally based gender violence on the Nigerian woman with specific emphasis on the role the penal and criminal codes have played out in such domestic conflicts.

2. Conceptualizing Culture

Declaring the onset of "a new phase in global history," Samuel Huntington defines "the fundamental sources of conflict" in the current world, not as economic or ideological in nature, but as "cultural." For Huntington, each civilization has a primordial cultural identity, so that the "major differences in political and economic development among civilizations are clearly rooted in their different cultures." He warns, "Culture and cultural identities. . . are shaping the patterns of cohesion, disintegration, and conflict in the post-Cold War world. . . . The rivalry of the superpowers is replaced by the clash of civilizations" (Huntington 1993, 22; 1996, 20, 28, 29). For Huntington, "culture" refers to the purported enduring values harboured by "highly integrated civilizations"-also sometimes confusingly termed "cultures." This understanding of culture as a specific group's primordial values or traits is untenable empirically. It ignores the historical conditions and relevant power relationships that give rise to political phenomena such as "democratization," ethnic conflicts, and contemporary radical Islamicist movements (Weeden, 2002;715).

The origin of the Latin word *cultura* is clear. It is a derivative of the verb *colo* (infinitive *colere*), meaning “to tend,” “to cultivate,” and “to till,” among other things (Tucker, 1931). It can take objects such as *ager*, hence *agricultura*,

whose literal meaning is “field tilling.” Another possible object of the verb *colo* is *animus* (“character”). In that case, the expression would refer to the cultivation of the human character. Consequently, the Latin noun *cultura* can be associated with education and refinement. The etymological analysis of “culture” is quite uncontroversial. But in the field of anthropology, the situation is much more complex. Definitions of culture abound and range from very complex to very simple. For example, a complex definition was proposed by Kroeber and Parsons (1958): as “transmitted and created content and patterns of values, ideas, and other symbolic- meaningful systems as factors in the shaping of human behaviour” (p. 583). An even less easily comprehensible definition was provided by White (1959/2007): “By culture we mean an extrasomatic, temporal continuum of things and events dependent upon symboling” (p. 3). Often cited is also a definition by Kluckhohn (1951):

Culture consists in patterned ways of thinking, feeling and reacting, acquired and transmitted mainly by symbols, constituting the distinctive achievements of human groups, including their embodiments in artefacts ; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values. (p. 86, no. 5). Culture is shared mental software, “the collective programming of the mind that distinguishes the members of one group or category of people from another” (Hofstede, 2001). According to Jahoda (1984), “culture” is the most elusive term in the vocabulary of the social sciences and the number of books devoted to the topic would fill many library shelves. A practical solution was proposed by Segall (1984), who believed that it was not worth the effort to enhance the concept’s clarity or attempt to articulate a universally acceptable definition. In his view, cultural analysts should abandon the struggle to conceptualize culture. Instead, they should “turn to the real business at hand,” which is to “intensify the search for whatever ecological, sociological and cultural variables might link with established variations in human behaviour” (p. 154).

According to Brown (1991), “culture consists of the conventional patterns of thought, activity, and artefact that are passed on from generation to generation” Recent definitions [of culture] tend to distinguish more clearly between actual behaviour on the one hand, and the abstract values, beliefs, and perceptions of the world that lie behind that behaviour on the other. To put it another way, culture is not observable behaviour, but rather the values and beliefs that people use to interpret experience and generate behaviour, and that is reflected in their behaviour. (p. 30)

3. Conceptualizing Gender

Prior to the 1960s, gender referred primarily to what is coded in language as masculine or feminine. Gender has subsequently been variously theorized as personality traits and behaviours that are specifically associated either with women or men (for example women are caring ; men are aggressive), to any social construction having to do with the male-female distinction, including those which distinguish female bodies from male bodies; to being thought of as the existence of two different social groups ‘men’ and ‘women’ that are the product of unequal relationships (Alsop et al., 2002; Connell and Pearse, 2014). In this latter sense, gender is understood as a hierarchy that exists in society, where one group of people (men) have power and privilege over another group of people (women) (Delphy, 1993).

Gendered worlds are defined by borderlines. Not all of them are physical borders (as the invisible lines separating male space from female space) but normative borders, restrictions and rules, distinctions and definitions of male and female. An important part of the process of becoming man or woman is a process of getting acquainted with and learning to respect the boundaries of the respective worlds (Arnfred 1996:8) More recent postmodern approaches, associated with the work of Butler (2006; 2011) in particular, conceptualize gender as performance; where gender is understood as continuously produced through everyday practices and social interactions. We need to understand these theoretical changes around the concept of gender

not only in a historical sense, but also in terms of cultural context. In other words, it is important that we ask whether gender as a concept translates in different countries and cultures in a manner that is analytically useful. we need to develop understandings of gender that allow us to theorize both cultural variation and historical changes in understanding gender and gender relations.

Any serious scholarship on the place of "gender" in African realities must of necessity raise questions about prevailing concepts and theoretical approaches. Feminists as one such group have used their newly acquired power in Western societies to turn what were formerly perceived as the private troubles of women into public issues. They have shown how women's personal troubles in the private sphere are in fact public issues constituted by the gender inequality of the social structure (Oyewumi: Nd)

In a gendered, male-headed two-parent household, the male head is conceived as the breadwinner and the female is associated with home and nurture). Gender distinctions are foundational to the establishment and functioning of this family type. Thus, gender is the fundamental organizing principle of the family, and gender distinctions are the primary source of hierarchy and oppression within the nuclear family. Marriage encapsulated and reproduced antagonistic relation of the two coherent social groups, men and women" (Haraway1991:138).

4. Conceptualizing Gender-Based Violence and Gender Justice

Gender-Based Violence: Gender-based violence is an occurrence deeply rooted in gender inequality, and remains one of the most notable human rights violations within all societies. Gender-based violence is violence directed against a person because of their gender. Both women and men experience gender-based violence but the majority of victims are women and girls. Gender-based violence and violence against women are terms that are often used interchangeably as it has been widely acknowledged that most gender-based violence

is inflicted on women and girls, by men. However, using the ‘gender-based’ aspect is important as it highlights the fact that many forms of violence against women are rooted in power inequalities between women and men (European Institute of Gender Equality (EIGE), N.d.-a).

The Istanbul Convention (Council of Europe, Convention on preventing and combating violence against women and domestic violence), is regarded as the benchmark for international legislation on tackling gender-based violence, frames gender-based violence and violence against women as a gendered act which is ‘a violation of human rights and a form of discrimination against women’. Under the Istanbul Convention acts of gender-based violence are emphasized as resulting in ‘physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or random deprivation of liberty, whether occurring in public or in private life. Hence, it is the obligation of the state to fully address it in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators (Council of Europe, N.d.).

Gender Justice: Refers to the idea that men and women should be treated equally in social, economic and all other aspects of society, and not discriminated against on the basis of their gender. Also known as gender equality, gender justice is the state of equal ease of access to resources and opportunities irrespective of gender, including economic participation and decision-making; and the state of respecting different behaviours, ambitions and needs equally, regardless of gender (Benningfield, 2004).

Accordingly, world organizations have defined gender justice in terms of human rights, especially women’s rights, and economic development. Hence, every woman and girl are eligible to live in dignity and in freedom, without any fear. Gender justice is essential for development, poverty reduction, and is central to attaining human progress, and this includes sharing of power and responsibility between

women and men at home, in the workplace, and in the broader national and international communities (OXFAM, N.d).

5. The Nexus between Culture and Gender

The difficult task before gender scholars now is to develop the implications of this reconceptualization by identifying key components of the gender system and analysing the processes by which these components maintain or change the gender system (Chafetz 1999). To begin this task, we argue in this article that widely shared, hegemonic cultural beliefs about gender and their effects in what we call “social relational contexts” are among the core components that maintain and change the gender system. Social relational contexts comprise any situation in which individuals define themselves in relation to others in order to act. While these include interactional situations, social relational contexts include a considerably broader range of contexts than interaction alone, as we explain shortly. We outline a theoretical perspective that specifies the impact of gender beliefs in social relational contexts and analyses these processes as components of a multilevel gender system.

There are several *prima facie* reasons for suspecting that both cultural beliefs and social relational contexts play significant roles in the gender system. If gender is a system for constituting difference and organizing inequality on the basis of that difference, then the widely held cultural beliefs that define the distinguishing characteristics of men and women and how they are expected to behave clearly are a central component of that system. These are the core, defining cultural beliefs about gender that we refer to as “gender beliefs” in this article. Such cultural beliefs have long been studied as widely shared gender stereotypes (Eagly, Wood, and Diekmann 2000). Considering these beliefs in the context of the gender system, however, suggests that they are considerably more than that as well. Widely held gender beliefs are in effect cultural rules or instructions for enacting the social structure of difference and inequality that we understand to be gender. A social structure, argued Sewell (1992), can be understood as jointly constituted by the cultural

rules or schemas by which it is enacted and the distributions of resources that result. Viewed this way, gender beliefs, as the cultural rules or schemas for enacting gender, are one of the twin pillars (along with resources) on which the gender system rests (Ridgeway and Correll 2000). It is only through the development of such defining cultural beliefs that a system of difference like gender or race becomes constructed as a distinct organizing principle of social relations (Ridgeway 2000).

Thus, while cultural beliefs about gender are indeed stereotypes, they have a substantially broader social significance than our common understanding of the phrase suggests. If cultural beliefs are an important component of the gender system, then social relational contexts—as the arenas where these beliefs or rules are in play—are likely to be important as well. Since social relational contexts include any context in which individuals define themselves in relation to others to comprehend the situation and act, everyday interaction, be it in person, on paper, or through the Internet, is a major source of social relational contexts. Yet as symbolic interactionists have. In general, contemporary stereotypes describe women as more communal and men as more agentic and instrumental (Eagly, Wood, and Diekmann 2000). In addition to this horizontal dimension of difference, gender beliefs have a hierarchical dimension of status inequality. Men are viewed as more status worthy and competent overall and more competent at the things that “count most” (e.g., instrumental rationality). Women are seen as less competent in general but “nicer” and better at communal tasks even though these tasks themselves are less valued.

6. The Penal Code in Nigeria and Gender Based Violence: A Bundle of Contradictions

During the past century, despite tremendous developments in society, women are still not treated equally and are not given equal opportunities. They are still at the side lines of economic, political, religious, social and cultural rights. According to OXFAM (N.d.), almost 70 percent of the world's hungry are women.

Women remain massively under-represented in democratic institutions globally; women represent less than 10 percent of parliaments in a third of the world countries. Gender equality outcomes in aid effectiveness are less prioritized overall. In post disaster and conflict settings, women often suffer from lack of security and are excluded from decision making processes in economic, social, and political spheres.

Domestic violence affects women as a gendered group across all racial, national, social and economic groups. The state of the world's population estimates that 33% of women worldwide suffer different forms of violence in different methods by various means. Domestic violence is not only an under reported crime; but when reported it is more often treated inconsequentially. Gender discrimination ranks amongst the most dominant types of social discrimination and occurs in every part of the world, with diverse manifestations that are peculiar to various localities. These disparities are largely due to cultural, economic, legal, political, and geographic location, as well as the religious norms which prevail in a given society (Inglehart and Norris, 2003). However, legal frameworks appear to play a more vital role in the cultural sphere, and may be only second to politics in the overall spheres of human interactions; it is deeply entrenched in peoples' practices and impacts the socioeconomic and political management of societies (Stump, 2008).

The account of women in Nigeria shows a narrative of unbelievable abuse, and discrimination. Women and girl's roles in the country could be labelled as neither one of total victimization or deprivation, nor of complete equality with their male counterpart. Though, the 1999 Constitution of Nigeria forbids discrimination on the basis of gender, the Penal and Criminal Codes continue to restrict women's rights. Dibia (2012), states that, the combination of federal system of government, and a tripartite system of religious laws, civil and customary laws make it very difficult to harmonize legislation and remove discriminatory measure against women in the country.

In Nigeria, accounts of gender-based violence are common place with unpleasant outcomes. The most regular acts of violence against women and girls in Nigeria include sexual harassment, physical violence, harmful traditional practices, emotional, psychological violence, socioeconomic violence and violence against non-combatant women in conflict conditions. In addition, women and girls experience violent acts in the household and within the family which could be habituated by legal, socio-cultural attitudes and traditions. According to a study commissioned by the Federal Ministry of Women Affairs and Social Development, Abuja, in collaboration with the United Nations Population Funds (UNPFA) Nigeria and the Norwegian Government revealed that 28% of Nigerian women between the ages of 25-29 have suffered a number of physical violence since the age of 15.

According to the Organization for Economic Co-operation and Development (OECD) report in (2010) Nigeria's women physical integrity is not sufficiently protected. Out of 36 states in the country, only nine states have a law in place that addresses violence against women. After almost seventy years since the country attained independence, its Penal Code still grants husbands permission to beat their wives, provided the violence does not result in serious injury. Further, the Nigeria's legal system is made of up of English common law, customary law, Islamic (Sharia) law and statutory law. Customary law is prevalent in the southern part whilst sharia law is widely made recourse in many of the states in the Northern states of Nigeria. Despite these legal systems, it is reported that domestic violence is common and affects one-fifth of couples (OECD, 2010).

Furthermore, a Nigeria Demographic and Health Survey (NDHS) (2008) result shows that more than two-fifths of women (43%) and almost one-third of men (30%) agree that a husband is justified in beating his wife for certain reasons. Going out without telling him and neglecting the children are the two most commonly cited justifications for wife beating among both women and men. The NDHS (2008) survey also shows that 28% of women age 15-49 have

experienced physical violence since age 15. Another 15% of women in the country is the person most often committing the violence. Seven percent of women age 15-49 have never experienced sexual violence. Physical violence varies by women's background characteristics. Women in urban areas are more likely than their rural counterparts to report having experienced physical violence since age 15 (OECD, 2010). A greater proportion of women living in South-South zone (52%) have experienced physical violence compared to women in North East (20%) and North West (13%) zones respectively (NDHS, 2008). As a result, Nigerian women consider it "normal" to be beaten by their husbands.

Cultural rules or expectations of behaviour and norms within a cultural or social group can encourage violence. Cultural acceptance of violence either as a "normal" method of resolving conflict is a risk factor for all types of inter-personal violence. Unfortunately for women in the county, the major religions in Nigeria still preach male superiority and domination (Ako-Nai, 2013). This has been the state of women affairs since the attainment of independence. For example, under Islamic and civil law, married women have the right and access to property other than land. Civil law entitles women to have access to land (Ako-Nai, 2013). However, certain customary laws stipulate that only men have the right to own land. It is however a common practice for women to obtain land solely through marriage or family. The major area of discrimination is the customary law that denies women from any entitlement to household property or assets acquired by their husband. In particular, the Penal Code of Northern Nigeria Section 55 (1)(d) provides that an assault on a woman by her spouse is legal as much as that assault is for corrective purposes being that the woman is the said property of the man. The Criminal Code in Section 357 exempts husbands from spousal rape, while the Violence against Persons (Prohibition) Act (2015) seeks to eliminate violence in private and public life and to ensure maximum protection and effective remedies for victims.

The Nigerian Criminal Code Act of 1990:360 indicates that, “Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment for two years”. As good as this may sound, there are some federal laws that allow gender-based violence, such as permitting husbands to “use physical means to chastise their wives, as long as it does not result in ‘grievous harm’, which is defined as loss of sight, hearing, speech, facial disfigurement or life-threatening injuries. Under Section 55 of the Penal Code (applicable in Northern Nigeria), men may engage in wife battery as long as it does not result in “excessive bodily injury”. These legal provisions are indeed worrisome, as they do not only help to legalize gender-based violence but they have gone a long way to institutionalize them (Ayo-Aderele, 2013).

However, in a bid to address the lacuna in the Penal and Criminal Codes in the Nigerian legal system which promotes gender-based violence, a number of steps have been taken in recent times. For instance, the Prohibition Against Domestic Violence Law of Lagos, State Law No 15, 2007, was enacted as a response to the rising incidents of violence against women in Lagos State. The state of the legal system prior to the enactment of the Law was generally unfavourable to women who suffered beatings and abuse from their partners. The Criminal and Penal Codes provide for punishment for assault but most women would not consider taking their partners before the Law Courts. The enforcement agencies, such as the police, were not interested in pursuing cases of a 'domestic' nature when there were more 'serious' crimes such as robbery to deal with. The law prohibiting domestic violence is a mechanism to correct the inadequacies of the legal system by ensuring that victims of domestic violence are protected, the strict compliance of police officers in apprehending suspects, providing alternative orders such as interim protection orders and expanding the definition of the laws that constitute domestic violence (Repila, 2013).

Similarly, the Violence Against the Persons (Prohibition) (VAPP) bill was passed in the House of Representatives in 2013. According to

Oxfam, the VAPP bill, which covers domestic and gender-based violence, also includes a more comprehensive definition of rape, harsher sentences for rape and other sexual offences, compensation for rape victims, institutional protection from further abuse through restraining orders and a new fund to support the rehabilitation of victims of violence (Repila, 2013). In spite of similar steps taken across the country to safeguard the rights of women and girls, these are not sufficient to reduce discrimination against women; ongoing action is needed to tackle inconsistencies (for example, between statutory and customary law), to ensure implementation of new laws, and to secure long term changes in the social attitudes that underlie and reproduce gender inequalities, hence, further legal reforms are still necessary.

It is pertinent to note that, the contradictions in the Penal and the Criminal Codes in Nigeria’s legal system, have created several problems for women and girls, making it difficult for them to seek redress when they are abused. Some of the inherent problems in Nigeria and parts of Sub-Saharan Africa include among others the lack of adequate legal mechanisms and normative frameworks that protect women’s rights; lack of knowledge of the legal measure that protect women and give them rights and access to services; high rates of illiteracy and poor literacy amongst women in many parts of the country; lack of resources or time to participate in justice processes; fear of repercussions; 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; cultural or religious practices that discriminate against women and inhibit their access to both formal and informal mechanisms (Nyamu-Musembi, 2005).

7. Conclusion and Recommendations

This paper problematized culture, gender and domestic violence in Nigeria, in the context of the Penal Code and Criminal Code. The paper revealed that, though there are legal provisions that support women’s rights, the Penal and Criminal Codes contain contradictions which

have unwittingly made nonsense of those provisions. In reality, Nigerian women's rights much more than men are overlooked and encroach upon at different stages of their lives despite constitutional guarantees and Nigeria being signatory to many international human rights instruments including CEDAW. The tripartite legal system - statutory/customary/Sharia - operates contradictory evidence procedures which permit trivialization of women's legal status. The resultant rights violations perpetuate gender inequality, and curb women's abilities to participate fully in development processes.

In particular, the law on domestic violence is clearly inadequate, particularly regarding wife battery. Domestic violence is currently classified under common assault, which downplays the seriousness of this crime. According to section 55 of the penal code, wife beating is allowed as long as it does not amount to grievous hurt. As outlined in section 241 of the penal code "grievous hurt" include emasculation, permanent loss of sight, ability to hear or speak facial disfigurement, deprivation of any member or joint, bone fracture or tooth dislocation (Imam, 2000). This means that a man who beats his wife short of inflicting the above injuries is acting within the law. How is the woman's fundamental right to dignity then protected under such circumstances? Section 353 of the criminal code makes an indecent assault on males punishable by 3 years imprisonment. A similar offence of indecent assault on females is treated as mere misdemeanour punishable by a maximum of 2 years imprisonment (section 360), clearly a discriminatory provision.

To remedy this discriminatory status quo, the paper proposes several approaches, human rights protection, review of laws and legislation and strengthening of legal institutions to overhaul laws, body of jurisprudence, structures and procedure as a strategy for mainstreaming and sustaining gender equity and equality principles. These recommendations become necessary as look at Nigeria's local laws and policies affirms that, until very recently, many legal instruments were discriminatory and/or, at best, gender blind. Ranging from the constitution to the criminal code, local edicts to customary laws,

women's rights have been systematically undermined. Violations of women's rights are further complicated by the existence of three legal systems namely English Law, Customary Law and Shari'a Law.

Accordingly, the major outcome of the tripartite legal system is the presence of numerous gender insensitive local laws that are not easily documented and consequently difficult to monitor. Advocating the abrogation of such laws is cumbersome, given the federal system with almost autonomous powers. Consequently, gender-sensitive legislations at the federal level may not result in progress at the state level, suggesting that interventions focused on the state level may be more effective. This reality needs to be better acknowledged by programme planners and implementers.

Therefore, governments at all levels should support judicial reforms that fully responds to the needs of women victims of gender-based violence by providing adequate protection of women victims; support the National Human Rights Commission (NHRC) and public complaints offices to develop adequate capacity on gender issues and women's human rights, including training and the establishment of gender desks.

Lastly, the Federal Government through the legislature should embark on gender-responsive police reforms with a view to addressing the implications of enforcement mechanisms for gender, as the Police and the security sector are known to be involved in perpetration of crimes against women instead of protecting them.

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