

A LECTURE DELIVERED BY HONOURABLE JUSTICE AKON B. IKPEME (FNISM,FICMC,F.DRI,JP) ON CULTURAL BELIEFS AND THE IMPACT OF FIGHTING SEXUAL OFFENCES AGAINST WOMEN AND THE GIRL CHILD AT THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES AFRICAN REGIONAL CONFERENCE 12TH TO 17TH MAY 2024 AT ACCRA, GHANA

INTRODUCTION

Cultural beliefs significantly shape the impact on societal norms and behaviors. These beliefs often play a role in determining the attitudes towards sexual offences against women and the girl child. Understanding and addressing these cultural beliefs are crucial steps in fighting against sexual offences thereby promoting gender equality and the safety of women and the girl child.

Gender equality is strongly tied to women's rights and eliminating harmful practices against women and girls including sexual violence will bridge the gaps that exist. Gender equality as defined by UNICEF means women, men, girls and boys enjoy equal rights resources, opportunities and protection.

This lecture therefore seeks to examine some cultural beliefs and the complexities arising from these beliefs as well as the impact in fighting sexual offences against women and the girl child.

Sexual offences are attempted or completed sexual acts perpetuated against a person in which the affected person does not consent or is unable to consent. A child for example or a mentally handicapped women or girl are good examples of persons who are unable to consent. The results are damaging and traumatic, leaving women with physical injuries and making them vulnerable to health risks such as infections, sexually transmitted diseases (STDs), post-traumatic stress, depression and sometimes death.

Statistics reveal that one in three women experience physical or sexual violence in her lifetime. Some of the strongest and most consistent factors that contribute to gender inequality are harmful traditional norms and practices.

It is important to recognize that although our Laws have made important strides towards criminalizing sexual violence, there seem to still be a significant number of unreported cases of sexual offences against women and girls in various communities.

May I at this juncture acknowledge the efforts of Governments, international organizations, civil society groups for the progress made so far in implementing laws and policies to ensure the protection of women and girls from sexual violence. However, fighting sexual offences against women and the girl child requires challenging deep-rooted cultural beliefs.

Research indicates that cultural beliefs reflect as a major issue in the perpetuation of sexual violence against women and girls. The degree of the impact of these cultural beliefs vary from one region to another.

It is therefore expedient for stakeholders to collaborate and actively dispel widely accepted cultural beliefs and break the cycle of sexual abuse against women and the girl child.

CULTURAL BELIEFS AND SEXUAL PRACTICES AMONG PEOPLE IN NIGERIA; THE IMPACT IN THE FIGHT AGAINST SEXUAL OFFENCES IN WOMEN AND THE GIRL CHILD.

1. Child Marriage (Early Marriage): This refers to the marriage of a person below the age of 18 or below the legal age for marriage. In Nigeria, Section 277 of the Child Rights Act, 2003 describes a child to mean "a person under the age of eighteen". In some communities child marriages form a strong cultural belief which exposes the girl child to abuse which violates their fundamental rights. Child marriage has psychological as well as health consequences on the girl-child. This practice is predominately witnessed in northern Nigeria. It is widely recognized that child marriage is a violation of children's rights and has several harmful effects on the lives of children.

Section 21 of the Child Rights Act 2003 states that "No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void of no effect whatsoever".

Section 22(1) and (2) of the same Child Rights Act states inter alia "No parent, guardian or any other person shall betroth a child to any person. A betrothal in contravention of subsection (1) of this section and is null and void.

Section 23 A person---

- (a) who marries a child, or
- (b) to whom a child is betrothed, or
- (c) who promotes the marriage of a child, or
- (d) who betroths a child

Commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both fine and imprisonment."

Existing reports demonstrate that child marriage exposes girls to early and frequent pregnancies with higher risks of maternal mortality and morbidity. This cultural belief that a girl child can be married off even without her consent and at an early age has a significantly adverse effect on the fight against sexual offences. As long as the practice of such cultural beliefs remains, it will continue to impede the fight against sexual offences and the continuous violation of the fundamental rights of the girl child.

2. Money Marriage: This is a cultural practice where girls as young as five (5) years old are sold to settle their parent's debt as part of a tradition. These "money wives" as they are called can face decades of slavery and sexual exploitation as they are passed from one owner to another. In Becheve community in the Northern part of Cross River State of Nigeria, this practice of money wives as reported by Aljazeera has negatively affected the lives of young girls who are victims. According to the report, organisations working to support the victims say they've been threatened on many occasions and warned to stop their work and this is a major drawback.

3. Female Genital Mutilation (FGM): This is an extreme case of sexual violence against women. Women and girls are forced to cut their genitals which leaves them traumatized, in pain and at risk of infection. It is most often carried out on young girls between infancy and age 15. FGM is mostly considered a cultural obligation by those who practice it and it is believed to be a transition to adulthood. According to reports, the culture of some communities who practice FGM believe that it prevents promiscuity. FGM is a violation of girls' and women's fundamental rights, including their rights to health, security and dignity. In Nigeria, the Child Rights Act 2003 and the Violence Against persons Prohibition Act (VAPP Act) 2015 speak against FGM.

Section 6 of The Violence against Persons Prohibition Act 2015 which has also been domesticated by some states in Nigeria prohibits female genital mutilation and prescribes punishment for FGM. However, it is indeed disheartening to note that despite the existence of this law there is still a poor record of conviction. It can be noted that the persistence of this harmful practice is an expression of deeply rooted cultural belief which has remained as a clog in the fight against this harmful practice.

4. The Belief of Silence or Secrecy: Another major cultural belief that affects negatively the fight against sexual offences is the belief that when a girl is sexually abused, it should be kept a secret. The belief is that exposure of such acts stigmatizes the girl and can jeopardize her chances of marriage so even when such cases are reported, prosecution most times is stalled because the victims are not encouraged to come to Court to testify. The mothers will tell investigators they are not ready to expose the child. A popular saying among rural old women is that "a woman must die with some secrets". This is a belief of non-disclosure, silence and reluctance to report cases of sexual assault against women and the girl child. May I mention that when victims and their families break the silence, it promotes the rapid prosecution of the case. See the case of

.....V..... A case that was successfully prosecuted in my Court. Two young girls who were living with their grandmother were sexually abused by a neighbor. The grandmother followed the case religiously. She was in court to testify. The girls testified in camera and defendant was convicted. Indeed the narrative is changing.

5. Belief of Male Entitlement, Domination And Control: Women are expected to be submissive to male family members in all aspects of life. That is why the statement "I have a woman like you under my control" is a rampant phrase amongst certain strata of men in the Nigerian society. The boys sleep while the girls are expected to do the chores. This creates a sense of entitlement in the boys and they grow up with the entitlement mentality which leads to coercive control. This belief has exposed a lot of women and the girl child to sexual violence by boys who attribute sexual violence to male domination over females.

6. Belief of Blaming Females for Provocation: It is common that some women who experience violence are blamed for it because some say they dressed in a "provocative manner". Some people cast blame on the affected person by blaming the action on the

dressing of the women to justify male sexual entitlement to violence. Stigma is often placed on women who experience sexual violence by blaming them for the abuse.

7. Human trafficking : Human trafficking is a global crime that trades in people and exploits them for profit. Trafficked persons are particularly vulnerable to sexual assault, Physical and sexual abuse, blackmail, and emotional manipulation. Exploitation can take place in a victim's home country, during migration or in a foreign country. While men, women and children of all ages and from all backgrounds can become victims of this crime, women and girls are mainly trafficked for sexual exploitation. In Edo Nigeria, some cultural practices take the form of "juju" (or voodoo) which will involve ritual acts and oath taking to prevent these women and girls from escaping or even disclosing the perpetrators. Some believe there will be cursed if they break the contract or oath. This keeps the victims terrified and trapped in this very harmful practice. In Nigeria, this practice continues to prevail inspite of efforts of organizations like the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to curb same.

8. Discrimination And Marginalization As A Result Of Disability: Women and girls with disability are vulnerable to experiencing violence specially sexual violence. An instance is the case of Where father raped his handicapped daughter (REQUEST FOR DETAILS OF CITATION). In Nigeria, the Discrimination Against persons with Disabilities (Prohibition) Act, 2018 provides safeguards of rights of persons living with disability.

9. Reluctance Of Authorities In Cases Of Marital Rape: Historically, husbands have been granted marital exemption to the crime of rape because it is believed that intercourse within marriage was regarded as the right of a spouse and therefore a man cannot rape his wife because of the mutual matrimonial consent and contract. It is imperative to note that traditional views of marriage like cultural expectations of subordination of a wife to her husband have impacted the willingness to criminalize and prosecute non-consensual sex in marriage. However, marital rape may not be covered by the ordinary rape laws but there is a way out. Non-consensual sex involving coercion or force may be prosecuted under general statutes prohibiting violence such as assault and battery. There is also a belief that since the bride price has been paid on the woman she is in the marriage as a "baby making machine" to produce as many children as possible especially when there is generally a preference for a male child in some parts of Nigeria . In instances where a woman gives birth to only female children she can be coerced by her husband to continue to indulge in sex even when she does not feel like it in order to get pregnant and keep giving birth to see if she will be lucky to have a male child. Some women are even coerced to resume sexual activities post child birth against the advice of medical experts. After child birth, medical experts say the woman's body is expected to heal and recover but some men will not hear that as they culturally see women as sexual objects.

APPLICABLE LEGISLATIONS ON SEXUAL OFFENCES AGAINST WOMEN AND THE GIRL CHILD IN NIGERIA.

A. THE CRIMINAL CODE ACT OF NIGERIA 2004 AND PENAL CODE OF NORTHERN NIGERIA 2004.

Section 357 and 282 of the Criminal Code and Penal Code respectively establishes rape as an offence. According to Section 357 and 358 of the Criminal Code Cap C 38, Laws of the Federation of Nigeria, 2004

"Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear or harm, or by means of false or fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of rape".

"Any person who commits the offence of rape is liable to imprisonment for life, with or without caning. "

Similarly, section 282 of the Penal Code Act 2004

"A man is said to commit rape who has sexual intercourse with a woman in any of the following circumstances:

- (a) against her will;
- (b) Without her consent;
- (c) with her consent when her consent has been obtained by putting her in fear of death or of hurts
- (d) 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 is or believes herself to be lawfully married;
- (e) with or without her consent, when she is under 14(fourteen) years of age or of unsound mind"

B. THE CHILD RIGHTS ACT, 2003

Section 31 of the Child Rights Act 2003

(1) "No person shall have sexual intercourse with a child

(2) A person who contravenes the provision of subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life."

It is expedient to note that under the Child Rights Act 2003 even if the child consents it cannot amount to a mitigating factor.

Section 31(3) (a) and (b) of the Child Rights Act 2003 provides thus;

Where a person is charged with an offence under this section, it is immaterial that

- (a) the offender believed the person to be of or above the age of eighteen years ; or
- (b) the sexual intercourse was with the consent of the child.

C. VIOLENCE AGAINST PERSONS PROHIBITION ACT 2015

Section (1) "A person commits the offence of rape 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 anything else;
- (b) The other person does not consent to the penetration; or
- (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such a person or in any case of a married person by impersonating his or her spouse.

(2) A person convicted of an offence under subsection (1) of this section is liable to imprisonment for life except –

(a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment;

(b) In all other cases to a minimum of 12 years imprisonment without an option of fine; or

(c) In the case of rape by a group of persons, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.

(3) The Court shall also award appropriate compensation to the victim as it may deem fit in the circumstance.

(4) A register for convicted sexual offenders shall be maintained and accessible to the public."

D. THE TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT AND ADMINISTRATION ACT 2003

Section 14 Procurement of any person under eighteen years

(1) Any person who procures a person who is under the age of eighteen years to have unlawful carnal knowledge with any other person or persons, either in Nigeria or any

place outside Nigeria, commits an offence and shall be liable on conviction to imprisonment for ten years.

(2) Any person who procures any person under the age of eighteen years to

(a) become a prostitute, either in Nigeria or any place outside Nigeria;

(b) leave Nigeria with intent that such person may become a prostitute in any place outside Nigeria

(c) leave such person's usual place of abode in Nigeria, with intent that such person engage in prostitution either in Nigeria or any place outside Nigeria,

Commits an offence and is liable on conviction to imprisonment for ten years.

Section 15 of The Trafficking In Persons (Prohibition) Enforcement And Administration Act 2003 also criminalizes the procurement of any person for prostitution and pornography. It provides for a term of fourteen years without option of fine for any person who procures, uses or offers any person for prostitution or the production of pornography or for pornographic performance. Also under this section any person who allows a person under the age of eighteen years to be in a brothel or trades in prostitution shall also be liable upon conviction to fourteen (14) years imprisonment without an option of fine.

Section 16 Foreign travels which promote prostitution

"Any person who organizes or promotes foreign travels which promotes prostitution of any person or encourages such activity commits an offence and is liable on conviction to imprisonment for ten years without option of fine."

Section 17 Unlawful detention with intent to defile

"Any Person who

(a) conspires with another to induce any person under the age of eighteen years by means of any false pretence or other fraudulent means, permits any man to have unlawful carnal knowledge of such person commits an offence and is liable on conviction to imprisonment for five years;

(b) detains any person under the age of eighteen years against such persons will in or upon premises for the purposes of being unlawfully carnally known by any man, whether a particular man or not, commits an offence and is liable on conviction to imprisonment for ten years.

E. DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (PROHIBITION) ACT, 2018

Section 1 provides thus;

"(1) A person with disability shall not be discriminated against on the grounds of his disability by any person or institution in any manner or circumstance."

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to, if the person is –

(a) A body corporate, fine of N1,000,000; and

(b) An individual, a fine of N100, 000 or six months imprisonment or both.

(3) Notwithstanding the prosecution, conviction or otherwise of any person for any offence under this Act, the person against whom the crime or wrong is committed may maintain a civil action against the person committing the offence or causing the injury, without prejudice to any conviction or acquittal."

F. THE 1999 CONSTITUTION As amended

The 1999 Constitution of the Federal Republic of Nigeria expressly provides for the preservation of the fundamental rights of Citizens. Particularly Section 34 provides that "Every individual is entitled to respect for the dignity of his person and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment.

FIGHTING AGAINST SEXUAL OFFENCES; THE FAMILY COURT SYSTEM IN CROSS RIVER STATE.

The Family Court in Cross River State was established in 2009 to entertain and determine cases pertaining to children pursuant to the Cross River State Child Rights Law, 2009 now replaced by the Child Rights Law 2023. The Court operates at two (2) levels; The High Court and the Magistrate Court. In line with the provisions of Section 156 & 157 of the Child Rights Law 2023, the Court shall sit with at least one Assessor. The Law also provides that "No other court except the court, shall exercise jurisdiction in any matter relating to children specified in this Law". In line with the powers vested in the office of the Chief Judge pursuant to Section 274 of the Constitution of the Federal Republic of Nigeria 1999 as Amended and Section 153 of the Cross River State Child Rights Law 2023, I designated two (2) High Courts and two (2) Magistrate Courts within the Calabar Judicial Division and All High Courts and Magistrate Court outside Calabar Juicial Division/Magisterial District as Family Courts. This is all geared towards the protection of the child against derogatory or inhuman treatment likely to affect the mental, physical, social, emotional development of the child.

THE FUTURE PROSPECTS

Having described how these cultural beliefs impact fighting sexual violence in women and the girls and some applicable legislations, the question to ask then is; are we winning or losing the battle? With the efforts of agencies like The Nigerian Police, Ministry of Justice, Ministry of Women Affairs, NAPTIP, NHRC, International Federation of Women Lawyers FIDA and other civil society groups to curb or eradicate the negative impact of these cultural beliefs there seem to still be records of cases of sexual offences. Let me state that we must not relent but continue in this fight, saving one woman at a time. The measures to combat sexual offences against women and the girl child must

involve collaboration between government agencies, non-governmental organizations, community leaders, and individuals. In order to keep challenging these cultural beliefs the following measures can be adopted;

1. Governments, international organizations, civil society groups and stakeholders will have to invest in national prevention programmes to change social norms that condone sexual violence and perpetrate a culture of silence.
2. Financial autonomy- One of the reasons why some women endure violence is lack of financial autonomy, therefore women and girls should be encouraged to strive for financial autonomy and be able to cater to their needs.
3. Build the knowledge of parents, guardians and children on how and where to seek help for protection.
4. Educate adults, parents, teachers and adults to identify signs of abuse and make sure children receive care.
5. Community leaders should be engaged through transformative learning, providing education and raising awareness.
6. Law enforcement agencies should also be trained and retrained in the investigation and prosecution of cases of sexual violence. The measures to combat sexual offences against women and the girl child must involve collaboration between government agencies, non-governmental organizations, community leaders, and individuals.

CONCLUSION

Women have the right to live in a society where they can exist freely without fear of being violated. Hence, there is a call to action to all individuals and organizations to rise up and continue fighting sexual violence against women and girls. There is need to continue to address cultural beliefs that encourage sexual violation of women and the girl child. Laws put in place to identify and prosecute Violators must be enforced. Combating violence against women is central to the sustainable development goal of promoting gender equality. By challenging cultural norms and working together to change cultural attitudes, we can create a society where women and girls are protected and respected.

Women's Anthem

(1)

All Across the Nation

All Around the World

Women are longing to be free

No longer in the Shadows

Forced to stay behind

But side by side in true Equality

Refrain

So sing a song for Women everywhere

Let it ring around the world and never, never cease,

So sing a song for Women everywhere, Equality,

Development and Peace

(2)

Women can't be silent

When around the world

People hurt and hungry children cry

We'll sing out now for Justice and Development

And hold the Rights of all the People High

Refrain

(3)

Women now are working to build a better world

Where the love of Peace can rest on every shore

Where men lay down their weapons and learn to love and share

And People work to bring an end to War