Violence against women (VAW) exists in many forms and is directed at female members of society primarily because of their gender, and seeks to curb their potential, dignity and opportunities, and reinforce harmful cultural and traditional beliefs on women’s roles in society. The infliction of violence, whether physical, psychological, economical, emotional, or as a threat, is essentially a tool for control by the aggressor against the victim.

TRADITIONAL SOCIAL CONTEXT AND LEGAL SYSTEMS

The cultural and traditional setting in many African societies, including Nigeria, creates a hierarchy of rights and personhood whereby men and boys are often given preferential treatment compared to women and girls. Majorly, this is linked to access to resources including land and a patriarchal system that ensures perpetuity of discriminatory practices to maintain the status quo. When women resist the injustice caused by the enforcement of discriminatory practices such as lack of inheritance rights, child marriage, or unwholesome widowhood practices, they are termed ‘wild’ women and accused of disrespecting culture (Choomaraswamy 2003, p. 92)

A marriage act between a man and a woman is seen as involving both families. ‘Marriage is therefore not a personal affair of the couple but a communal issue, a situation that culturally empowers family members and kindred to intervene in husband-wife crises’ (Ilika 2005, p. 79). Therefore, where there is conflict, the first port of call is the extended family, the community leaders for advice, and most importantly to direct the correction of a wrong caused by the offending partner. However, in the case of VAW, particularly domestic violence involving intimate partner assault or sexual abuse of young girls and rape in the family, the elders in the family and community structures have failed to give women justice. Alarmingly, women and young girls are stigmatised, scolded for reporting such incidents, and shamed to silence.

With such a situation, it becomes imperative that an independent body such as the state intervenes. Such intervention must have legitimacy and authority in order to provide redress for victims and survivors of violence.

The legal system, prior to the advent of human rights treaties addressing VAW, focused on using the criminal justice system to address similar issues. In Nigeria, for example, the criminal code (applicable in Southern states of Nigeria) and the penal code (applicable in Nigeria’s Northern states) criminalise rape, defilement of girls, abduction, assault and battering. However, Section 55(1)(d) of the Penal Code does not recognise the discipline of a wife by her husband as a crime, provided it is permissible under their customary practice and does not cause grievous hurt. Grievous hurt in this case is defined in section 241 of the Penal Code to include, but is not limited to, loss of one eye, facial disfiguration, and loss of a limb. Under this law, punishment for causing grievous hurt ranges from a fine or four years imprisonment to 14 years imprisonment, depending on whether the assailant was provoked and whether a dangerous weapon was used. An interesting distinction that effectively eliminates psychological and economic abuse or threat of violence as they would not fall within the definition of grievous hurt provided in the Penal Code.

Moreover, the seriousness of certain acts of violence against women and girls is downplayed by the legal system. In Section 353 of the Criminal Code, an assault is a felony punishable by three years
imprisonment, while Section 360 of the Criminal Code states that indecent assault of a woman or girl is a misdemeanour (a lesser offence), which carries a two-year term of imprisonment. These laws do not offer any sort of compensation, restitution, or support for victims/survivors.

In addition, when a woman has the courage to report violence inflicted on her, she risks re-victimising herself as the law enforcement officers who work within the justice system are likely to have reservations based on cultural perceptions about dealing with VAW—especially in domestic cases involving couples and/or their children. In the study carried out by KIND in 2008, 73 per cent of respondents stated that law enforcement agents do not take violence against women and girls seriously, thereby resulting in low reporting of the incidents and very few prosecuted cases.

This interplay between cultural expectations and the legal system leads to a situation where women find that they have no recourse to traditional justice systems and have also been denied access to justice under the formal legal system. It creates an environment where all the machinery, the instruments and support is there, but cannot be accessed. Like the Ancient Mariner that was stuck at sea in the same position in the ‘Rime of the Ancient Mariner’ by Samuel Taylor Coleridge, women and girls stuck in the position of injustice, suffering as a result of the inability or failure of the State to prevent VAW, provide services to survivors of violence and promote mechanisms to end violence against women and girls, require urgent action and relief (Coleridge 1798).

WHY LEGISLATION ON VIOLENCE AGAINST WOMEN?

The last 10 - 15 years have seen a gradual shift by African States to address the issue of VAW at the national and the regional level. There are a plethora of laws, policies, treaties, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and its Optional Protocol; Declaration on Violence Against Women denouncing VAW.

The regional and international human rights frameworks provide a standard for preventing and protecting women and girls from violence. These frameworks also ensure that adequate services and resources are made available by the State to survivors of violence and their families to ensure that justice is made. One tool that is promoted in the fight to end violence against women and girls is legislation – using the law as a deterrent to stop the violence and promote justice against violators of this act.

Article 4(2)(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides that “state parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.” This provision restates the states responsibility to protect women and girls from violence through the positive act of creating an enabling law where it is either non-existent or insufficient, and enforce existing laws to eliminate violence against women.

Civil society and women's groups are adapting the law as a tool for reforming the inadequacies in the justice and legal system to tackle incidents of VAW, especially those that occur in the home or in a domestic relationship. Enacting new laws appears to be the preferred method because newer laws would incorporate the standards and human rights focus contained in international and regional treaties. The laws enacted therefore must be effective in reducing impunity and tolerance for VAW since such violent acts increase where perpetrators are not punished.

In Nigeria, the journey to enacting a national law on VAW has been long and torturous. The current bill before the National Assembly is the Violence Against Persons (Prohibition) Bill, whose full title is “Bill for An Act to Eliminate Violence in Private and Public Life, Prohibit All Forms of Violence Including Physical Sexual, Psychological, Domestic, Harmful Traditional Practices, Discrimination Against Persons and To Provide Maximum Protection and Effective Remedies for Victim and Punishment of Offenders”. This bill was originally titled the Violence Against Women (Prohibition) Bill; however, it faced challenges from conservative groups on the grounds that it excluded men who have suffered from violence. In order to facilitate the legislative process and win more support for the bill, the name was changed to Violence Against Person (Prohibition) Bill.
The Nigerian Civil Society Coalition’s Legislative Advocacy Coalition on Violence Against Women (LACVAW) carries out advocacy and public awareness to promote acceptance of and passage of the Violence Against Persons (Prohibition) Bill to Law.

Nigeria is a federal republic of 36 states and while a national law on VAW has not been passed, some states have passed laws on gender-based violence, harmful traditional practices including widowhood practices, and domestic violence. A few of these state laws are reviewed below.

DEFINING VIOLENCE AGAINST WOMEN

A major contribution of specific laws on VAW brings to the table a wider definition of what constitutes VAW. The Ekiti State Gender-based Violence (Prohibition) Law, 2011, defines VAW as “Any act of gender-based violence that results in or is likely to result in 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.” It then went further to list a combination of acts considered as VAW (see section 2(E)(II)):

i. Wilfully placing or attempting to place a woman or girl in fear of physical injury which includes slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon and murder

ii. Coercing a woman or girl by force or threats to engage in any act, sexual or otherwise, to the detriment of her physical or psychological wellbeing

iii. Traditional practices harmful to women such as female genital mutilation, attempting or aiding the mutilation of a woman or girl-child’s genitals

iv. Indecently assaulting a woman or girl

v. Raping a woman or girl

vi. Committing incest with a woman or girl

vii. Marrying or giving an under-age girl into marriage;

viii. Sexually harassing a woman or girl

ix. Sexually assaulting a woman or girl

x. Sexually exploiting or enslaving a woman or girl

xi. Sexually abusing a woman or girl

xii. Forcing a woman or girl into prostitution, slavery or trafficking

xiii. Depriving a woman of her liberty

xiv. Denying a woman of economic benefit without just cause

xv. Exposing any woman or girl to forced labour

xvi. Forcing any woman to isolate herself from family and friends

xvii. Inflicting any emotional abuse on a woman

xviii. Abandoning wife or children without any means of subsistence

xix. Stalking or intimidating woman or girl

xx. Inflicting any domestic violence on a woman or girl

xxi. Imposition of dress codes under any guise

xxii. Criminalizing pregnancy outside marriage

xxiii. Trafficking in women and girls.

The Ekiti State Gender-based Violence (Prohibition) Law also defined gender-based violence, rape and sexual assault elaborately. The Protection Against Domestic Violence Law 2007 of Lagos State focuses on domestic violence and provides description of domestic violence (See Section 18(1)(f) – (m), Protection Against Domestic Violence Law, Lagos State) to include:

• Physical abuse
• Sexual abuse exploitation including but not limited to rape, incest and sexual assault
• Starvation
• Emotional, verbal and psychological abuse
• Economic abuse and exploitation
• Denial of basic education
• Intimidation
• Harassment
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- Stalking
- Hazardous attack including acid bath with offensive or poisonous substance
- Damage to property
- Entry into the complainant’s residence without consent where the parties do not share the same residence or
- Any other controlling or abusive behaviour towards a complainant, where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant;
- Deprivation
- Economic Abuse
- Emotional, verbal and psychological abuse
- Exploitation
- Harassment and intimidation

Section 3 of the Domestic Violence and Maltreatment of Widows (Prohibition) Law, 2004 of Cross River State, criminalises any act that subjects a woman to “any form of unwholesome treatment or domestic violence.” The pending national bill on VAW i.e. the Violence Against Persons (Prohibition) Bill provides for more VAW types including rape, indecent assault, sexual violence; coercion; physical injury; female circumcision or genital mutilation; forceful ejection by married partner; forced financial dependence or economic abuse; forced isolation from friends & families; emotional, verbal & psychological abuse; harmful widowhood practices; abandonment of spouse, children & other dependents without sustenance; harmful tradition; substance attack; stalking; political violence; violence by state actors; incest; and indecent exposure.

REPORTING AND MANAGING VAW

The various laws on VAW permit complaints to be made by persons other than the victim/survivor e.g. a family member, a concerned third party, police, health professional, etc as referenced in Section 6 of the Ekiti State Gender-based Violence (Prohibition) Law; Section 2(3) Protection Against Domestic Violence Law 2007; Section 30, Violence Against Person (Prohibition) Bill).

This provision helps eliminate concerns such as a victim withdrawing her application as a result of intimidation from family members and firmly places the issue of VAW in the public sphere. An interested party may in the states where VAW laws exist make a complaint to the police and apply for a protection order against the perpetrator.

The Gender-based Violence Support Fund is a fund created under the Ekiti State Gender-based Violence (Prohibition) Law to provide material support to victims/survivors, their dependants, contribute to their rehabilitation, and for construction of shelters and training. A similar trust fund is planned for the Violence Against Persons (Prohibition) Bill.

Victims Care and Counselling is also a benefit under the laws. Victims have access to counsellors to help them prepare for next steps. Compensation is also possible since the laws make provision for monetary compensation. (see Section 7(4), Protection Against Domestic Violence Law, Lagos State)

In order to effectively monitor the implementation of the laws, regulatory and monitoring bodies are established, such as the proposed Commission on Violence Against Persons under Section 46, Violence Against Person (Prohibition) Bill; and the Gender-Based Violence Management Committee under the Ekiti State Gender-based Violence (Prohibition) Law, Section 38.

OTHER STRATEGIES

- Transit homes/Shelters – An NGO, Project Alert on Violence Against Women, runs a shelter in Lagos State, Nigeria at an undisclosed location to offer women and girls who are usually victims of domestic violence a safe place to rest, think, and refresh. The Lagos State Government also runs a transit home for domestic violence complainants that offer a temporary space for counselling, skills acquisition and conflict resolution (Lagos State Government website).

- Toll-free line – A toll-free line currently exists that is open to victims/survivors of rape; this was made possible by Mallam Bolaji Abdullahi, the Minister of Youth Development, who contacted a
phone operator to allocate a toll-free number for this purpose.

The services listed above would not have been possible without the enactment of new laws entrenching the requirement for such services and supporting the ideal behind them. With increased budgetary allocation, the respective monitoring bodies on VAW would have more resources to carry out their work; especially the implementation of the law and policies at local level.

CONCLUSION

The barriers of historical discriminatory practices in the name of custom, the influence of conservative religious beliefs and the economic dependency of vulnerable persons, exposes women to abuse and increases the likelihood of VAW. The preamble to the Violence Against Persons Bill recognises that “culture is a dynamic value system and the need to promote a positive culture of human rights and zero tolerance to all forms of violence and eliminate negative elements of culture and stereotyping of men and women”. Elimination of harmful cultural practices that inflict VAW is key to successfully combating current high levels of tolerance for VAW.

The Law can be a very useful tool for social justice if adequately drafted and effectively implemented. Legislating VAW gives a framework for those whose responsibility is to investigate, prosecute, adjudicate and enforce decisions to end violence against women and girls. The laws on VAW go further to close the gaps in general laws or criminal codes that lead to disillusionment and despair to victims/survivors of violence by providing gender-sensitive handling of complaints, provision of transit homes or shelters, compensation, and monitoring. Implementing the law within a highly cultural and religious setting as we find in Africa can be challenging as people are resistant to change. Using the law in conjunction with other strategies such as public awareness campaigns, and capacity building for relevant state and non-state actors can strengthen efforts to end VAW.

Nonetheless, laws on VAW with sufficient sensitization and application of the law based on international human rights standards, have the potential to change the state of VAW in Africa and move us closer to achieving the outcomes of the Africa UNiTE Campaign to End Violence Against Women and Girls by 2015 and beyond.

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*Ms. Osai Ojigho is a Programmes Officer/Gender Justice in Africa Coordinator, Alliances for Africa which is a SOAWR member. Follow Osai on twitter: @livingtruely

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It is necessary to implement legislation to address violence against women in Africa. Yet women must tread the fine line between cultural expectations and legal systems that often deny them justice.

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