



# THE INSTITUTIONAL DIMENSIONS OF OPPRESSION: EXAMINING THE GENDER-RELATED IDEOLOGICAL FACTORS ASSOCIATED WITH VIOLENCE AGAINST GIRLS AT THE LEGAL AND POLITICAL LEVEL

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Résumé de l'article

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**Julie Ada Tchoukou**

**Abstract:** The problem of violence against girls in Nigeria has attracted scholarly attention from a number of empirical and theoretical vantage points. This scholarship is vitally important. It has helped thrust feminist and other anthropological discourse into an arena of anti-violence work with significant impacts on, and repercussions for, girls in Nigeria. However, despite systemic change over the past years, the problem of violence against girls in Nigeria — as in Africa generally — persists. A consensus has emerged in the literature that cultural and social norms are relevant to the persistence of violence against girls in Nigeria. Without understating that relevance, this article analyses the problem from a different perspective. Cultural, religious, ethnic, and social norms have figured increasingly in the conceptual frameworks of both international and national institutions, distracting attention from the ways in which ideologies confronting girls are actually embedded within organisational structures of control. Important as it may be to understand the ways that these norms have given rise to violence against girls, it is also vital to investigate the techniques through which violent practices are maintained despite the changing nature of Nigerian society. Using a critical legal studies approach, I argue that any solution to violence against girls must focus as much on institutional change as it does on social transformation. Exploring violence against girls from this perspective opens up an “institutional complex”, revealing a legal and political system that serves as a tool used by the government and the political elite for consolidating power and legitimising discriminatory principles as traditional values.

**Keywords:** violence against girls, gender-based violence, human rights, critical legal studies, Nigeria, Africa

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Gender-based violence (GBV) is a problem affecting millions of girls and women, cutting across culture, religion, socioeconomic class, education, age, and other forms of diversity (Kapoor, 2000). It is a human rights issue that can manifest itself physically, psychologically, socially, and culturally. This form of violence is regarded by many as one of the most prevalent and pervasive of human rights violations, and one of the most pernicious, denying women and girls equality, security, self-worth, and the right to enjoy fundamental freedoms. An overview of the international repertoire of responses to violence against women reveals that the magnitude and universality of GBV, together with its impact on the rights of women and girls, has received worldwide attention in both advanced and developing communities. The many studies and analyses on the incidence and prevalence of GBV that have been reported reveal the alarming global extent and impacts of this form of violence (e.g., Ellsberg et al., 2008; Walker, 2012).

While this article is relevant to violence against girls throughout all of Africa, I pay special attention to Nigeria. The problem of violence against girls in Nigeria has been discussed at length in the literature. Major findings of studies (e.g., Harwood-Lejeune, 2001; Singh & Samara, 1996; Walker, 2012) provide data on childhood violence including prevalence by region, female perceptions of violence and its effects, the socioeconomic class of perpetrators, risk factors, and perceived long and short-term impacts. As well as empirical studies, research has provided theories and tools to be used in measuring and monitoring improvements in the regulation of violence against children (e.g., Fawcett et al., 1996; Okemgbo, 2002; Oyediran & Isiugo-Abanihe, 2005). This scholarship is vitally important. It has launched feminist and other anthropological studies into an arena of anti-violence work with far-reaching repercussions for girls who experience violence in Nigeria: some studies have included petitions for legal reform (e.g., Jimoh et al., 2018; Oyediran & Isiugo-Abanihe, 2005; UN Women, 2019; Walker, 2012), and the widespread attitudes and beliefs that support violent behaviour against girls in Nigeria have been challenged (e.g., Berg & Denison, 2012; GBV Sub Sector Working Group, 2017). These efforts are yielding results. Surveys and studies are providing more information about the prevalence and nature of the abuse (e.g., Jimoh et al., 2018; Ashimi et al., 2015; Garba et al., 2012). However, despite a growing focus on modes of intervention, the incidence of violence in Nigeria continue to rise steeply, an indication that the problem is in the ascendant and requires urgent attention (National Population Commission of Nigeria, 2015).

While building on the foundational works of earlier researchers, this article takes a different perspective on the problem. A consensus has emerged from the literature that cultural and social norms are particularly relevant to the persistence of violence against girls in Nigeria. For example, social and cultural factors influence the persistence of violent practices like female infanticide, forced feeding, female genital mutilation, child marriage, breast ironing, various nutritional taboos, and son preference, with its implications for the status of the girl child. Without understating the relevance of those norms, I am of the view that cultural, religious, ethnic, and social norms have figured increasingly in the conceptual frameworks of both international and national institutions,

distracting attention from the ways in which ideologies confronting girls are actually embedded within organisational structures of control. The mystification of cultural norms as an unchangeable and deeply rooted concept conceals the true exclusionary and silencing practices of the Nigerian state. In this way, any campaign to address the causes of girls' experiences of violence becomes a fight against an established, ancestral, inherited — and consequently unchangeable — social process. And so, while acknowledging that violence against girls may indeed originate from culture, religion, ethnicity, and social norms, one cannot use them to explain the techniques through which violent practices are sustained. Exploring violence against girls from this perspective opens up an “institutional complex” — the system of ruling practices that order societies (Smith, 2005) — revealing a legal and political system used as a tool by the government and the political elite for consolidating power and legitimising discriminatory principles as traditional values.

I contend that any solution to violence against girls must focus as much on institutional change as it does on social transformation. Despite the range of factors that could play a role in sustaining violence against girls, there is little reason for the prevailing ideas of culture and gendered practices in Nigeria to remain unchanged and unchallenged. An-Na'im and Hammond (2000) asserted that the state, with its “juridical sovereignty, extensive powers and relatively much larger resources”, is a crucial element in the context of cultural transformation (p. 29). It is my view that many of the major abuses of girls and women occur as a result of political and legal institutions, and that the perennial problem of violence against girls in Nigeria can thus be connected to the way legal and political institutions have consolidated power.

I use a critical legal studies (CLS) approach to analyse the institutional dimensions of violence against girls in Nigeria. CLS is a theory that puts in place a different conception of law, one based on the premise that law is an apparatus of social, economic, and political domination. Such a conception suggests a different view of society and informs a practice of politics. A fundamental concern in CLS is the need to unravel the ideologies of legal institutions. The ability of the law to advance development in children's rights is a key theme in this article. I consider law to be a primary tool of such development, especially in post-conflict and postcolonial societies like Nigeria. In my view, the current approach to the problem of violence in Nigeria suffers from a narrowing of our vision as to what law is and what it can become, undermining our ability to make use of law as a tool in addressing this issue. As such, I use CLS to challenge specific aspects of the Nigerian legal framework. This approach is pertinent to my research because, while there has been progress in some parts of that framework, other parts have lagged. Taking account of the context of violence and the fact that the application of law in a pluralistic society like Nigeria poses additional problems, far-reaching political measures and creative application of the law are required to properly address the normative foundations fuelling violence against girls.

It is important to acknowledge the unique positioning of girls as marginalised by both age and gender. I consider girls in this context as marginalised within the classification of children as female and within the classification of women as children. This “intersectional marginalisation” is

evident in the fact that I sometimes refer to girls as women and sometimes as children (Lal, 2008, p. 328). For example, in certain regions in Nigeria, once a girl is married, even though she may be only 12 years old, her childhood is transformed. As Lal (2008) explained, the “possibility of spontaneity and discovery that befits the stage of girlhood is erased” (p. 322); a new sense of responsibility and maturity is placed on her because of marriage, but at the same time, the agency, independence, and capacity for autonomy that this newly married woman could be expected to possess is limited by virtue of her age. The merging of the adult and the child implies that the child bride is “merely the shadow of a woman” who, due to her age, “can do nothing of her own” (p. 325). Therefore, this article, although focusing on the girl-child, extends the gender debate to the “figure of the girl-child/woman” (p. 322), a figure that finds increasing attention within communities in Nigeria. I begin by providing a brief overview of the Nigerian legal framework, with a particular focus on the relationship between federal and state law and the role of informal systems. Next, I discuss ideology in patriarchal societies, and Nigeria in particular, briefly highlighting the role of CLS in this analysis. I then examine both the legal and political dimensions of oppression and external systems of control that account for the continued oppression of girls in Nigeria. In each dimension, I pay close attention to structures of power shaping the dynamics of change in the lives of girls. Throughout, I regard law as, to a significant extent, a power institution participating in legitimating processes that advance male dominant ideas. The texts of a nation’s laws are powerful: they are utilised repeatedly, reiterated by judges, and referenced by lawyers while constructing our sense of what is just and right (Meijer, 1993).

A later section, “Law as an Apparatus of Transmission of Beliefs”, focuses on analysing the capacity of law to validate dominant social and power relations in ways that come to be seen as normal and unchanging: cultural hierarchies and relations of subordination become acceptable to those who are persistently disadvantaged. In Nigeria, statutes, policies, and ideological assertions are created and executed on several levels. Federal, state, and local governments reflect different policies and different sets of interests that merge and conflict with regard to particular issues. In Nigeria, the federal and state governments pursue parallel yet often conflicting policies, differentially expressed and operationalised depending on the interests to be protected (Pittin, 1991). Policy at the federal level appears accommodating to the interests of women, given the inclusion in the constitution of sections prohibiting sex discrimination. This, however, must be weighed against other aspects of law that are associated with control over women and girls. The Nigerian framework allows violence against girls to occur, too often with impunity. At the state level, laws are rarely neutral in either text or application; instead, they display a focus on gender as part of identity. Statements by members of the political elite reveal ideological continuity in the way women are perceived in the private and public spheres of knowledge production. We will see how the state openly participates in this process through language and content of legislation and other political practices.

My ultimate focus is on the capacity of the state to enhance, protect, and promote the rights of girls. If a life free of violence requires protection provided by the state, then the state must assist girls in realising their needs and aspirations.

### ***Understanding the Legal Framework for Child Protection in Nigeria***

Nigeria is a federation consisting of 36 relatively sovereign and equal states, with each having an independent legislature (Amah, 2017). Governance is divided into three levels: federal/central, state/regional, and local. Each level possesses legislative competence to enact laws within the confines of the legislative list designated in the constitution.<sup>1</sup> The legislative list is structured into three categories. The first relates to matters within the exclusive legislative powers of the federal government, which makes laws through the National Assembly. The second relates to matters within the concurrent legislative powers, where both federal and state parliaments may equally exercise legislative powers through the State Houses of Assembly.<sup>2</sup> The third group concerns matters over which only State Houses of Assembly may exercise authority, referred to as “residual” legislative powers because they are not specifically allocated to any level of government.<sup>3</sup> States’ residual powers affect matters that are within neither the exclusive competence of the federal legislature nor the concurrent powers of both federal and state legislatures (Ogunniyi, 2018). The federal parliament is incapable of legislating on matters falling within states’ residual powers (Ogunniyi, 2018).

The practical effects of this framework on girls are numerous. For example, due to obligations emanating from the 1989 United Nations Convention on the Rights of the Child (CRC) and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC), the Nigerian National Assembly enacted the Child Rights Act of 2003 (CRA) in accordance with a constitutional requirement that all international conventions be “domesticated before they can create domestic legal obligations” (Nwauche, 2015, p. 423). The CRA was, and remains, a major piece of reforming legislation addressing the rights of children in Nigeria and their need to be protected.

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<sup>1</sup> With reference to Sections 4 and 7 of the Constitution of the Federal Republic of Nigeria, 1999, the Supreme Court in *Attorney General of the Federation and Minister of Justice and Attorney General of Lagos and Commissioner for Justice, SC. 340/2010* declared that the federal government lacks the constitutional powers to make laws outside its legislative competence, which are by implication residual matters meant for the State Assembly.

<sup>2</sup> Issues on the exclusive legislative list include state creation; customs and excise duties; creation of banks; defence; citizenship; diplomatic and consular relations; external affairs; extradition; and nuclear energy. See generally the 1999 Constitution, second schedule, part I (legislative powers). Concurrently shared powers include legislation relating to electricity and the establishment of electric power stations; health care; archives and public records of state governments; and the establishment of educational institutions. See the Constitution, second schedule, part II (extent of federal and state legislative powers).

<sup>3</sup> It should be noted that the term “residual” is not expressly mentioned in the Constitution but has been used to refer to state legislative powers. Unlike the 1995 Draft Constitution, which specified a state legislative list, the 1999 Constitution has no such list. However, all matters not identified in the exclusive federal, concurrent, and the local government lists come under the jurisdiction of the states. See section 4(2) & (3) of part I second schedule of the Nigerian Constitution; Section 4(4)-part II second schedule of the Nigerian Constitution; *Lagos State v Federation of Nigeria* (2003) vol. 35 W.R.N. 1.S.C.

However, the constitution classifies child rights matters as residual, falling within the exclusive legislative powers of regional governments. This gives regions complete responsibility and authority to make laws relevant to their specific situations. As a result, before the CRA becomes applicable within an individual state, the state must explicitly adopt it by enacting a Child Rights Law (CRL). States are not under an obligation to adopt the CRA; however, most have done so (Nwauche, 2015).

This implies that children, especially girls, have limited rights and protections within states that have not ratified the CRA. For example, child marriage regulation is a contentious issue in Nigeria, which has the largest number of child brides in Africa. Although the practice is widespread in Nigeria, child marriage is particularly prevalent within Muslim communities in Northern Nigeria, where girls as young as 8 or 9 are frequently married (UNICEF, 2018). The problem of child marriage is positioned within a disputed legal terrain since the age of marriage and the age of consent for sex have strong ties to the ethnoreligious nature of the state (Bunting, 1999). Nigerian lawmakers have debated and grappled with marriage customs for decades because religious and cultural constituencies consistently resist efforts to proscribe child marriage. The CRA prohibits child marriage; however, cultural and religious norms are used to justify changes in the definition of “child” within the CRL of most Islamic Northern states. For the CRA, a child is a person under 18 years, but legislators in those states have accepted the view that “in Islam, there is no age that marks childhood” (Brammah, 2014, p. 481). A child’s maturity is generally established by “signs of puberty such as menstruation, the growth of breasts and pubic hair” (Brammah, 2014, p. 481).

For example, although section 15(1) of the *Jigawa State Child Rights Law* of 2006 prohibits child marriage, it defines a child in section 2(1) as a person below the age of puberty. This suggests that a child as young as 10 years who shows signs of puberty will be deemed suitable for marriage. The problem is exacerbated by item 61, schedule II to the 1999 Constitution, which effectively removes customary and Islamic marriages from federal legislative competence. The result is that laws enacted by the National Assembly will have “no effect on the formation, amendment and dissolution of marriages under Islamic law and customary law” (Fayokun, 2015, p. 464). Section 262 of the Constitution also grants the Sharia Court of Appeal the right “to decide any question of Islamic personal law [for Muslims] ... including the validity or dissolution of [a] marriage ... guardianship ... will or succession”. While on the surface, the enactment of the CRA makes a strong political statement of the need to protect children from violent practices, in reality, culture, religion, and the plurality of laws in Nigeria pose several problems for child rights enforcement.

In my analysis, I frequently use the terms customary law, Islamic law, and customs. These terms are not interchangeable. The legal system of a typical African state is pluralistic and comprises African customary law, religious law (especially where there is a significant Muslim population), and received law (common law or civil law depending on the colonial history; Ndulo, 2011). Customary law is the body of law derived from the local customs and usages of various ethnic groups (Ndulo, 2011). Precolonial law in most African states was customary in character,

having its sources in the practices and customs or traditions of the people (Ndulo, 2011). Customary law is ethnic in origin; it usually operates in the area occupied by the ethnic group and only covers disputes in which at least one of the parties to the dispute is a member of the ethnic group (Oba, 2011). Islam was common in Nigeria by the end of the eighteenth century and later emerged as state law in the Kanem–Bornu and Sokoto Caliphates, which now constitute Northern Nigeria (Doi, 1984). There is no official definition of Islamic law in Nigeria; however, the Islamic law applicable in Northern Nigeria is the Maliki school (Oba, 2011).

Nigeria is divided by ethnoreligious differences, so reforms that attempt to deal with cross-ethnic matters in accordance with the more inclusive ideals of human rights are not easily sustained. Tribal divisions, the basis for most state policies, have not erased the goal of human rights realisation for women and girls, but keep it on the horizon, never quite realised. The Nigerian constitution recognises plurality and sets the limits for human rights protection. In fact, constitutional provisions are now used to claim ethnic and religious privileges.<sup>4</sup> The 1999 constitution does not explicitly declare Nigeria to be a secular state. Section 10 only prohibits both states and the federal government from endorsing any religion as state religion. Nonetheless, the Sharia as adopted by Northern states has extended the jurisdiction of Islamic civil law courts into criminal matters, created Islamic criminal codes, and affected a wide-ranging set of Islamic social policies intended to manage the socioeconomic lives of Muslims (Paden, 2005). Disagreement over secularism in Nigeria takes place within an enduring debate over how the state might balance the recognition of the country's ethnic and religious pluralism with the desire to reduce regional conflict (Kendhammer, 2013). Despite an insistence on separation of religion and state, to the extent that Nigeria constitutionally identifies itself as part Islamic, the state at times has allowed a special role for Islam. As a result, religious groups, specifically Christians and Muslims, tend to view themselves as a source of authority at least equal to the state, and they perceive issues of religion and state as issues involving competing systems of law or sovereignties (Kendhammer, 2013).

The challenges of pluralism are not unique to Nigeria; many African states struggle with identifying ways to sustain the cultural heritage reflected in customary and religious norms and institutions while attempting to also function as modern democratic states (see Ada Tchoukou, 2020b). Some of modern-day Africa's struggles emanate from a forceful colonial amalgamation of diverse ethnic groups into one "centrally administered territory" (Ubi & Ibonye, 2019, p. 148). Consequently, ethnicity has generated conflict that continues to condition law and politics in African countries (Ubi & Ibonye, 2019).

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<sup>4</sup> In chapter II under the fundamental objectives and directive principles of state policy, the state is enjoined to provide facilities for, among other things, religious life. See section 17(3) of the 1999 Constitution; The Supreme Court of Nigeria held in *A.G. Ondo State v A.G. Federation & 35 Ors* [2002] 9 NWLR (Pt.772) 222 that the word "state" in the "context of the fundamental objectives and directive principles of state policy includes the Federal, State and Local Governments, as the case may be".



### *Ideology in a Patriarchal Society*

Post-independence African states are widely characterised as patriarchal, but this is usually regarded as resulting from inherited colonial systems that excluded women or from the exclusionary nature of state formation (Mama, 1995, p. 39). Chazan (1989) put it this way:

Women have neither played a significant part in the creation of the modern state system on the continent, nor have they been able to establish regular channels of access to decision-makers. State policies toward women have, as a result, exhibited varying degrees of discrimination and coercion. (p. 186)

It is beyond the scope of this article to analyse the roles of women in contemporary African states or the involvement of women in the formation of modern Nigeria. Instead I take the more direct approach of considering the ways in which current state practices are gendered and exclusionary. It can then quickly be seen how law is fundamentally conceived from a traditionally masculine point of view, which in turn impacts the regulation of violence against girls. Identifying law as a “gendering terrain” allows an understanding of inconsistencies in law’s engagement with girl children (Smart, 1992, p. 29). The ways in which law shapes society’s evaluation of women and girls is thus particularly important to the issue of violence against girls.

Shaheed (2002), in her study of women’s identity formation in the Muslim world, noted that for women, who often serve as the “repositories of culture, the issue of identity is crucial” (p. 63). In explicating gender-related political manoeuvring within Asian nations, Agarwal (1988) contended that, in order to “legitimise its own position and policies regarding women” (p. 14), the state focuses on “institutional and ideological contradictions” in order to advance a specific gender ideology: it sets itself up in opposition to a prevalent ideology, or mediates between rival ideologies. I would suggest that in the Nigerian context, although the different levels of law and policy regarding gender are neither coordinated nor necessarily coherent to the same degree that Agarwal found for Asia, they are systematic in encouraging the domesticity of women and girls (Pittin, 1991). The reality experienced by women and girls is not represented in the governing ideology; rather, their perspective is dominated by men’s views. Therefore, “when women decide to expand their space as women by rejecting and redefining the roles previously designated for them, they are in fact challenging more than the contours of their own lives” (Shaheed, 2002, p. 63). Women and girls’ empowerment both challenges and is challenged by cultural, legal, and political norms. Matters of direct significance to women and girls’ desire to redefine the conditions of their lives include: how a girl’s identity is created; who defines it; how understandings of gender fit into definitions of community and those of a communal and individual self; and the interaction between these definitions at the local, regional, and federal levels of government in Nigeria.

As previously stated, while resting upon ideas regarding law and society, CLS prompts a critique of law and legal ideology that proposes possibilities for transforming society (Munger & Seron, 1984). CLS scholars recognise a link between legal ideology and class relations. They demonstrate that legal doctrine does not always signify progress, nor an equal allocation of the

benefits and burdens of social life, nor a reasonable solution to conflict (Munger & Seron, 1984). Instead, law legitimises existing social structures and the class relationships within them by representing and protecting particular interests. Therefore, while today it seems that the long-standing calls for reform of the Nigerian legal system to ensure adequate protection of girls (e.g., Ashimi et al., 2015; Braimah, 2014; Fayokun, 2015; Jimoh et al., 2018; Nwauche, 2015) have led progress in the law, in this article a critical lens is used to analyse the nature and effects of the changes that have been made and the prioritisation of a specific framing of the problem of violence against girls.

Using CLS, I analyse legitimating structures within the society by unravelling the ideology of legal institutions within Nigeria as applicable to girls. This makes it possible to approach the problem of violence through a focus on coexisting institutional frameworks and the roles they play in shaping girls' experiences. The core ideology within legal institutions has had a great impact on dominated classes, particularly on women and girls. A focus on how the law embodies ideologies that support the production and reproduction of violent and discriminatory practices within homes reveals that the oppression experienced by girls within homes does not derive exclusively from family, cultural, or social life. I argue that not only internal systems but also powerful explicit rules embedded within discriminatory legal institutions permit the various expressions of violence against girls. Internalised gender oppression in Nigeria is institutionalised and systemic. In Nigeria, the state is not monolithic. Diverse policies and ideas are presented and pursued at different political levels, for specific and distinct political purposes (Pittin, 1991). We will see how the state occasionally presents conflicting policies and ideologies between, and sometimes within, levels of government, with adverse consequences for women and girls. Across jurisdictions, intervention on violence against girls is couched in different terms, with a variety of justifications and with women and girls sometimes having to adjust to shifting ideological positions.

The CLS idea that certain features in legal discourse impede fundamental change is also useful to the analysis in this article. As reflected below, the body of laws in Nigeria, especially in personal and family law, structures women and girls' everyday lives and determines what is possible at the personal, community, and national levels, and what is not. Whether formal or informal, laws expressly or implicitly project an ideal for society (Shaheed, 2002). I view law in Nigeria as a source of alienation and oppression, and also as an instrument used in maintaining societal power structures that inhibit the progressive eradication of violence against children. I use the CLS approach of thinking critically about the language of law and the relevance of power structures to contend that laws are framed with specific social ends and that the oppression experienced by girls at the family and social levels is grounded in law.

### **Law as an Apparatus of Transmission of Beliefs**

In Nigeria, there are different ways of depicting the various interests that law tries to satisfy. That the country's law is gendered is evident from a reading of its constitutional and legislative

provisions, as well as from political statements made by men in power. It can be seen that legal discourse features a sexual division not only in terms of what the law authorises through its provisions and procedures, but at the deeper level of what conceptual structures the law embodies. The provisions in the texts I refer to privilege certain actors over others and prioritise authoritative male ways of knowing. My aim in this section is to “deconstruct law as gendered in its vision and practices” and to highlight how patriarchal beliefs embedded in legal thought and legal reasoning affect the regulation of violence against girls (Rifkin, 1980, p. 83). We will see that there have been state efforts at law reform, but these have suffered from rather obvious inconsistencies. It remains a fact that legal discourse in Nigeria exemplifies a male standpoint and institutionalises male interests. It cannot envisage a “subject in whom gender” is not a decisive attribute; it cannot contemplate such a subject (Allen, 1987, p. 30).

Consequently, instead of inquiring into how “law can transcend gender” in the Nigerian system, the more productive question posed in this article is, “How does gender work in law and how does law work to produce gender?” (Smart, 1992, p. 34). Consideration of this question will encourage a view of the law as a system that not only produces gender difference but also validates the oppression of women and girls. This section is devoted to an investigation of the incoherence of certain legal ideas and views and to exploring the implications of these contradictions for girls in Nigeria. I am concerned with the ways in which legal rules promote a systematic domination of women and girls by providing an aura of certainty that facilitates the rationalisation and reproduction of violence against girls. While recognising that some genuine achievements have been realised in rights protection, these only serve to mask a less auspicious reality for girls in Nigeria.

### *Constitutional Language*

At independence, most African states inherited constitutions containing provisions safeguarding human rights to varying degrees (An-Na'im, 2001). There was, however, no reason to assume that their new leaders, lacking nuanced understanding or practical knowledge of democracy or constitutional rule, would soon forget the lessons of authoritarianism and oppression learned from colonisers (An-Na'im, 2001). Since most British colonies in sub-Saharan Africa gained independence in quick succession between 1955 and 1965, the Colonial Office in Great Britain engaged vigorously in the process of drafting the new constitutions (Bond, 2017). The so-called “third wave of democratisation of the 1990s” sparked a trend of constitution making and remaking throughout Africa, and nurtured hopes for a modern era of constitutionalism, respect for human rights, and good governance (Fombad, 2013, p. 6).

According to Bond (2017), the language of these constitutions had many similarities, suggesting that the constitutional provisions were primarily drawn from patterns familiar to the departing colonial power, and thus reflected assumptions not characteristic of African societies. A number of these drafting similarities appeared in the Bill of Rights provisions. The drafters of these post-colonial constitutions grappled with balancing individual rights with the protection of the

rights of minority groups. These constitutions contained some protection of fundamental rights, such as freedom from discrimination, but contained exclusionary provisions that exempted customary law from the purview of the constitution. As such, these modern African constitutions failed to address the several human rights abuses integral to customary laws and practices, especially those marginalising women and children (Fombad, 2013). Therefore, contrary to what many expected, the constitutional entrenchment of fundamental rights, especially the non-discrimination provisions, has not provided a solid foundation for the protection of women and girls. For example, according to Chapter II, section 17(1) of Nigeria's constitution (1999), the state's social order is founded on the ideals of "freedom, equality and justice". However, the relief these provisions ostensibly provide is eliminated by the constitution itself in section 6(6)(c), which states that the provisions of Chapter II of the constitution are mere policy guidelines and not justiciable<sup>5</sup>. The Supreme Court of Nigeria, in *Okogie v The Attorney General of Lagos State* (1981) reinforced this non-justiciability. This was also echoed in *AG Ondo v AG Federation* (2002) when the court held:

No court can enforce the provisions of chapter ii until the [National Assembly] has enacted specific laws for their enforcement ... They remain mere declarations, they cannot be enforced by legal process ... It is for the executive and the legislature, working together[,] to give expression to them through enactment. Thus, they can be made justiciable through legislation. (p. 222)

To state that a country's constitution is gendered means that its impacts on women and men are unequal or disparate (Irving, 2017). In Nigeria, an intimation of the unequal treatment of women and girls under the law can be found in the masculine language and grammatical expressions used in the constitution. While vocabulary and linguistic expressions of gender are not the focus of this article, one cannot ignore the legal implication and discriminatory potential of the ideologies projected by the exclusive use of masculine words. An example is the recurring use of male-only pronoun references for all nominated and appointed public offices in the executive, judicial, and legislative arms of government in Nigeria. In fact, a total of 480 male pronoun references were used, with no examples at all of a female pronoun reference (Ezeifeke & Osakwe, 2013). For example, section 131 of the constitution states:

A person shall be qualified for election to the office of the President if — (a) he is a citizen of Nigeria by birth; (b) he has attained the age of forty years; (c) he is a member of a political party and is sponsored by that political party; and (d) he has been educated up to at least School Certificate level or its equivalent.

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<sup>5</sup>See the case of *Oronto Douglas v Shell Petroleum Development Company Limited*, [1999]. Apart from section 42, which prohibits discrimination on grounds of sex, the Constitution contains no specific and substantive provisions on the protection of women's rights.

Even though it is unlikely that gendered language in a constitution would be interpreted literally to exclude women today, it remains symbolic of a view that women are of secondary status in Nigerian society. According to Smith (2005), texts, particularly written texts in law, are used within institutions to regulate almost every aspect of life, and are thus important in producing a certain “generalization and standardization of people’s doing” (p. 167). As much as one would like to regard gendered constitutional language as a mere remnant of history, its adoption has important implications for the ideology embedded in the constitution.

To what degree should a constitution “speak to the members of its community” (Irving, 2017, p. 63)? Although judicial interpretation can be more moderate than the bare words would suggest, reframing the text in more carefully chosen words could reduce negative outcomes for girls. A constitution that seems to speak only or mostly to men can lead to harmful assumptions about the roles, qualities, and capacities of women and girls, and runs the risk that such assumptions will be embedded in the consciousness of girls. For example, the recurring use of male pronouns for office-holders, including the President and Vice President, can be taken as indicating that women are neither qualified for nor expected to occupy such positions (Ezeifeke & Osakwe, 2013). The effect of this ostensibly harmless representation on the consciousness of a girl-child who encounters this text at school may be significant. First, it may impress on her consciousness the belief that her identity as an individual is not acknowledged; and second, it may lead her to repress any desire to aim for high public office, since she has been trained from an early age by the school system and by the “constitution to think of such positions as the exclusive preserve of males” (Ezeifeke & Osakwe, 2013, p. 687).

Nonetheless, Nigeria’s constitutional text holds promise for addressing the subordination of women and girls. Many amendments to the Constitution have been made in the 21st century to correct provisions of law that limit women’s rights and relegate them to powerless positions in the private sphere. Human rights provisions guaranteeing non-discrimination and recognising gender equality have progressively addressed the rights of women and girls. The constitution has also come to recognise and provide better prospects for the protection of children. Moreover, Nigeria’s legal foundations and case law reflect an eagerness for the next step in the development of judicial equality for women. For example, the courts have reformed some discriminatory practices. In *Ukeje v Ukeje* (2014), the court found unconstitutional an Igbo customary law that denied female children the right to inherit the estates of their fathers. In addition, numerous court decisions uphold the idea that the best interests of the child should be given paramount consideration in decisions affecting children. The cases of *Williams v Williams* (1987) and *Odogwu v Odogwu* (1992) are landmark cases touching on the best interests principle. Section 1 of the *Child Rights Act*, which defines this principle, is applied in cases of custody, divorce, and the division of property.

Nigeria’s equality jurisprudence, having already come so far for women and children and bearing such promise for the future, is inspiring. However, these laws and legal institutions were developed from systems originally designed, implemented, structured, and interpreted exclusively by men (Jackson, 2017), and reflect the concerns that grew from their personal experience,

overlooking or masking the consequences for women and girls. For example, section 26 of the constitution confers the right of citizenship on any foreign woman who is married to a male citizen but denies such right to a foreign man married to a female citizen. Of particular concern are two neighbouring provisions: section 29(4)(a), which specifies that “full age means the age of eighteen years and above”; and section 29(4)(b) stating that “any woman who is married shall be deemed to be of full age”. During a review of the 1999 constitution, the Senate Committee in July 2014 voted to remove section 29(4)(b) because it validates child marriage; however, upon deliberation, the Senate reversed its position and retained this paragraph (Fayokun, 2015).

Despite the progress that has been made, it is thus apparent that there remain enormous obstacles to applying constitutional rights in a meaningful way that will advance the lives of girls. The state’s idea of and approach toward gender profoundly shapes the power of the constitution to change gender-based inequality in law and society. My inference is that the male subtexts concealed within sections like 29(4)(b) are not accidental but are integral to the ideologies fuelling the continual perpetration of violent practices against girls (Ada Tchoukou, 2020). Through provisions like section 29(4)(b), law is used as a tool to bring into being specific forms of division by constructing identities to which girls become tied or associated (Smart, 1992). The same forces that determine women’s status relative to men in culture and society also determine the nature of constitutional guarantees of equality and how vigorously they are interpreted and implemented (Mackinnon, 2012, p. 5).

### ***Other Legal Provisions***

In relation to women and girls, the inclusion in the constitution of sections that, for example, prohibit discrimination based on sex must be related to other aspects of law and policy. Powerful oppressive discourses in legislation exist alongside the equality provisions in the constitution, imposing constraints that render good intentions ineffective. The laws referred to in this section are created and implemented at both the federal and state levels. Their overall direction is the maintenance of an ideological affirmation of women and girls as wives, mothers, and helpmates to men (Pittin, 1991). The policies they embody ensure a strong intergenerational thread of cultural continuity, one that emphasises the subordination of women and girls. In this section, we also see that gender roles are not limited to the realms of culture, family, and interpersonal relationships. We will see that the construction of gender is visible even in areas where the state claims universality and neutrality — for example, in labour and criminal laws.

The different statutes analysed here regulate different facets of the social environment. As Smith (2005) would predict, even though each regulates a disparate field, these texts speak the same language, and the meanings attached to them trigger a multiplicity of events within the social setting. Their capacity to transcend but not disrupt the evolving nature of cultural and social processes across disparate local settings in Nigeria is key to its peculiar force (Smith, 2005). Like Campbell and Gregor (2004), I am of the view that once we fully understand the notion that power is entrenched in written materials, and in organisational actions around legal texts, we will begin

to see how individuals at separate sites are bound together to act in concert. These texts will usually be generated by individuals working in a specific institutional context. For example, a text written by a policymaker sitting in an office in Abuja, Nigeria is activated and reproduced by other people, each performing their different duties, such as politicians, judges, news agencies, local activists, and so on. In this way, we can understand how the legal system organises “its workers to think about[,] and act” in ways that produce, the experiences of girls (Smith, 1987, p. 11). We can also understand that some of the processes, although “carried out locally, were organized at state, national and even cultural levels” (Wilson & Pence, 2006, p. 202). This inherently leads us to a reconceptualisation of, and provides a different way of reflecting on, the numerous violent practices perpetrated against girls.

In understanding how legal texts function as constituents of social relations, my interest in this article is in explicating legal texts as creating an active social process (Smith, 1990). These statutes exclude certain experiences from the realm of legislative concern and reflect certain organisational interests as the dominant interest (Campbell & Gregor, 2004). For example, section 118 of the *Police Act* states that “married women are disqualified from enlisting in the police”. Section 121 also provides that “women police officers shall as a general rule be employed on duties which are concerned only with women and children”. Section 124 of the same Act states that “a woman police officer who is desirous of marrying must first apply in writing to the commissioner of police for the state police command in which she is serving, requesting permission to marry...”, while section 127 states that “an unmarried woman police officer who becomes pregnant shall be discharged from the Force and shall not be re-enlisted except with the approval of the Inspector-General”.

The presence of gendered provisions within policy regulating the police force, an agency of the executive arm of government, evidences a specific ideology that encourages disregard for women and girls’ experiences while privileging a masculinised way of knowing (Ada Tchoukou, 2020). The constructions of gender in the *Police Act* facilitates a specific idea of womanhood, an idea that shapes the experiences of girls. According to Smith, textual materials generally present themselves as “sources of information about something else, rather than as a phenomenon in their own right” (Smith, 1990, p. 120). Therefore, even though the *Police Act* has no direct correlation with violence against girls, its approach shares a presupposition represented as “part of an active process of dialogue” between the external and the internal. For example, this dialogue is evident in the correlation between child marriage and gender in Nigeria. Marrying girls early is preferred because it is then easier to teach them to be submissive socially, economically, and sexually to their husbands, to stay focused on bearing children, and to take up other domestic roles (Mohl, 2015). By marginalising and excluding women and emphasising the role of men in this sector, the *Police Act* thus reinforces similar ideologies embedded in the practice of child marriage. These sections of the *Police Act* also have significant social consequences that include depriving impoverished families of a source of economic support. For example, demographic indicators suggest that the economics of parenting in Nigeria elevate the rate of early marriage. Some scholars have contended that within poor settings, child marriage is a strategy to alleviate parents of the

expenses and obligations of raising a girl (e.g., Otoo-Oyortey & Pobi, 2003; Erulkar & Muthengi, 2009). Therefore, the *Police Act* provisions that limit employment to only unmarried women and mandate the discharge of pregnant unmarried women increase the economic vulnerability of women and girls.

Other gendered provisions include section 55 of the *Labour Act* barring women from employment at night except as nurses. Section 55 provides that “no woman shall be employed on night work in a public or private industrial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof”. Subsection 2 states that “subsection (1) of this section shall not apply to women employed as nurses”. This provision seems to be protective of women by accounting for the unequal reality they face since they are at greater risk of experiencing violence if commuting at night, but its purpose and effects are also paternalistic in keeping women in subordinate roles. Laws like the *Labour Act* generate frameworks and hierarchies of workplace rights that can easily be manipulated to the detriment of women and girls. Another example is section 360 of the *Criminal Code*, which makes the indecent assault of women a misdemeanour punishable with a two-year prison term, as opposed to the three-year prison term for indecently assaulting a man, which is a felony under section 353. In addition, even though section 218 of the *Criminal Code* punishes by life imprisonment any person who has unlawful carnal knowledge of a girl under the age of 13, and with two years imprisonment if the girl is above 13 but under 16, unlawful carnal knowledge is held not to include “sexual relations by a man with a girl under sixteen to whom he is married”. Although this law purports to protect girls under 16, it nullifies that protection by recognising child marriage.

### ***Political Speech***

Politics in Nigeria generates policies that affect people in every aspect of their lives. As already highlighted, the social, legal, and political worlds are constitutive of a multiplicity of power relations that help produce certain ideologies through their activities and practices (Chunn & Lacombe, 2000). The question is: Who promotes the endless reproduction of oppressive practices and social perceptions of women and girls? It is in the differences between written laws and policies and what is verbalised through public speech that one can see the actual policy trends towards women and girls. In this section, I focus on political speech, and try to connect the political world to the experiences of girls within society. This will lead to a realisation of how the legal and political arenas are organised in terms of gendered meanings within which cultural and social institutions are constructed (Harding, 1986).

Devaluing women at the institutional level makes the mistreatment of girls likely at the cultural and social levels. The more state officials publicly devalue women and girls, the greater will be the degradation experienced by women and girls locally. This is strongly reflected, especially on days celebrating women, in the public statements of some male Nigerian political actors regarding women’s participation in politics.



On International Women’s Day in March 2018, Gudaji Kazaure, a member of the Nigerian House of Representatives from Jigawa state in Northern Nigeria, argued against calls for more political opportunities for women in Nigeria (Oak TV, 2018, 0:44):

It is good to give women opportunity, but not too much...When we give them opportunity at home and outside, they will capture everything, Mr. Speaker. If you consider, Mr. Speaker, almost 60-70% of my votes is from women. So, if women understand this thing very well, they will vote us out. If one woman contests in your constituency, they will say, “Let’s go and support our sister”, they will vote for her, and you will come here one day, and you will be found out that all is women in this chamber. And, seriously, if women become 60-70% in this chamber, they will mess up, Mr. Speaker, because when they go zig zag, we are the ones who straighten them. We are the ones controlling them. That is why God said they should come under us. We will marry them, and they will serve under us.

To see how much ideological effect is produced by such statements, they should be understood in terms of an active process of organising society premised on the control of women. This statement limits and excludes women’s participation and perspective with the conclusion, “they will serve under us”. It seeks to establish hierarchical social norms between men and women that would render any legislative reform on violence ineffectual.

Another striking example of such discourse occurred at a 2016 press conference with the German chancellor Angela Merkel, when Nigeria’s current president, Muhammadu Buhari, reacted with displeasure to a question about criticism of his government’s performance by his wife, Aisha Buhari (Alonge, 2016). The video embedded in Alonge’s article shows Buhari saying of his wife that, “She belongs to my kitchen and my living room, and the other room” (0:05). Such thoughtless public statements contribute to narratives used by public officials and political leaders to shape public attitudes and perceptions towards women and girls. There is a striking consistency between associating women with the private domain and the gendered nature of violence against girls. By limiting women’s roles to the family environment, the political discourse consistently positions women as caretakers and custodians, in contrast to state documents that promise equality and freedom from gender discrimination.

We observe something similar in statements made by prominent public figures attempting to justify their marriages to underage girls. In defending his marriage to a 13-year-old girl, Senator Ahmed Sani Yerima of Northern Nigeria, aged 49, was quoted as follows:

Nigeria has uncountable problems and none of them is early marriage.... As a matter of fact, early marriage is the solution to about half of our problems.... For those who wonder if I can give my daughter(s) out in marriage at the age of 9 or 13, I tell you honestly, I can give her out at age of 6 if I want to.... This is because

I am a Muslim and I follow the example of the best of mankind, Muhammed ...  
(Mabai, 2013, para. 3)

A focus on men's language as exemplified in the above statement reveals much about women's place in Nigeria. The statement reflects a power dynamic that shapes constructions of meaning around marriage to the exclusion of women and girls. Statements like these create a "false consciousness" that is used to manipulate and obscure reality for the public while maintaining existing power relations (Ada Tchoukou, 2020). The language and vocabulary of powerful politicians signals the use of gender relations and the gender partitioning of the household to preserve male dominance. Their statements generate influential interpretations of women and girls' roles while defining masculine power. In this way, we see that the legislation described in the preceding section emphasises, supports, acts on behalf of, and protects specific interests. The law is an arena in which men's interests are actively constructed and protected (Smith, 1990). The public speech of state authorities is simply one platform for the reproduction and reinforcement of a male-oriented value system that encourages the production and reproduction of violence against girls.

### **Conclusion**

This article has presented violence against girls in terms of ideological understandings at the legal and political level. I have argued that the law, despite appearances, is not a neutral entity; instead, it often reflects the ideology of society's dominant group, while maintaining existing power structures that assist in reproducing violence against girls. To me, the problem of violence against girls is one of the male domination that is evident within political and legal institutions. From the dynamics operating in Nigeria, therefore, violence against girls is not a problem with straightforward solutions. Legal and political institutions continue to serve as an apparatus of domination that accounts for the continued oppression of girls in Nigeria. Far-reaching political measures and creative application of the law will be required to properly address the normative foundations fuelling violence against girls. It would be both mistaken and counterproductive to view the challenges facing girls in Nigeria as derived exclusively from culture, religion, or their social identity. Such a view only hinders an understanding of structural inequities and diminishes the efforts of activists striving for change within their communities, usually at the cost of their freedom if not their lives. It also obscures the various social and political forces that are often in conflict with one another. Institutional structures of power shaping the dynamics of change in the lives of girls need to be dismantled. Only then will social and community interventions have a lasting impact on the experiences of girls in Nigeria.

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