

# The Influence of Community Leaders on the Criminal Justice System of Gender-based Violence in West Africa: A Case Study of Nigeria and Ghana

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## Abstract

Gender-based violence (GBV) continues to be a global phenomenon. Though many African countries have taken legislative steps to criminalise various acts that constitute GBV, the effectiveness of which has been challenged and documented. Many victims/survivors seek informal communal justice that is appropriate and acceptable in their specific communities. This article examines community-based justice approaches in the criminal justice system of GBV crimes in West Africa, specifically in Nigeria and Ghana. While Nigeria is a purely patrilineal society, Ghana is a hybrid of both patrilineal and matrilineal societies. The article examines the influence of matrilineal culture on community justice regarding GBV crimes in Ghana. It examines the effectiveness of these approaches in identifying and punishing offenders as well as ensuring justice and closure for survivors as compared to formal justice in the prosecution of GBV offenders and the protection of survivors. The qualitative socio-legal method was adopted to conduct a desktop literature review as well as to collect fresh data by way of interviews. It was found that community-based justice is gaining popularity owing to several factors, including the slow process of formal justice dispensation, corruption and high rates of case attrition. Suggestions for reforms of the formal criminal justice system to gain a balance with the community systems of criminal justice in Nigeria and Ghana are made.

**Keywords:** Gender-based violence; Nigeria; Ghana; formal justice; community criminal justice; community leaders

## Introduction

Gender-based violence (GBV) is a major problem in West Africa, with the rape of minors becoming rampant from around 2010. GBV in this context has been defined by the World Health organization (WHO) as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, or deprivation.’<sup>1</sup> GBV takes place in private or public life with females being the major victims, due to inequality between the sexes. However GBV also affects men, but in smaller numbers. GBV manifests in various forms ranging from rape, domestic violence, female genital mutilation (FGM) forced marriage, intimate partner violence (IPV), widow-shaming and forced prostitution, all prevalent in Nigeria and Ghana.<sup>2</sup> A noticeable increase in child sexual violence and domestic violence has been observed over the last few years.<sup>3</sup>

In the countries under discussion in this article, several interventions have been made, such as advocacy programmes, legislative interventions, training programmes, the social orientation of males, relief intervention as well as the establishment of support units across these countries.<sup>4</sup> However, despite these, GBV continues to be on an alarming increase, which calls for a different approach. Although the criminal justice system generally ensures that criminals are tried and punished for their crimes, survivors are not at liberty to institute a criminal case against a perpetrator because a crime is seen

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- 1 World Health Organization, *World Report on Violence and Health: Summary* (World Health Organization 2002) 4.
  - 2 Idowu Aigbovo Chiazor, Mercy I Ozoya, Mercy Udume and others, ‘Taming the Rape Scourge in Nigeria: Issues and Actions’ (2016) 14(3) *Gender and Behaviour* 7764.
  - 3 Nkiruka David, Oliver Ezechi, Agatha Wapmuk and others, ‘Child Sexual Abuse and Disclosure in South Western Nigeria: a Community Based Study’ (2018) 18(2) *African Health Sciences* 199 <doi:10.4314/ahs.v18i2.2>; Bettina Böhm, ‘She got Spoilt: Perceptions of Victims of Child Sexual Abuse in Ghana’ (2017) 26(7) *Journal of Child Sexual Abuse* 818 <DOI:10.1080/10538712.2017.1354347>; Afeez Hanafi, ‘Lagos Records 134% Rise in Sexual Abuse, Domestic Violence’ *Punch* (3 February 2019) <<https://punchng.com/lagos-records-134-rise-in-sexual-abuse-domestic-violence/>> accessed 8 March 2019; Tobi Awodipe, ‘Project Alert, Others Decry Increased Child Sexual Abuse, Violence against Women’ *The Guardian* (2 February 2019) <<https://guardian.ng/guardian-woman/project-alert-others-decry-increased-child-sexual-abuse-violence-against-women/>> accessed 12 February 2019.
  - 4 Bettina Böhm, ‘Perceptions of Child Sexual Abuse in Ghana: Causes, Consequences and Implications for Intervention’ (Report on Child Sexual Abuse 2016); Geneviève M Proulx and Andrea Martinez, ‘Sexual Violence against Girls in Schools: Addressing the Gaps between Policy and Practice in Awaso, Ghana’ (2013) 4(2) *Journal of Applied Research on Children: Informing Policy for Children at Risk* 1; National Agency for the Control of AIDS (NACA), ‘National Guidelines and Referral Standards on Gender-based Violence in Nigeria’ <[http://naca.gov.ng/sbccvch/sites/default/files/GBV\\_NATL\\_GUIDELINES\\_and\\_REFERRAL\\_STANDARDARDS-%5B1%5D.pdf](http://naca.gov.ng/sbccvch/sites/default/files/GBV_NATL_GUIDELINES_and_REFERRAL_STANDARDARDS-%5B1%5D.pdf)> accessed 23 April 2021.

as a crime, not just against the survivor, but also against the public and the state. This system of justice dispensation has been criticised for being indifferent to crime survivors and their achievement of closure.<sup>5</sup> It is therefore not surprising that survivors of GBV in the countries under study seek alternative forms of community-based justice for the crimes committed against them.

## Legal Framework for GBV in Nigeria and Ghana

Both Nigeria and Ghana are signatories to several international instruments that seek to prevent GBV. In 1985 Nigeria acceded to the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),<sup>6</sup> and went on, without reservations, to sign the Optional Protocol in 2000, which was ratified in 2004. Additionally, Nigeria ratified the African Charter on Human and People's Rights (African Charter)<sup>7</sup> as well as the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol).<sup>8</sup> However, the country is yet to domesticate CEDAW and its Optional Protocol, as well as the Maputo Protocol as required by section 12 of the Nigerian Constitution.<sup>9</sup> Although there was an attempt to domesticate CEDAW and the Maputo Protocol by the Gender and Equal Opportunities Bill,<sup>10</sup> the Bill was not approved by the then male-dominated Nigerian Senate.<sup>11</sup> Similarly, Ghana is a signatory to several international treaties that seek to eliminate GBV including the CEDAW, the African Charter and the Maputo Protocol.

The Nigerian Constitution in chapter four guarantees the rights and well-being of all Nigerians, irrespective of gender. Specifically, section 42 protects every person from sexual discrimination. Thus, the Nigerian Constitution is the foundation for the

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5 Christine M Englebrect, 'The Struggle for "Ownership of Conflict": an Exploration of Survivor Participation and Voice in the Criminal Justice System' (2011) 36(2) *Criminal Justice Review* 129.

6 CEDAW, 1979 <<http://www.un.org/womenwatch/daw/cedaw/>> accessed 27 April 2021.

7 African Charter on Human and People's Rights of 27 June 1981 CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

8 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, of 11 July 2003.

9 Constitution of the Federal Republic of Nigeria 1999 (as amended) Act 24 of 1999.

10 Gender and Equal Opportunities Bill 2016 (SB 116).

11 Olusesan Ayodeji Makinde, Cheluchi Onyemelukwe, Abimbola Onigbanjo-Williams and others, 'Rejection of the Gender and Equal Opportunities Bill in Nigeria: a Setback for Sustainable Development Goal Five' (2017) 23(3) *Gender in Management: An International Journal* 235; Damilola Taiye Agblajobi and Leke Abraham Oluwalogbon, 'The Nigerian Senate and the Politics of the non-Passage of the Gender Equality Bill' (2019) 13(3) *African Journal of Political Science and International Relations* 21 <DOI: 10.5897/AJPSIR2019.1150>; Oluwaseun Olanrewaju, 'An Assessment of the Gender and Equal Opportunities Bill in Nigeria: Focus on Human Rights' (2020) 9(2) *African Journal of Gender, Society and Development* 99 <<https://doi-org.uplib.idm.oclc.org/10.10520/EJC-clf12f6cd>>.

protection of all those vulnerable to GBV in Nigeria. It is on this basis that all other laws, policies and guidelines that seek to ensure the access to justice of survivors of GBV draw their validity. The Criminal Code Act (CCA)<sup>12</sup> which is applicable in the southern parts of the country (with corresponding application of the Penal Code Act (PCA)<sup>13</sup> in the northern parts) seeks to protect women and girls in various ways. For instance, section 357 of the CCA prohibits the unlawful carnal knowledge of a girl or woman without her consent and prescribes life imprisonment with or without caning for anyone found guilty of raping a girl or woman.<sup>14</sup> However, a rape conviction on the uncorroborated evidence of a single witness is not permissible.<sup>15</sup> A girl over the age of thirteen, but under sixteen is offered protection from defilement but with a probable defence to the defendant that he reasonably believed the survivor to be over the age of sixteen.<sup>16</sup> In essence, should an accused who was charged with defiling a girl between the ages of thirteen and sixteen, be able to convince the court that he honestly believed the girl to have been over the age of sixteen, such an offender may not be convicted. This is a questionable provision of the law.

It has therefore been argued that some Nigerian laws technically promote GBV, such as the provision of section 221 of the CCA which appears absurd and contradictory because the aim of the provision is to criminalise and prosecute the unlawful carnal knowledge of a minor, but a clause that offers a defence on the grounds of reasonable belief of the age of the survivor does not change the fact that the offence remains unlawful. Section 55 of the PCA and section 6 of the CCA have also been criticised. Section 55 of the PCA provides that an assault by a man on a woman is not an offence if they are married and if customary law recognises such correction and there is no grievous injury. Similarly, section 357 of the CCA and section 282 of the PCA fails to recognise rape during the existence of a marriage, but reduces the proof of the elements of rape to that of sexual assault.

In 2015 two major pieces of legislation that are significant for the protection of women and the fight against GBV were enacted—The Administration of Criminal Justice Act (ACJA) and the Violence Against Persons (Prohibition) Act (VAPPA). Both Acts were lauded as a welcome development in the dispensation of criminal justice in Nigeria. The strengths of the ACJA includes the speedy dispensation of justice by the regulation of the time frame for raising certain objections and adjournments,<sup>17</sup> the protection of

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12 Criminal Code Act (CCA) Cap C38 Laws of the Federation of Nigeria 2004.

13 Penal Code Act (PCA) Cap P3 Laws of the Federation of Nigeria 2004.

14 Section 358 of the CCA.

15 Section 218 of the CCA.

16 Section 221 of the CCA.

17 Section 396 of the ACJA 2015.

parties' rights during proceedings, effective management of criminal justice institution and above all, the inclusion and compensation of survivors.<sup>18</sup>

To further address GBV, in 2000 the United Nations Security Council adopted Resolution 1325 on Women, Peace and Security.<sup>19</sup> This Resolution led to the development of an Action Plan by Nigeria<sup>20</sup> and subsequently to the enactment of the VAPPA. The strength of this legislation lies in the protection of Nigerian women and girls against FGM,<sup>21</sup> protection of widows<sup>22</sup> and the rights of women in marriage and divorce<sup>23</sup> as well as protection from all forms of harmful practices. Also, the National Gender Policy (2014) was adopted as a follow up to the National Gender Policy of 2008–2013. The National Gender Policy is a strategic framework for achieving gender equality in Nigeria.

Unfortunately, justice administration being a concurrent constitutional matter,<sup>24</sup> each state within the Federation is required to domesticate the ACJA and VAPPA to suit the local context. While many states have taken steps to domesticate this legislation, some states remain resistant. Nigeria does not possess a statute that incorporates the specifics of the international treaties to eliminate GBV, however, the national laws and policies, especially the VAPPA, serve as a good starting point to ensure access to justice for survivors of GBV.

In Ghana, the foundation for the protection of persons against GBV is the Constitution,<sup>25</sup> with a provision against slavery, servitude and forced labour.<sup>26</sup> Further protective provisions can be found in chapter 5 which guarantees the fundamental human rights and freedoms of all. Article 17 guarantees the equality of every person before the law and offers protection against all forms of gender discrimination. Article 22 further guarantees the property rights of spouses. Furthermore, article 26 expressly prohibits all customary practices which dehumanise or which are injurious to the physical and mental health of a person. Article 27 specifically protects women's rights but only in the context of the rights of working mothers but not on GBV. It is clear that the Ghanaian

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18 Section 319 of the ACJA 2015.

19 UNSCR 1325 of 2000.

20 National action plan for the implementation of the UNSCR 1325 and related resolutions in Nigeria (NSRP Nigeria 2020) <<http://www.nsrp-nigeria.org/wp-content/uploads/2014/03/National-Action-Plan.pdf>> accessed 27 April 2021.

21 Section 6 of VAPPA.

22 Section 15 of VAPPA.

23 Sections 9, 12, 13, 16, 19 and 20 of VAPPA.

24 Second schedule, part II of Nigerian Constitution 1999 (as amended).

25 Constitution of the Republic of Ghana 1992 (as amended).

26 Article 16 of the Constitution of Ghana.

Constitution is more explicit in terms of taking preventive measures towards eliminating GBV.

Similar to Nigeria, the Ghana Criminal Code<sup>27</sup> prohibits rape,<sup>28</sup> assault, and defilement of a child<sup>29</sup> as well as customary practices that reduce the quality of human life.<sup>30</sup> Unfortunately, like the Nigerian CPA, the Criminal Code of Ghana actually promotes violence by preventing the ability to revoke the consent given in marriage.<sup>31</sup> A woman is presumed to have consensual sex with her husband by virtue of her marital status. Article 42(g) of the Criminal Code provides that

a person may revoke any consent which he has given to the use of force against him ... save that the consent given by a husband or wife at marriage, for the purpose of marriage, cannot be revoked until the parties are divorced or separated by a judgement or decree of a competent court.

Thus, if rape could be proven to have occurred in wedlock, the guilty party can only be prosecuted for injuries due to the act, while the ‘forced sex’ itself is not an offence. This offence carries a lesser punishment than rape.<sup>32</sup> A provision such as this can be said to be a contributory factor to the prevalence of GBV in Ghana.

In 2007, Ghana enacted the Domestic Violence Act (DVA).<sup>33</sup> Section 3 of the DVA prohibits domestic violence, which cannot be justified by consent.<sup>34</sup> The Act further provides for police assistance<sup>35</sup> and free medical services<sup>36</sup> as well as protective court orders.<sup>37</sup> While the DVA seeks to protect survivors of domestic violence by providing shelter and temporary custody for children, tradition has played a considerable role in conditioning women and children to accept the disparity of male-female inequality by continuing to succumb to violence.<sup>38</sup>

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27 Criminal Code Act 29 of 1960 (as amended).

28 Article 97 of Criminal Code Act 29 of 1960.

29 Article 101 of Criminal Code Act 29 of 1960.

30 Articles 69, 69A and 109 of Criminal Code Act 29 of 1960.

31 Article 42(g) of Criminal Code Act 29 of 1960.

32 Article 69 of Criminal Code Act 29 of 1960.

33 Domestic Violence Act 732 of 2007.

34 Section 4 of DVA.

35 Section 7 of DVA.

36 Section 8 of DVA.

37 Sections 11–22 of DVA.

38 Proulx and Martinez (n 4) 5; Canada: Immigration and Refugee Board of Canada, ‘Ghana: Domestic Violence, Including Legislation, State Protection and Support Services (2011-2015)’ (17 September 2015) GHA105264.E <<https://www.refworld.org/docid/560b95c54.html>> accessed 27 April 2021.

It is evident that specific legislative measures have been taken in both jurisdictions to address the problem of GBV. While Nigeria has broadened the scope of justice dispensation by providing for victim compensation in the ACJA as well as including all persons as being vulnerable to violence, there is no specific gendered approach to these legislative instruments. In Ghana, emphasis appears to be on victims of domestic violence. Thus, it would appear that where GBV occurs outside the home and perpetrated by persons who are not members of a household, the DVA will not apply. An analysis of the mechanisms put in place to give effect to the legislative interventions is essential to determine their effectiveness.

## Institutional Framework Gender-based Violence in Nigeria and Ghana

The role of law enforcement officers in justice administration for GBV is valuable, with the police stations, judiciary (courts), prisons, rehabilitation centres and non-government organisations at the forefront. The starting point is usually the police, with a formal complaint when there is reasonable suspicion of a crime.<sup>39</sup> The police officer in charge of the case will then investigate the complaint and when reasonable belief exists that a crime has been committed, an arrest will be made. The suspect may apply for bail, either at the police station or at the court, depending on the gravity of the offence.

In some cases of GBV, however, the matter never reaches a court, especially where the perpetrator is a relative or a prominent member of society. The matter is often treated as a family affair and alternative dispute resolution techniques are sought to resolve the crime. The decision to prosecute the matter, even where a substantive case has been established, will depend largely on the complainant's ability to 'mobilise'<sup>40</sup> the police officers or department involved with the investigation. Where the complainant is unable or unwilling to do so, there is a high risk of the case being improperly investigated, or when investigated, being improperly prosecuted.<sup>41</sup> Cases were reported where the perpetrator had been able to manipulate the complaint, to make the survivor appear like the suspect, and when care is not taken, the survivor could end up being charged with one offence or the other, with the initial complaint being abandoned.<sup>42</sup> This phenomenon is linked to the 'Nigerian factor' that spans every sphere of life in the country.<sup>43</sup>

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39 Sunday A Ogunode, 'Criminal Justice System in Nigeria: for the Rich or for the Poor?' (2015) 4(1) *Humanities and Social Sciences Review* 27.

40 Mobilise in this sense refers to the ability of the complainant to give the officers involved money as requested (bribe). This is usually justified on the lack of logistics support.

41 Ogunode (n 39) 31.

42 *ibid.*

43 Nigerian factor basically means the factors that are peculiar to the Nigerian society where handling matters in a negative manner has been celebrated due to poverty, corruption, social status, fraud, ethnicity and tribalism.

While the notion of plea bargaining<sup>44</sup> is a welcome development in the criminal justice system in Nigeria, concerns have been expressed in the way that the concept is open to manipulation by the justice system to enable perpetrators of crime to escape the wrath of the law.<sup>45</sup> The law permits such a perpetrator to pay a fine or make restitution and compensation to a survivor, which have allowed many perpetrators of GBV to escape punishment for their crimes. For plea bargaining to be an effective tool in speedy trials in Nigeria, its essence, namely to allow an accused to enter a guilty plea in exchange for giving up the prosecutor's right to seek the highest punishment,<sup>46</sup> must be strictly adhered to. This does not mean that the offender will not be punished or go to jail, but the length of sentence will be reduced for not having wasted the court's time. Thus, plea bargaining in Nigeria should not be interpreted to mean that compensation to the victim of GBV should replace punishment.

Although the court is an important institution in Nigeria's criminal justice system, trials for both civil and criminal matters are notorious for delayed justice. Cases have been known to last for as long as thirty years, with a simple assault case spanning over a period of five years and in cases where the accused is unable to make bail, he or she is imprisoned for the entire duration of the case.<sup>47</sup> When an accused is acquitted or sentenced to a lesser term than the period for which he had been remanded to stand trial, this amounts to an injustice. A question may then be asked: 'Would a young girl of fifteen who was raped be said to have truly gotten justice or closure if she has had to wait for seven years to see her rapist convicted or in a worse case, released?' This is the type of scenario that GBV cases are confronted with.

Delays in the trial process are due to various factors, such as lawyers' tactics to seek unmerited adjournments, lateness or absence in courts by judges and magistrates without compelling reasons, general unpreparedness on the part of the prosecutors and defence counsels<sup>48</sup> and manual recording of proceedings. The cumulative effect of these comes down to 'justice delayed is justice denied.'

Nigerian prisons are highly congested with a daily influx of convicted criminals and accused persons awaiting trial.<sup>49</sup> A perplexing fact is that those awaiting trial often outnumber the convicted.

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44 Section 270 of the Administration of Criminal Justice Act 2015.

45 Ogunode (n 39) 29.

46 Robert E Scott and William J Stuntz, 'Plea Bargaining as Contract' (1992) 101(8) Yale LJ 1909.

47 Ogunode (n 39) 32.

48 *ibid.*

49 Jombo Onyekachi, 'Problems and Prospects of Administration of Nigerian Prison: Need for Proper Rehabilitation of the Inmates in Nigeria Prisons (2016) 5(4) Journal of Tourism and Hospitality 228 <doi: 10.4172/2167-0269.1000228>; Robert Omote, 'Problems in the Administration of Criminal

The Ministry of Women Affairs and Social Development is an executive ministry in the Nigerian government and seeks to promote the development of women and youths. The ministry works with several non-governmental organisations to provide the required support to survivors of GBV across the country. A laudable effort is the establishment of the Sexual and Domestic Violence Response Teams across the country, for example the CLEEN foundation,<sup>50</sup> ACTS Generation,<sup>51</sup> International Federation of Women Lawyers,<sup>52</sup> the National Human Rights Commission of Nigeria,<sup>53</sup> Domestic Violence and Several Response Team<sup>54</sup> and The Mirabel Centre,<sup>55</sup> to mention a few. However, despite these efforts, GBV continues to be on the rise and largely under-reported.<sup>56</sup> Institutional incompetence and many other factors have contributed to inadequate data on GBV in Nigeria and across Africa. GBV is also under-reported in Nigeria owing to secondary elements such as stigmatisation and other cultural attitudes that arise when a formal complaint is made.<sup>57</sup> Thus, there is need to re-evaluate the approaches adopted by these civil society organisations (CSOs) in ensuring that GBV survivors receive justice and that perpetrators are brought to book. It is therefore appropriate to call for capacity building of the CSOs to effectively assess and address the gaps in the formal justice system.

Turning to Ghana, a larger percentage of GBV cases are unreported and sixty-five percent of reported cases concluded with warnings against the perpetrator with no legal action taken.<sup>58</sup> In 1998 the Ghanaian government established the Domestic Violence and Victim Support Unit (DVVSU) within the Police Division.<sup>59</sup> The DVVSU is empowered to refer survivors for medical care, counselling and community support services. Ongoing training exists to further equip this department to handle domestic

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Justice in Nigeria' *Vanguard* (23 October 2009) <<https://www.vanguardngr.com/2009/10/problems-in-the-administration-of-criminal-justice-in-nigeria/>> accessed 29 April 2021.

50 <<https://cleen.org/>>

51 <<http://www.actsgeneration.org/>>

52 *ibid.*

53 <<http://www.nigeriarights.gov.ng/>>

54 <<http://www.dsvrtlagos.org/>>

55 <<http://mirabelcentre.org/>>

56 Olufunmilayo I Fawole, Olubunmi D Balogun and Oladipupo Olaleye, 'Experience of Gender-based Violence to Students in Public and Private Secondary Schools in Ilorin, Nigeria' (2018) 52(2) *Ghana Medical Journal* 66 <<https://doi.org/10.4314/gmj.v52i2.1>>

57 Ngozi Catherine Okolo and Chukwuemeka Okolo, 'PW 0246 Gender Based Violence in Nigeria: a Study of Makurdi Metropolis in Benue State, Nigeria' (2018) 24(2) *Injury Prevention* A99 <<http://dx.doi.org/10.1136/injury-prevention-2018-safety.273>>.

58 Evelyn Mamle Quarm, 'Domestic Violence Law in Ghana: Analysis of the Actors and Strategies Involved in Setting the Public Policy Agenda' (Master's Thesis, University of Bergen 2009) 4.

59 *ibid.*

violence cases.<sup>60</sup> In addition to the DVVSU, gender desks were established in all the municipal and metropolitan districts.

However, the process of filing complaints, obtaining medical reports, apprehending perpetrators and investing and taking cases to court is lengthy and expensive and often discourages the survivors from proceeding with a case and so denying them justice.<sup>61</sup> Bribery has been reported in cases where police have been reluctant to act unless they were paid by the survivor or the survivor's family.<sup>62</sup> When a case is followed up, the investigation process involves listening to the husband's side of the story and if the husband can prove that the wife has hit him first, even in self-defence, the police may charge both spouses for assault. Police prosecutors have also been known to charge a woman complainant who has been found to provoke her husband with offensive conduct that disturbed the peace, an offence which is punishable by up to three years' imprisonment.<sup>63</sup>

The Ghanaian government has been commended for establishing gender courts specifically for the speedy prosecution of GBV crimes.<sup>64</sup> Subsequently, there has been an increase in the number of reported cases of domestic violence<sup>65</sup> but no correlation between the number of reported cases and prosecutions and convictions.<sup>66</sup> Delays in the judicial process are ascribed to the high cost of investigation, lack of knowledge of the judicial system and the lack of adequate skills to prosecute a GBV case.<sup>67</sup> This has led to many dropped cases and attritions.<sup>68</sup>

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60 Proulx and Martinez (n 4) 5.

61 *ibid.*

62 Liz Ford, 'Government Accused of "Perpetrating" Violence against Women' *The Guardian* (23 June 2015) <<https://www.theguardian.com/global-development/2015/jun/23/governments-accused-perpetrating-violence-against-women-actionaid-report-activists>> accessed 27 April 2021.

63 Nancy Chi Cantalupo, Lisa Vollendorf Martin, Kay Pak and others, 'Domestic Violence in Ghana: the Open Secret' (2006) 7 *Georgetown Journal of Gender and Law* 5566.

64 Ministry of Gender, Children and Social Protection, 'Ghana's Fourth Progress Report on the Implementation of the African and Beijing Platform of Action and Review Report for Beijing+20' (June 2014) <[https://www.uneca.org/sites/default/files/uploaded-documents/Beijing20/NationalReviews/ghana\\_beijing\\_review\\_report.pdf](https://www.uneca.org/sites/default/files/uploaded-documents/Beijing20/NationalReviews/ghana_beijing_review_report.pdf)> accessed 27 April 2021.

65 Ernest Adu-Gyamfi, 'Challenges Undermining Domestic Violence Survivors' Access to Justice in Mampong Municipality of Ghana' (2014) 27 *Journal of Law, Policy and Globalization* 67.

66 *ibid.*; Gervin A Aparinga, Eric Y Tenkorang and Paul Issahaku, 'Silent and Lethal: Consequences of Sexual Violence against Married Women in Ghana' (2020) *Journal of Interpersonal Violence* 1 <<https://doi.org/10.1177/0886260520905552>>.

67 Theresa U Akpoghome and Ufuoma V Awhefeada, 'Challenges in Prosecuting Sexual Violence in Armed Conflict under Nigerian Law' (2020) 11 *Beijing Law Review* 262 <<https://doi.org/10.4236/blr.2020.111018>>

68 *ibid.*

In 2000 the government established the Ministry of Women and Children's Affairs<sup>69</sup> (The Ministry) to coordinate the government's commitment to gender equality and to protect and promote the rights of women and children in Ghana.<sup>70</sup> The Ministry, in its 2014 report, confirmed the establishment of a Domestic Violence Board and Secretariat.<sup>71</sup> The Ministry has also recorded success in establishing domestic violence shelters across the country and providing training for the police, healthcare workers and social workers.<sup>72</sup>

To complement the efforts of the government in curbing GBV in Ghana, CSOs have provided support of varying degrees to survivors of GBV. The Federation of Women Lawyers (FIDA) of Ghana is lauded for protecting the rights of women across Ghana.<sup>73</sup> FIDA has recorded significant success in the fight against the *trokosi*<sup>74</sup> system in the Volta Region of Ghana. Also, the Ark Foundation<sup>75</sup> is notable as one of the leading non-governmental organisations in the heart of Accra, that provides shelter for survivors of GBV. The Ark Foundation set up a twenty-four hour hotline in September 2014 to provide support to survivors in terms of counselling, police protection and legal assistance.

However, despite these institutional interventions, cases of GBV seem to be on the rise, casting doubt on the effectiveness of these institutions. Some scholars ascribe the low level of effectiveness to factors such as weak instruments and capacity of law enforcement agencies in dealing with GBV issues.<sup>76</sup> Gender stereotyping and cultural beliefs that characterise GBV, especially within the domestic sphere, continue to be impediments for survivors to access formal justice.<sup>77</sup> The practice of referring GBV cases for counselling rather than prosecution shows a lack of capacity on the part of police officers and the cause of the slow progress in combating GBV.<sup>78</sup> Judges have not

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69 Also known and referred to as the Ministry of Gender, Children and Social Protection of Ghana; see Christine Dowuona-Hammond, Raymond A Atuguba and Francis Xavier Dery Tuokuu, 'Women's Survival in Ghana: what has Law got to do with it?' (2020) SAGE Open 3.

70 <<http://www.mowac.gov.gh/>>

71 Ministry of Gender, Children and Social Protection (n 64).

72 Efua Esaaba Mantey, 'Domestic Violence in Ghana: the Attitudes of Male Victims of Accra' (2019) 9(1) *African Journal of Social Work* 1; Ellen Mabel Osei-Tutu and Ernest Ampadu, 'Domestic Violence against Women in Ghana: the Attitudes of Men toward Wife-beating' (2017) 18(4) *Journal of International Women Studies* 106; Canada: Immigration and Refugee Board of Canada (n 38).

73 <<http://www.fidaghana.org/>> ; Dowuona-Hammond, Atuguba and Tuokuu (n 69) 4.

74 A practice of compensating the gods with young maidens for the crimes of their ancestors. These young maidens are usually sexually and physically abused.

75 <<http://www.arkfoundationghana.org/>>

76 Judith Bawa, 'Strengthening Social Structures for Protecting Women's Rights among the Kassena of Northern Ghana' (2012) 9(1) *Ghana Journal of Development Studies* 49.

77 Cantalupo, Martin, Pak (n 63) 552.

78 *ibid* 552.

been spared in allegations of displaying gender stereotype attitudes by mitigating sentences on the grounds of the woman having provoked the violence, although this mostly occur in domestic violence cases.<sup>79</sup> Thus, when judges encourage settlement in GBV cases or allow third parties, such as chiefs or community leaders, to withdraw the cases from courts or give lesser punishment, it sends a message that GBV cases do not require the same judicial attention as other violent crimes.<sup>80</sup>

Furthermore, political interference and inadequate resource allocation have negated the effectiveness of strategies adopted to fight GBV. In some cases, duplicated mandates have limited the ability to achieve desired results.<sup>81</sup> Also, many citizens do not understand the laws that have been put in place to protect them, as they consider these laws foreign, to the extent that they would choose to ignore the law and handle complaints of GBV in that the manner that they perceive to be the best solution culturally, thereby further violating the rights of survivors in some cases.<sup>82</sup>

## Community Justice Approach for Gender-based Violence in Nigeria and Ghana

Nigeria is a multi-ethnic society with various customary laws as its major source of law,<sup>83</sup> subject to being recognised as valid.<sup>84</sup> This refers to customs that have been found not to be repugnant to natural justice, equity and good conscience.<sup>85</sup> Additionally, such custom must not be in conflict with any law in force in the country and it must not be contrary to public policy.<sup>86</sup> In this light, most customary rules in the country promote gender inequality and relegate women's status lower than men, owing to the patriarchal nature of the country.<sup>87</sup>

While the formal system of justice administration is adversarial in nature, with the emphasis on delivering justice according to which party is found to be right or wrong, the community approach to justice dispensation focuses on the preservation of calm in

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79 *ibid* 553.

80 *ibid* 554.

81 *Bawa* (n 76) 50.

82 *Bawa* (n 76) 49.

83 *Oyewumi v Ogunesan* (1990) NWLR [pt 182] 207.

84 Provided the custom is not repugnant to natural justice, equity and good conscience and provided the custom is neither incompatible with any law in Nigeria nor against public policy.

85 *Eshugbayi Eleko v Government of Nigeria* (1931) AC 662.

86 *Okonkwo v Okagbue* [1994] 9 NWLR (pt 368) 301.

87 Ngozi O Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' (2013) 2(1) Afe Babalola University Journal of Sustainable Development Law and Policy 190.

the community,<sup>88</sup> which is often of greater importance than women's and girls' rights, that could be used as a bargaining tool as long as the community is preserved.<sup>89</sup> Therefore, the notion of preserving the cultural norms associated with African patriarchal society has indirectly promoted GBV and is thus a major contributor to the increase of GBV in Africa.

In an interview with Olorunfunmi Adebajo,<sup>90</sup> it was revealed that community leaders in the rural areas of Nigeria would prefer to shield a perpetrator of GBV from the formal justice system but rather punish the individual in their own acceptable way. When asked on the forms of punishment, she revealed that this included public whipping, a public apology to the survivor, with intervention by CSOs and compulsory counselling for both the survivor and perpetrator of GBV. This approach, according to Olorunfunmi, has brought about a sense of justice and security for the female members in her area of engagement.<sup>91</sup> A survivor and other women of the Makoko community claim to derive satisfaction and a sense of justice from the fact that a rape perpetrator is publicly flogged in the presence of the community members, forced to apologise in writing, responsible for the medical bills of the survivor and further compelled to attend therapy sessions.<sup>92</sup>

A similar study to understand the role of community leaders in Ibadan environs<sup>93</sup> shows that the community leaders work to support the law enforcement agencies and various CSOs. The community leaders work with survivors of GBV to identify and locate perpetrators of GBV. In the past, the community leaders ensured that a formal complaint was lodged with the police. However, in an interactive session with the Olubadan in council,<sup>94</sup> it was discovered that the community leaders have lost faith in the law enforcement agents, due to the manner in which past cases have been manipulated without the survivors receiving justice. The chiefs however confirmed that a new approach to channel the complaints through the state via FIDA, has been productive. Constant training on how to avoid jungle justice and self-help has contributed to the success of this partnership with FIDA.

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88 Sheelagh Stewart, 'Ensuring Focus on Sexual and Gender-based Violence in Justice and Security Programmes' (2016) *Overseas Development Institute Report*.

89 *ibid* 7.

90 Interview with Olorunfunmi Adebajo, Founder of Kindle Africa, a Civil Society Organization working on access to justice and education for women and children in *Makoko* slum of Lagos State, Nigeria, conducted by Olanike Adelakun (14 March 2019 at Makoko, Lagos, 10:30am).

91 *Makoko* community of Lagos State, Nigeria.

92 Olorunfunmi Adebajo (n 90).

93 State capital of Oyo State of Nigeria, specifically a locality known as Oja-oba area. The interview was held with community leaders who chose to be anonymous on 12 March 2019, 11:25am.

94 The traditional leader of Ibadan and the senior chiefs.

When asked how the community leaders are working to ensure that GBV is reduced, they confirmed that while the Yoruba<sup>95</sup> culture is patriarchal in nature and sees the man as superior to the woman, it does not support sexual violence against women.<sup>96</sup> However, it was confirmed that other forms of violence such as FGM, scarification (the practice of scarring) and some widow practices are being carried out. The traditional leaders' council however, insists that these practices do not qualify as GBV but rather cultural practices that must be preserved. The council does not agree that the required form of indoor mourning on the part of widows should be abolished.

In the northern states of Nigeria that were studied,<sup>97</sup> the prevalent forms of GBV are child marriage, wife battering, intimate partner violence and sexual violence. The community leaders interviewed are of the opinion that the prevailing culture is in line with Islamic principles. Many justify intimate partner violence by relying on the Qur'anic provision that it is in line with Islamic law to mildly beat an erring wife as long as it does not cause harm to wife.<sup>98</sup> A community chief who was interviewed, maintained that sexual violence was a crime against humanity which must be fought by a collective effort. Some proponents however maintained that classifying sexual relations between a married couple, child marriage and 'wife correction' as GBV, would amount to imposing Western standards on the norms and values of the populace and thus questioned the yardstick by which acceptable cultural and religious practices are measured as GBV.

A series of interviews with experts across the Adamawa State<sup>99</sup> of Nigeria revealed that there are over eighty ethnic groups in this state, with fifty-eight different languages spoken across the state. Thus the community approach and intervention to GBV differ across the communities, depending on whether violence occurs within or outside matrimony. In the Sukur Kingdom of the Madagali local government area, reasonable chastisement of a wife in the form of mild beating is allowed. However, when the beating becomes severe, the family members of the couple intervene by investigating the cause of the beating. If the wife is responsible for provoking the husband, she is advised on how to treat the husband by not provoking him. However, where the wife is not guilty, the husband is mentored and advised on how to treat his wife and handle her without beating her continually. This approach is similar to the approach of the

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95 A major tribe in Nigeria.

96 FF Akanle, Ola Tolulope and Johnson Olusegun Ajayi, 'Sexual Crime among Married Couples in Yoruba Ethnic Group of Nigeria' (2012) 2(6) *Journal of Educational and Social Research* 241.

97 Adamawa, Gombe and Yobe States of Nigeria.

98 Nada Ibrahim and Mohamad Abdalla, 'A Critical Examination of Qur'an 4:34 and its Relevance to Intimate Partner Violence in Muslim Families' (2010) 5(3) *Journal of Muslim Mental Health* 327.

99 A north-eastern state of Nigeria.

Ganye community of Adamawa State. This has been claimed to be in line with Islamic principles which governs the matrimony in the areas.

Rape occurring outside matrimony in the Sukur Kingdom, is regarded a serious offence, when the *Mai Anguwa*<sup>100</sup> would step in and call for the public shaming of the perpetrator. No flogging or physical acts of punishment are involved. However, the disgrace renders the perpetrator a pariah and often forces him and his family to leave the community. There is no form of reparation for the survivor. In the Ganye community, rape offenders are handed over to the police for proper prosecution.

The approach among the Fulani communities of Adamawa State conforms with Islamic law. In a case of severe spousal beating or domestic violence, the *Waliy*<sup>101</sup> or elder brother of the wife is invited to mediate between the couple. Where the *Waliy* cannot resolve the problem, the *Imam*<sup>102</sup> or *Mai Anguwa* will be involved. Where they are of the opinion that the dispute cannot be resolved or they cannot prevent future violence, they may recommend divorce. Where the violence is severe, they may order the husband to pay compensation, at the discretion of the mediators, to the wife. In cases that involve serious or permanent damage to the wife, the police intervention may be sought to prosecute the husband.<sup>103</sup>

In rape cases among the Fulani communities, there are three main approaches. First, the community may invite the police and hand over the offender to face due process of law. Secondly, the matter may be resolved at family level or with the intervention of the religious leaders or the *Mai Anguwa*. There is no record of reparation for the survivor but the perpetrator will be dealt with as the leaders deem fit. A popular and third approach is to shame the perpetrator by beating him up publicly and this in turn forces him to move away from the community.<sup>104</sup>

Summarily, most GBV acts where a family member is the perpetrator, end up unreported, to preserve the family ties and when such an incidence is reported, it often gets settled as a private matter, to protect the survivor from stigmatisation,<sup>105</sup> resulting in the survivor withdrawing the case.

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100 Community head.

101 The person that negotiated the wedding.

102 Religious leader of the community.

103 Interview with Mr Habib Usman (a Fulani indigene of Adamawa state) by Olanike Adelakun (8 March 2019, 2:35pm). The interview was held at Yola South Local Government of Adamawa State, Nigeria.

104 *ibid*.

105 Funmi Josephine Para-Mallam, 'Gender-based Violence in Nigeria: a Comparative Review of Violence Affecting Women and Girls in Selected States' (2018) Working Paper <DOI: 10.13140/RG.2.2.34832.10249>

The government must have realised its lapses and introduced various programmes and projects aimed at involving traditional leaders in fighting GBV. Recently, the federal government launched a project to involve the community and religious leaders in Yobe state to reduce sexual violence in the state.<sup>106</sup> This initiative was extended to several parts of the country.

Like Nigeria, GBV in Ghana is more prevalent against women, compared to men, the reason being that society generally perceives women to be inferior to men, thereby giving men the right and responsibility to control women's behaviour.<sup>107</sup> Thus, the prevalence of GBV in Ghana has been directly linked to gender inequality and patriarchy.<sup>108</sup> The prevalence of GBV has further been attributed to the weakness of law enforcement agencies in handling customary-related GBV matters and failure to draw on cultural strategies to respond to and prevent GBV cases.<sup>109</sup> Generally, the process of formal justice in Ghana involves reporting a case to the law enforcement agencies upon which investigations are made, offenders charged, and if found guilty, punished by imprisonment or payment of a fine or both. This process does not solve the problems of the survivors of GBV in the traditional sense. For instance, if the GBV involves a married woman, the process of taking the formal justice route may expose the woman to more harm than justice in the society and this forces victims to stay silent or explore customary means of justice.<sup>110</sup>

The pre-colonial traditional justice adjudication system was retained in Ghana and recognised under the rules of customary law in the Constitution of Ghana.<sup>111</sup> The importance of customary law in Ghana cannot be over-emphasised as certain laws require strict adherence to customary law for the validity of certain actions, for example, the Marriage Act of Ghana.<sup>112</sup> Thus, traditional community leaders and religious leaders play a significant role in GBV justice administration.

The community approach and intervention to ensure justice for survivors of GBV in Ghana differ slightly from that of Nigeria. The intervention and perception in Ghana is

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106 Hamisu Kabir Matazu, 'FG Involves Traditional Rulers to Reduce Sexual Violence in Yobe' *Daily Trust* (11 February 2018) <<https://www.dailytrust.com.ng/fg-involves-traditional-rulers-to-reduce-sexual-violence-in-yobe.html>> accessed 10 January 2019.

107 Quarm (n 58) 11.

108 RO Ofei-Aboagye, 'Domestic Violence in Ghana: an Initial Step' (1994) 4(1) *Columbia Journal of Gender Law* 1.

109 Bawa (n 76) 49.

110 DM Martin and FO Hashi, *Women in Development, the Legal Issues in Sub-Saharan Africa Today* (Working Paper No 4) (World Bank 1992).

111 Article 11(3) of Ghana Constitution.

112 See further the Chieftaincy Act 2008; Arbitration Act 2010 specifically makes provision for customary arbitration.

greatly influenced by the lineal pattern.<sup>113</sup> Generally, incidences of GBV in patrilineal societies are higher than in matrilineal societies with a ratio of about 4:1.<sup>114</sup> Generally, the gravity of the GBV will determine the extent to which community leaders can intervene. Historically, community leaders in Ghana served as peacekeepers and problem solvers and the general approach has been to counsel women to endure domestic violence without complaint.<sup>115</sup> In both patrilineal and matrilineal cultures, spousal rape usually goes unnoticed and hardly reported.<sup>116</sup> This is more so because the Domestic Violence Act does not make provision for spousal rape. Thus, religious leaders often counsel the wife to be more submissive in order not to provoke the husband to violence and often frown on lodging a formal complaint with the police.<sup>117</sup> When a complaint is lodged with the police, religious leaders often intervene to withdraw cases and prevent them from going to court.<sup>118</sup> With regard to the roles of community leaders, community chiefs in the patrilineal communities and the Queen mother in the matrilineal communities, would listen to both parties and determine the party at fault after which the party would be fined. Although the process is supposed to be fair, most community leaders in both patrilineal and matrilineal cultures believe that a wife has to be submissive to her husband and hold the view that many educated women bring violence to themselves by exerting a level of independence.<sup>119</sup> Thus it is unlikely that women receive justice in GBV cases within the domestic sphere.

However, rape outside marriage is treated as a grievous offence and the community leaders do not preside over this. Rather, such a case would be referred to the Domestic Violence Unit of the Ghana Police.<sup>120</sup> In cases of beating or assault, where the act is perceived as less grievous, the traditional council would decide, with the community leader acting as judge and the council of elders as jury. The decision always involves public reprimand of the perpetrator and an order of material compensation for the

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113 Christobel Asiedu, 'Lineage Ties and Domestic Violence in Ghana: Evidence from the 2008 Demographic and Health Survey' (2014) 37(16) *Journal of Family Issues* 2351.

114 *ibid.*

115 Cantalupo, Martin, Pak (n 63) 551.

116 Bismark Kwasi Osei and others, 'Wife Beating and Rape in Ghana: a Case in Accra Metropolis' (2019) 5(3) *Journal of Social Sciences and Humanities* 244.

117 Cantalupo, Martin, Pak (n 63) 555.

118 *ibid* 556.

119 *ibid* 556.

120 Georgina Yaa Oduro, Sharlene Swartz and Madeleine Arnot, 'Gender-based Violence: Young Women's Experiences in the Slums and Streets of Three sub-Saharan African Cities' (2012) 10(3) *Theory and Research in Education* 275.

survivor.<sup>121</sup> In the matrilineal societies, the women leaders are involved in advising the chiefs and bearing influence on the survivor's compensation.<sup>122</sup>

Recently, a community chief has called on the government to legally empower community leaders to punish perpetrators of GBV in their various communities,<sup>123</sup> the reason being that most GBV cases reported to the police are not adequately dealt with, but rather compounded, leaving the survivors without any form of justice. Naba Apasipanga Ayine II claimed that the attitude of law enforcement agencies has contributed to the reluctance to report criminal cases because members of the public have lost faith in the system.<sup>124</sup> He is cognisant of the fact that community leaders are highly respected and cannot be bribed, thus the cases will be adequately dealt with, without influence from highly placed members of society.

In 2002, the Rural Response System (RSS) was established by the Gender Studies and Human Rights Documentation Centre (Gender Centre) to address some of its findings in its study on violence against women and children.<sup>125</sup> The RSS was established to deal with four major inadequate responses to violence against women, which include:

- issues of victim blaming, referring reported cases back to family and state agency personnel and society in general trivialising the issue;
- the high degree of tolerance of violence against women in Ghanaian society;
- confusion about what constitutes violence and ignorance about the causes, consequences and mechanisms that perpetuate violence against women; and
- isolation of rural women and women's expressed dissatisfaction with the assistance and support they received when they reported violence against them.<sup>126</sup>

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121 Phone interview with Michael Addaney by Olanike Adelakun (17 March 2019).

122 Felicia Safoa Odame, 'Ghanaian Traditional Women Leaders and Sustainable Development: the Case of Nadowli District of Ghana' (2014) 10(14) *European Scientific Journal* 380.

123 Samuel Akapule, 'Ghana: Empower Chiefs to Punish Perpetrators of Gender-based Violence' *All Africa* (10 January 2019) <<https://allafrica.com/stories/201901100523.html>> accessed 10 February 2019.

124 *ibid.*

125 Adolphina A Addo-Lartey, Deda Ogum Alangea, Yandisa Sikweyiya and others, 'Rural Response System to Prevent Violence against Women: Methodology for a Community Randomised Controlled Trial in the Central Region of Ghana' (2019) 12(1) *Global Health Action* 5 <<https://doi.org/10.1080/16549716.2019.1612604>>

126 *ibid.*

The emphasis of the RSS is on the community initiative with the effort of community ownership. Thus, the Gender Centre only serves as a facilitator in the mediation process while community-based action teams respond to complaints.<sup>127</sup>

## Similarities and Differences in GBV Justice Approaches in Nigeria and Ghana

It is clear that both Nigeria and Ghana dispose of an adequate legal framework to control GBV. However, while the emphasis of the Ghanaian law is on domestic violence, the Nigerian laws cut across all forms of GBV. This could be because the emphasis on GBV research in Ghana focused more on GBV within the domestic setting and classifies most forms of harmful cultural practices as domestic violence. However, this law is limited in its scope to cover GBV in the public realm. This study has found that despite the provisions of the laws in both countries studied, cases of GBV are largely under-reported. Patriarchy, social stigma, religious influence and attitudinal approach to law enforcement agents are the main impediments. This has led to a shift from the formal quest for justice, to a community justice approach by survivors of GBV in both countries.

While Ghana has approached community justice by incorporating and validating customary practices alongside the formal system, the customary practices over which the community leaders can adjudicate have not been delineated clearly. It is commendable that Ghana tried to balance its plurality system by emphasising the importance of customary laws—however, more needs to be done in enhancing the capacity of these community leaders in fulfilling their traditional roles and cooperating with the law enforcement agencies in eradicating GBV in Ghana.

Although Nigeria has a plural legal system like Ghana, the scope of the application of customary law in Nigeria is subject to the validity of the formal legal system. This could be regarded as a set-back in the fight against GBV since evidence has shown that socio-cultural norms continue to stymie the realisation of GBV legislation. There is a need to strike a balance in the cultural norms of the people and the formal system, in such a way as to give a community ownership of formal approaches by the government. If this could materialise, the two systems will complement each other and improve the GBV justice system.

The communal approach and intervention in Nigeria and Ghana consists of three categories. Firstly, where the GBV occurs in public life (among persons not related), the community leaders take this more seriously and ensure that the perpetrator is brought to book. Though there is a high tendency to shield the perpetrator from the wrath of the

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127 *ibid.*

law in some communities in Nigeria,<sup>128</sup> irrespective of the gravity of the crime, the opposite is the case in Ghana where the gravity of the GBV will determine the extent to which the community leaders can intervene. Thus, the complementary nature of the formal and informal systems in Ghana cannot be overlooked. In some parts of Nigeria, the traditional leaders intervene to complement the efforts of law enforcement agents in bringing a perpetrator of GBV to book in terms of the formal justice system.<sup>129</sup> It does, however, appear that the social status of the perpetrator will determine the position of the community leaders.

Secondly, where the GBV occurs in private life at the domestic level, between persons who are related, these cases are often treated as family matters in both Nigeria and Ghana.<sup>130</sup> Thus, community leaders will reprimand the perpetrator and encourage the individuals to settle the matter as a domestic affair. Unfortunately, the law enforcement agents in the formal justice systems in both countries also tow this line and encourage GBV in private life to be settled privately by encouraging the woman to persevere and be more submissive. In most cases, the perpetrator is often let off with warnings. Lastly, in matrilineal communities in Ghana, female traditional leaders have a strong input in how GBV that are not perceived as grievous, are dealt with.<sup>131</sup> Unfortunately, most Queen mothers hold the view of male dominance over females and have contributed to the continued perpetration of GBV rather than use their positions to advocate for a lasting change in perceptions surrounding the promotion of GBV.

While the efforts of the community leaders in punishing some GBV acts can be commended, the fact that there is a classification of what community leaders choose to ‘punish’ is a cause for concern. Of more concern is the fact that in an attempt for this restorative justice approach of the community leaders, little or no attention is paid to the actual justice for the GBV survivor who desires closure. Furthermore, the fact that the survivor, in most cases, do not have a voice in what he or she wants is clear evidence of the subtle condoning of GBV in West African communities. This raises a question as to which extent community leaders should be allowed to dispense criminal justice.

One notable advantage of community justice dispensation in both jurisdictions is the setting in which cases are heard. Unlike the formal adversarial setting in Nigerian and Ghanaian courts, the resolutions at the community meetings are usually held in the

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128 For instance, *Makoko* community of Lagos State.

129 Itohan Mercy Idumwonyi and Solomon Ikhidero, ‘Resurgence of the Traditional Justice System in Postcolonial Benin (Nigeria) Society’ (2013) 6(1) *African Journal of Legal Studies* 123 <<https://doi.org/10.1163/17087384-12342017>>

130 Osei (n 116).

131 Alice Pearl Sedziafa, Eric Y Tenkorang and Adobea Y Owusu, ‘Kinship and Intimate Partner Violence against Married Women in Ghana: a Qualitative Exploration (2018) 33(14) *Journal of Interpersonal Violence* 2197 <<https://doi.org/10.1177/0886260515624213>>

living room of the community leader or even at the house of the survivor.<sup>132</sup> Parties are relaxed and able to express themselves without the need for a formal representatives like the prosecution and defence counsels. This manner of proceeding is cost effective and social therapy is introduced in the form of counselling for both the survivor and perpetrator. The focus is on letting go of grievances and on apologising where needed. Thus, social harmony and relationships are preserved. This is what is meant by ‘justice our own way.’<sup>133</sup>

## The Effect of Community Intervention on the Formal Criminal Justice System

The formal criminal justice systems in both jurisdictions under study are not without challenges. In Nigeria, it was reported that persons who ought to be convicted are sometimes acquitted because a lack of due diligence and an inadequate knowledge of the law and its application by prosecutors persist.<sup>134</sup> However, section 106 of the ACJA seeks to rectify this by referring the prosecution of criminal cases to the Attorney-General or a law officer in the Ministry of Justice, thereby excluding police officers from prosecuting crimes in courts. Although section 296 of the ACJA seeks to ensure the speedy trials of criminal cases, the slow process of justice administration and the backlog of cases have impeded the effectiveness of this provision of the law, hence a high number of case attrition.<sup>135</sup>

Additionally, judgment practices and incidences of blaming the rape victim, have negatively affected faith in the formal justice system, with the result that many victims do not report cases of GBV.<sup>136</sup> In addition to inadequate regulation of police prosecution in Ghana, corruption and police brutality has caused citizens to lose confidence in the criminal justice system, with sexual crimes being under-reported.<sup>137</sup> The practice of

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132 Bob Arnot, ‘How Traditional Justice in Nigeria is Changing’ (24 February 2015) British Council <<https://www.britishcouncil.org/voices-magazine/how-traditional-justice-nigeria-changing>> accessed 30 April 2021.

133 Olorunfunmi Adebajo (n 77).

134 Ifeoluwa Olubiyi and Hilary Okoeguale, ‘The Nigerian Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act 2015’ (2016) *African Journal of Criminal Law and Jurisprudence* 1.

135 JK Ukwayi and JT Okpa, ‘Critical Assessment of Nigeria Criminal Justice System and the Perennial Problem of Awaiting Trial in Port Harcourt Maximum Prison, Rivers State’ (2017) 16 *Global Journal of Social Sciences* 17.

136 Eze Victor, Diyoke Michael Chika and Idoko Innocent, ‘Investigating the Impact of Crime Reporting on Crime Control in Gwagwalada Area Council Abuja North Central Nigeria’ (2019) 1(3) *International Journal of Academic Research in Business, Arts and Science* 36.

137 Francis D Boateng and Heeuk D Lee, ‘Willingness to Report Sexual Offenses to the Police in Ghana’ (2014) 9(4) *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice* 436.

allowing community and religious leaders, who are third parties to a formal complaint, to withdraw cases at the investigation or trial level on behalf of the complainant, causes obstruction and a lack of confidence in the formal justice system. This situation inevitably leads survivors to explore community justice systems.

Community and religious leaders in Africa enjoy a high level of respect, and their subjects have faith in them as custodians of cultural norms, with the result that the formal criminal justice system will continue to struggle for acceptance, especially in cases where crimes such as GBV touch on the sensitivities of community members. Community justice in Nigeria and Ghana is less formal, but patriarchy is still rife<sup>138</sup> with minimal consideration for acceptable human rights rules. Thus, ongoing support for community justice for GBV will continue to have an impact on the commitment to end GBV in Africa.

While the formal justice system ensures safety for a survivor when the perpetrator is convicted and imprisoned, there is no guarantee under the community justice system that the perpetrator will not repeat the same or similar crime against the survivor or another person,<sup>139</sup> especially where the perpetrator is a member of the traditional leaders' council. Though emphasis is on the ability of a survivor to get compensation and retribution from the traditional justice system,<sup>140</sup> there is a need to achieve a complementarity of both systems by accommodating the survivor in the justice procedure and system under the formal criminal justice system. This is what the ACJA in Nigeria seeks to achieve.

Additionally, the community justice systems regarding GBV in Nigeria and Ghana are not concerned with identifying the root causes and future prevention of these acts. Emphasis is not on prevention but on restoration and communal peace. Thus, survivors live in fear of a recurring event and there is no assurance that the perpetrator will not take revenge for the punishment received. Therefore, the cycle of repetition will continue until the survivor is forced to take drastic steps like relocating or, in extreme cases, commit suicide or murder in self-defence. It is therefore important to ensure that GBV justice, both within the public and private realm, remains within the control of the state, but with a high level of cooperation from community leaders. It is therefore safe to posit that though it may appear as if GBV victims who explore community justice, do not necessarily receive true justice in a patriarchal society like Nigeria and Ghana,

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138 Even in the matrilineal communities of Ghana.

139 Maiwa'azi Dandaura Samu, 'Nigerian Indigenous Justice Examined through the Lens of the Restorative Justice System' (2013) Justice and Human Security Initiatives <[https://www.academia.edu/6778006/NIGERIAN\\_INDIGENOUS\\_JUSTICE\\_EXAMINED\\_THROUGH\\_THE\\_LENS\\_OF\\_THE\\_RESTORATIVE\\_JUSTICE\\_SYSTEM](https://www.academia.edu/6778006/NIGERIAN_INDIGENOUS_JUSTICE_EXAMINED_THROUGH_THE_LENS_OF_THE_RESTORATIVE_JUSTICE_SYSTEM)> accessed 30 April 2021.

140 *ibid.*

in the real sense of getting closure, the victims can be said to have gotten justice in their own way.

## Recommendations

It would appear that the retributive justice system in Nigeria contributes to the approach of some community leaders to adopt restorative justice and shield perpetrators of GBV from the formal justice system. With no direct evidence of the success of the retributive justice system in controlling the rate of GBV in Nigeria and Ghana, it is high time these countries adopted a different approach. The following recommendations are therefore essential to eradicate GBV in West Africa:

- Improve response and support to GBV victims by establishing shelters in every local government area to accommodate and support survivors for a period of at least one year. The transitional period should include skills acquisition training, therapy sessions and development programmes.
- Engage males, especially community and religious leaders, in advocating for formal justice for GBV acts and the eradication of GBV.
- Strengthen the institutional framework to enhance the capacity of law enforcement officials on effective prevention and response to GBV. Law enforcement officials should be trained to work with local community leaders to achieve a core goal of prevention of GBV and adequate access to justice for survivors.
- Aggressive measures should be taken to combat corrupt practices of law enforcement agents. This will strengthen the institutions of justice and restore lost faith in the formal criminal justice system.
- Criminal justice laws should clearly define the roles of community leaders in justice systems and strike an inclusive balance in a restorative justice approach. Thus, the role of the community leaders should be limited to assisting in the arrest and investigative process without hindering the formal justice system.
- There should be a provision for a formal justice system that allows GBV survivors to express their grievances directly in the local language without the complexity and technicality of a formal court system.
- The government should work with community leaders to achieve an acceptance of human rights for women and the need for cultural practices that promote GBV to be revisited or amended to promote human rights rather than trample on them.

## Conclusion

Community leaders are playing a significant role in the lives of Africans, especially in the rural areas as they are the main custodians of the peoples' culture and traditions. They command respect and obedience from their people and therefore have a significant and positive role to play in controlling crime rates and especially GBV in their immediate communities. However, to fulfil this role, community leaders must have the capacity in terms of knowledge and a change in perceptions.

Undoubtedly, the formal criminal justice system is not achieving the desired result in controlling the rate of GBV and victims seem to prefer community justice over the formal justice system. It is therefore essential to address the root cause of this preference, which is directly linked to cultural norms and values. As the saying goes: 'To catch a thief, one must act as a thief.' Therefore, the formal justice system for GBV is in need of reform to incorporate community intervention in a way to give communities a sense of belonging. This can be achieved by emphasising a change in social perception.

This article has further revealed that the best way to deal with GBV in West Africa is to adopt a complementary approach where the formal and community justice systems must work in tandem. It is clear that even in the matrilineal societies of Ghana, men still have the final say in decision-making, thus the emphasis on change must start with men who must learn to accept that human beings are born equal and are entitled to dignity. While it may be difficult to achieve equality in West Africa, the emphasis here is to treat all humans with respect and dignity and not subject certain persons to dehumanising treatment purely by virtue of their gender. Thus, there is a need for male engagement in achieving socio-cultural change. This way, African solutions to African problems could truly be achieved without necessarily eradicating cultural norms, but rather by improving on these norms and values.

## Further Research

This article investigated how community leaders have contributed and are still contributing to the prevalence of GBV and how interventions are made in ways perceived to be the best in preserving peace and unity of their communities. It was discovered that different approaches have been adopted across cultures with some complementing and others hindering the formal justice system. There is a need for further research on third world approaches to a sustainable solution to GBV and addressing the prevalence of GBV case attrition in African courts.

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