INFLUENCE OF TRADITIONAL LEADERS ON CRIMINAL JUSTICE OF GENDER BASED VIOLENCE IN AFRICA: A CASE OF NIGERIA AND GHANA

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CAVEAT!

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OVERVIEW

• Legal framework for GBV in Nigeria and Ghana
• Institutional framework for justice of GBV in Nigeria and Ghana
• Traditional approach to GBV justice in Nigeria
• Traditional approach to GBV justice in Ghana
• Strengths of the traditional justice system
• Weaknesses of the traditional justice system
• Impact/effect of traditional justice system on formal justice system
• Our thoughts on way forward
• Conclusion
WHAT IS GBV AND WHO IS A VICTIM OF GBV
LEGAL FRAMEWORK FOR GBV IN NIGERIA & GHANA

UDHR
CEDAW
African Charter
Maputo Protocol

NIGERIA
• Constitution
• Criminal Code Act
• Penal Code Act
• Administration of Criminal Justice Act
• Violence Against Persons (Prohibition) Act
• National Gender Policy 2014

GHANA
• Constitution
• Criminal Code
• Domestic Violence Act
INSTITUTIONAL FRAMEWORK FOR GBV IN NIGERIA & GHANA

NIGERIA

- Nigerian Police Force
- Courts (judiciary)
- Prisons
- Rehabilitation Centres
- Counselling Centres
- Ministry of Women Affairs and Social Development
- NGOs

GHANA

- Ghana Police Division
- Domestic Violence and Victim Support Unit
- Gender courts
- Ministry of Women and Children Affairs
- Domestic Violence Board and Secretariat
- Domestic Violence Shelters
JUSTICE THEIR WAY.

It's been a long 4 weeks since our student was raped, but by God we got justice.

1. The perpetrator was punished by public flogging. That's justice their way. The pictures and videos were too gory for me to see. I'm not sure the police would have dealt with him that way.

2. We got interpreters and carried out the community sensitisation project on Rape with the support of the chief and his people. Placards were also written in their language.

3. Thanks to Mirabel Center and Stand To End Rape our girl has undergone series of counselling sessions. The anger and bitterness is wearing out and she's participating better in class.

4. We kept our side of the bargain by not involving the police. However, we went with a law enforcement agent to instill some sort of fear and to let them know we'd be involving the police henceforth. We also did that to guarantee the safety of our students and our school.

Thanks to Stand To End Rape, we are providing counselling for the girl. She went with her counsellor and Sam to the Mirabel center for medicals. She has a tear in her vagina, bruises all over her body and abarasions to her wrists. She's neither eating nor talking. Her mother will be counselled too (why would you beat your daughter for being raped!)

After a 3 hour discussion with the Baale, youth leaders and other community men, we extracted a statement from him.

The final verdict is in his statement as seen in the photo below. The public apologies will be done next Friday at the village square.

We can't involve the police (yet) because it's a community steeped in culture and tradition. Everyone is related to everyone else so the family of the girl is not really pushing for justice. We decided that it has to be a punishment agreed upon by the entire community else our safety would be at stake.

We have threatened to involve the police (and indict the community as enablers) if they don't fulfil their part of ensuring he complies with the punishment.

The other girls in class thanked us profusely. A serial rapist is finally being shamed.
Peace building vs the Justice YOU seek.

In the past 2 days I have received countless suggestions on how I should have handled the rape case. I appreciate them all. I took the best decision after several hours of negotiations and consultation with my team. I also considered these.

1. An elder in our host community cautioned me about interfering in the matter. "Be careful of your safety. You are an outsider. They live in a world different from yours. If the father doesn't seek justice, DON'T DO IT. Even if the mother wants it." A reminder that you are an outsider is not one to be taken for granted.

2. I don't understand their language and my interpreter is the son of the baale (chief) of another community. We sat with over 25 people and don't know what they were saying about us. The interpreter had to sneak out to use phone calls to communicate what he couldn't tell us in their presence. We don't want to pitch a community against the other. Inter-communal clashes are real.
TRADITIONAL INTERVENTION FOR JUSTICE IN GBV CASES IN NIGERIA: IBADAN, OYO STATE (HERMONWELL FOUNDATION)

• In mild domestic violence cases, they are resolved at the family level or with the police mediating over the matter.

• In severe domestic violence or rape within the community, the traditional leaders work with the victim to identify the perpetrator and hand over the perpetrator to the police.

• There is a cooperation among the traditional leaders and NGOs working in preventing GBV.

• Acts such as FGM, scarification and some widow practices are not perceived as GBV but as cultural practices that should be preserved.
TRADITIONAL INTERVENTION FOR JUSTICE IN GBV CASES IN NIGERIA: NORTHERN STATES
• Reasonable chastisement of the wife by the husband is permitted.

• In cases of severe chastisement, the family members step in to determine the cause of the dispute. The guilty party is cautioned and mentored on the proper way to treat the spouse.

• In Sukur Kingdom, rape cases are treated as a serious offence and the Mai Anguwa is involved in passing judgment.

• A common form of punishment is public shaming which affects the entire family of the perpetrator. No beating or physical violence of the perpetrator is involved.

• In Ganye community, a rapist is handed over to the police for prosecution.
TRADITIONAL INTERVENTION FOR JUSTICE IN GBV CASES IN NIGERIA: NORTHERN STATES: FULANI COMMUNITY, ADAMAWA

Severe Spousal abuse

Waliy

Wife’s elder brother

Imam

Mai Anguwa

Wife’s opinion

Compensation

Work on the marriage

Divorce
TRADITIONAL INTERVENTION FOR JUSTICE IN GBV CASES IN NIGERIA: NORTHERN STATES: FULANI COMMUNITY, ADAMAWA

Rape within the community

- Police
  - Investigation/Prosecution
- Family resolution
  - Community protection
- Shaming/Flogging
  - Forced migration/Stigmatization
TRADITIONAL INTERVENTION FOR JUSTICE IN GBV CASES IN GHANA

- Influence and approach depends on the lineal pattern: patriarchy or matriarchy?
- GBV incidences higher in the patrilineal communities than the matrilineal communities.
- Spousal battering is dealt with according to the discretion of the traditional leaders.
- Spousal rape is accommodated within the law and hardly reported.
- In non spousal cases of GBV, the gravity of the violence determines the kind of intervention and compensation to be awarded to the victim.
- Rape cases are not deliberated by the traditional leaders but referred to the Domestic Violence Unit of the Ghana Police.
FOOD FOR THOUGHT

• Should traditional leaders be given the mandate to try GBV cases and prosecute offenders?
• What is the best way to repose confidence in the formal justice system?
RECOMMENDATIONS

- Improve response and support to GBV through establishment of shelters in every local government area to accommodate and support victims for a period of at least one year.

- Strengthen the institutional framework to equip officials on effective prevention and response to GBV. Law enforcement officials should be trained to work together with local community leaders to achieve a core goal of prevention of GBV and adequate access to justice for victims.

- Aggressive measures should be taken against corrupt practices of the law enforcement agents. This will strengthen the institutions of justice and restore the lost faith in the criminal justice system.

- Criminal justice laws should recognize the traditional justice systems and strike a balance in a restorative justice approach that is inclusive.
THANK YOU!

AMERICAN UNIVERSITY OF NIGERIA