GENDER-BASED DOMESTIC VIOLENCE: EXAMINING THEADEQUACY OF THE LEGAL REGIME IN NIGERIA

JOEL BARDE

PHD. Department of International Law and Jurisprudence, Faculty of Law, University of Jos, Nigeria

I. INTRODUCTION

Gender-based violence occurs in Nigeria as it does in many parts of Africa and indeed other nations. There is a deep cultural belief in Nigeria that it is socially acceptable to hit a woman in order to discipline her.[1] . According to the Nigeria stability and Reconciliation Program, approximately 80 million Nigerian women and girls are victims of this type of violence.[2] It affects their educational opportunity and their ability to strengthen their skills and to grow within the workforce, and contributes to chronic illness, and sometimes even death.

Violence against women is evident in many forms including physical, psychological, battering, sexual abuse of female children, female genital mutilation, marital rape, forced and harmful traditional practices[3]. It is a violation of human rights and therefore there have been serious efforts to address this menace.

This work examines the concept of gender-based violence, different forms and effects of such violence in Nigeria vis-a-vis Existing laws.

Concept of Gender-Based Violence : "Gender-based violence and "Violence against women" are terms that are always used interchangeably as most gender-based violence is inflicted by men on women and girls. The terms are used interchangeable throughout this work as it's always understood that gender-based violence means violence against women.

Gender-based violence is a human rights violation .The UN General Assembly in adopting the 1993 declaration on the elimination of violence against women defined gender-based violence as "any act of physical, sexual, or psychological harm or suffering to women, including threats of such acts, Coercion or arbitrary deprivation of liberty, whether occurring in public or private life.[4] The declaration encompasses all forms of gender-based violence against women (Physical, Sexual and Psychological), no matter in which context or setting they occur.

II. FORMS OF VIOLENCE AGAINST WOMEN

Gender-based violence includes:

Domestic Violence: Domestic violence against women remains one of the most Pervasive human rights violations of our time, and one of the biggest global problems.[5] It is the most Prevalent form of gender-based violence and typically occurs when a man beats his female partner. On a daily basis, Nigerian women are beaten, raped and even murdered by members of their family for trivial reasons like burning the food, arguing with the husband, going out without asking permission, neglecting the children; and refusal to have sexual intercourse.[6]

The beating of women and children in Nigeria is widely sanctioned by Nigerian Culture and is used as a form of discipline. Most ethnic groups believe that the woman is not equal to the man and so she must always submit to his authority. This notion is so deeply entrenched in the cultural mindset that the penal code in section 54 provides that a husband is permitted to beat his wife for the purpose of correcting her, subject only to any native law and custom in which such correction is recognized as lawful and provided that the result does not amount to the infliction of grievous hurt.[7]

Such practices put women in subservient positions in relation to their husbands and other males. This inferior status makes women "undervalued, disrespected and prone to violence by their male counter parts".[8]

Physical Violence: Women often face physical violence at the hands of their family members.

Examples of physical violence against women in Nigeria include rape, murder, slapping and

---

[1] "Cultural Beliefs Fuel Domestic Violence" *Daily Trust*. Accessed 3/1/016

[2] Ibid.

[3] Noah, Y. "Incidence and Dimension of Violence Against Women in Nigerian society" *centre point Journal, 2000.*

[4] Gender-Based Violence and Reproductive Health and HIV/AIDs. General Assembly Resolution 48/104 Declaration on the Elimination of Violence against women, 1993.

[5] "Review of the Implementation of the Beijing Platform for Action in the EU Member States" *Violence against women victim support.*

[6] "Domestic Violence" *www.domesticviolence.com.org.* Accessed 07/01/2016

[7] "Domestic Violence Against Women in Nigeria" *https://ameharome.word-press.com.* Accessed 12/01/2016

[8] Observed a 2003 Report by the UN Development Fund for Women (UNIFEM)

kicking.[9] Violence has a significant impact on the health and life expectancy of women

Sexual Abuse: Sexual abuse is a common form of domestic violence. It is defined by World Health Organization as any sexual act; attempt to obtain a sexual act, unwanted sexual comments or advances,[10] otherwise directed, against a person's sexuality using coercion. It also includes obligatory inspections for virginity[11] and female genital mutilation.[12] Aside forcing an unwilling partner to engage in sex, sexual abuse occurs if a person is unable to understand the nature or condition of the act, unable to decline participation due to illness, disability, influence of drugs or unable to communicate unwillingness to engage in the sexual act due to underage.

The most rampant sexual abuses in Nigeria is rape . Most rapists are known by those they attack and they are often the victim's father[13], partner[14], neighbour[15].

Sexual violence against a woman is a human rights violation that cannot be justified by any political, social, religious or cultural claim rather it results in physical, psychological and emotional harm.

Economic abuse: It is a form of abuse when one intimate partner has control over the other partner's access to economic resources.[16] This may take on many forms, such as a husband preventing or forbidding his wife from working or gaining an education, limiting what the victim may use, withholding basic necessities (food,[17]clothes, medications, shelter), making the victim account for every penny spent[18].

In parts of the world particularly Nigeria, where women depend on husband's income in order to survive , economic abuse can have very severe consequences because the victim is completely at the abusive partner's mercy.

Causes of Domestic Violence : Of the most important causes of domestic violence is a belief that abuse, whether physical or verbal, is acceptable. Other factors include the following:

Legislation: Lack of adequate legislation which criminalizes domestic violence may hinder the progress in regard to reducing or eliminating the incidence of domestic violence. The WHO notes that violence against women is frequently ignored because often "legal systems and cultural norms do not treat as crime, but rather as a "private" family matter, or a normal part of life".[19]

While domestic violence is a violation of fundamental human rights, which the Nigerian constitution is against,[20] some provisions of the law, specifically the penal codes applicable in the Northern part of Nigeria encourages violence against women and give the accused wide room to escape

[9] "No safe Haven: An Annual Report of Attacks on Women in Nigeria". *Project Alert on Violence Against Women* .

[10] Human trafficking is the trade of Humans, most commonly for the purpose of sexual slavery, forced, labour, or commercial sexual exploitation for the trafficker or others.

[11] A virginity test is the practice and process of determining whether a girl or woman is a virgin, i.e. whether she has never engaged in sexual intercourse. The test involves an inspection of the hymen, on the assumption that it can only be torn as a result of sexual intercourse. This is common among African tribes. Virginity test is very controversial, both because of its implications for tested girls and women and because it is viewed as unethical. See university of California at Santa Barbara's sex info-the HYMEN. Retrieved 04/04/2016.

[12] Female Genital mutilation is the ritual removal of some or all of the external female genitalia. UNICEF estimated in 2016 that 200 million women had undergone the procedure in 27 countries in Africa, as well as other countries of the world. The Violence against Person Prohibition Act 2015 prohibits female circumcision, making it a federal offence.See WHO (2002) "The forms and context of violence" in WHO, *World Report on Violence and Health: Summary*, Geneva, Switzerland: World Health Organization pp17-18.

[13] In November 2015, a man named Emmanuel Udoh in Ini Local government area of Akwa Ibom was arrested for defiling his daughter. See "my daughter doesn't need a Lover, I satisfy her sexually" *www.vanguard.com* Nov. 17th, 2015. Accessed 5/4/2015.

[14] This has to do with marital and intimate partner sexual Assault. Intimate partner sexual assault is an assault that is committed by a current or past spouse or boyfriend. Forced intercourse within a marriage is often called "marital rape" Like other forms of domestic violence, marital rape is about exerting power and control over one's partner. Unfortunately, marital rape is not regarded as a crime under Nigerian law as it is widely held that marriage entitles the husband to have sex with his wife when and how he wants it.

[15] Jekayinfa, A.A., "Types, causes and effects of Gender-based violence: Challenges for social studies Education in Nigeria."

[16] Adams, A.E (2008) et'al, "Development of the scale of Economic Abuse" *Violence Against Women (sage) 14 (5): 563-588*

[17] In India, for example, the withholding of food is a documented form of family abuse. See Ackerson, L.K ibid

[18] .Disagreement about money spent can result in retaliation with additional physical,sexual or emotional abuse

[19] WHO, Gender, equity, human rights: Gender-based violence. Geneva, Switzerland: World Health Organization 2015.

[20] Section 34(1) of the 1999 constitution guarantees the rights of all against torture and other inhuman or degrading treatment.

punishment. Under the penal code, still applicable in all the states of the North, the beating of a wife for the purpose of correction is legal by virtue of section 55(1) (d).

Also the police and courts often dismiss violence as a family matter and refuse to investigate or press charges. When the cases finally get to court, they are usually stagnant. Therefore domestic violence persists due to a faulty justice system.

As a result of agitations for protection of persons against the different forms of violence, the former president of Nigeria, Goodluck Ebele Jonathan signed into law the violence Against Persons Prohibition Act, 2015. The content of the Act is homegrown, reflecting the realities of violence in Nigeria today, even as it incorporates provisions based on Nigeria's commitment to international human rights principles.

Importantly for the purpose of violence against women, the Act among other things prohibits spousal battery[21], forceful ejection from home[22], forced financial dependency or economic abuse[23], female circumcision/female genital mutilation (FGM)[24], harmful widowhood practices[25], substance attacks such as acid baths and other harmful traditional practices,[26] sexual violence[27], forced isolation and separation from family and friends[28].

The shortcoming in relation to the Act is its limited application to the federal Capital Territory, Abuja.[29] Although some states of the federation like Lagos, Imo, Ekiti, Kogi, Amambra, Plateau etcetera have enacted related legislation, it is expected that the remaining states of Nigeria will take immediate necessary action to adopt and enact similar law on violence against persons.

Another drawback of the Act, is that, it was passed without the express repeal of section 55(1) of the penal code (which encourages the beating of wives for purpose of correction), although with the proviso that "any provision of the Act shall supersede any other provision on similar offences in the criminal code, penal code and criminal procedure code",[30] an express repeal of the section would have been preferred more so that international agreement like the convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) encourages states to repeal discriminatory laws and promulgate new ones that dismantle gender based discrimination, violence and coercion.

Further, the Act implicitly excluded marital rape from the definition of rape. This implies that women in Nigeria will continue to endure sexual assault from their husbands despite the passage of the Act into law

Societal/Cultural Factors: Society contributes to domestic violence by not taking it seriously enough and by treating it as expected, normal, or deserved. Others are: poverty. religion, addiction to drug and alcohol ETC.

Effects of Domestic Abuse : Domestic violence not only affects those who are abused, but also has substantial effect on family members, friends, co-workers, other witnesses, and the community at large. However, the effects of domestic violence or abuse on the victim are as follows:

Physical and psychological injury to the victim, Sexually transmitted diseases, ETC

Conclusion

The issue of domestic violence is a society problem that cuts across cultures, classes and races. It deprives women of their ability to achieve their full potential by threatening their safety, freedom and autonomy. These experiences show that the implementation of all enforceable policies, legislations and the repeal of obsolete laws are important in countering this threat. Ending violence against women and girls is a priority that must be pursued by all lovers of human rights, as human rights are indeed fundamental to societal growth and well-being.

In the light of the above, we propose the following recommendations.

The provisions of the Violence Against Persons prohibition Act should be implemented.

With regard to marital rape, we opine that it should be made a criminal offense only when the wife is very sick and the sexual act will endanger her life. The wife must inform her husband prior to the sexual act about her health condition and if despite her ill-health, the husband insists on having sex with her then he should be penalized.

Our legislature must step up and expunge provisions in our laws that allow men to legally inflict violence on their wives. According to World Health Organization, "when the law allows husbands to physically discipline wives, implementing programs to prevent intimate partner violence may have little impact.[31] Therefore our law must protect vulnerable groups instead of legalizing their oppression. It is therefore our humble view that section 55(1) (d) of the penal code that sanctions the beating of wives be repealed to enable a woman press charges against her husband for assaults.

[21] Section 19 of the Violence Against Persons Prohibition Act, 2015
[22] Ibid S. 9
[23] Ibid S. 12
[24] Ibid S. 6
[25] Ibid S. 15
[26] Ibid SS. 21 and 20
[27] Ibid S. 1
[28] Ibid S. 13
[29] S. 27 Violence Against Peron's prohibition Act 2015
[30] Ibid S. 45(2)
[31] WHO Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence. Geneva, Switzerland.

Ending domestic violence will require empowering women and girls to speak up for themselves. Women at the grassroots level should be empowered so that they would know that any act of violence against them is wrong.

★★★