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Why Nigeria Needs a Femicide Law

Abstract

The Federal Republic of Nigeria does not have a law against femicide or comprehensive global femicide data. The numbers currently reported at the national level are questionable, especially with the prevalence of economic-motivated harvesting of female reproductive organs in the country. The lack of a legalized femicide law has exacerbated the underreporting of such activities in Nigeria and has made the severity of the crime less visible. This article aims to name the problem by defining and advocating for a femicide law encompassing the social realities of many Nigerian females.

Keywords

Nigeria, Femicide, Femicide Law, women, homicide

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WHY NIGERIA NEEDS A FEMICIDE LAW

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ABSTRACT

The Federal Republic of Nigeria does not have a law against femicide or comprehensive global femicide data. The numbers currently reported at the national level are questionable, especially with the prevalence of economic-motivated harvesting of female reproductive organs in the country. The lack of a legalized femicide law has exacerbated the underreporting of such activities in Nigeria and has made the severity of the crime less visible. This article aims to name the problem by defining and advocating for a femicide law encompassing the social realities of many Nigerian females.

KEYWORDS

Nigeria, femicide, law, women, homicide

ABOUT 48% OF NIGERIAN FEMALES have been exposed to at least one form of direct or indirect gender-based violence since the COVID-19 outbreak (Okafor, 2021). Some female homicides should be labeled femicides. However, Nigeria does not have a femicide law, so crimes against females with gender-motivated undertones are criminalized as *homicides*. It is pertinent to name gendered-motivated crimes against females as femicides because it accounts for all groups of perpetrators and projects the social processes leading to their deaths. Also, naming the problem can positively impact litigation efforts and homogenize national efforts to combat violence against women and girls (Hefti, 2022).

A significant limitation to naming the problem in Nigeria is determining that an act of violence against a female is gender-motivated. That is, she was killed because she is female. UN Women (2022) defines femicide as “an intentional killing with a gender-related motivation. Femicide may be driven by stereotyped gender roles, discrimination towards women and girls, unequal power relations between women and men, or harmful social norms.” While I agree that misogynistic elements ingrained in culture have plunged females into death, I argue in another article that ‘cultural exaltation’ rather than ‘subordination’ has fueled the illegal harvesting of female reproductive organs that have produced femicides in Nigeria (Chinonye, 2024). All Nigerian cultures are not violent, but certain elements tolerate violence against women and girls (Galtung, 1990).

I use and expand Shalhoub-Kevorkian’s (2003) definition of femicide to account for Nigeria’s social realities. I define femicide as the violent processes leading to a female’s death, whether consensual or non-consensual, intentional or unintentional, and the creation of a situation where a female can’t live. This means that femicide should be conceptualized using a continuum approach that accounts for violent acts

across context — “location (private or public, online or offline), relationships (intimate/familial/collegial/acquittance/stranger), temporalities (one-off/repeated/sustained), and harmful cultural ideologies” (Boyle, 2018, p.4).

EXISTING HUMAN RIGHTS VIOLATION LAWS

Nigeria has several laws protecting its citizens from violence; they prohibit, investigate, and criminalize human rights violations. A starting point for criminalizing *female homicide*, which I will argue is distinct from *femicide*, are the regional and international laws and treaties already ratified by Nigeria. They include: the fundamental Right to Life in Article 3 of the Universal Declaration of Human Rights; the 1976 International Covenant on Civil and Political Rights (ICCPR); the 1981 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment; the Maputo Protocol; the African Charter on the Rights and Welfare of Women in Africa; and the African Charter on the Rights and Welfare of the Child (Human Rights Watch, 2014).

Under National Laws, Section 33(1) of the Constitution of the Federal Republic of Nigeria (1999) guarantees its citizens “a right to life, and no one shall be deprived intentionally of his life, except in execution of the sentence of a court in respect of a criminal offense of which he has been found guilty in Nigeria.” Section 34(1) of the Constitution (1999) emphasizes respect for the dignity of persons, prohibiting inhuman treatment, torture, slavery, and forced or compulsory labor, with a few exceptions mandated by the state. Section 16 (1b) of the Constitution (1999) also mandates the state to “control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen based on social justice and equality of status and opportunity.”

The Criminal Code Act (1990. Amend. 2003), applicable only in southern Nigerian states (Ogunlana et al., 2021), contains specific provisions for female violation. Sections 218, 219, 221, 222 (a and b), 224, 225 (a and b), 226, and 227 focus on the defilement of mostly girls below 16 years and the procurement of females. Chapter 27 discusses homicide, suicide, infanticide, concealment of birth, and the unlawful possession of human heads, including punishment for juveniles and pregnant women. Sections 357, 358, 359, 360, 361, 362, and 363 indicate forms of assaults and abduction of females, and Chapter 31 focuses on the deprivation of liberty, including kidnapping.

Nigeria’s Penal Code for Northern States only (1960) criminalizes murder and rape. It also discusses acceptable and prohibited forms of domestic violence and assault in Section 55. Though controversial, Section 55(1d) tolerates assault “by a husband for the purpose of correcting his wife, such husband and wife being subject to any native law or custom in which such correction is recognized as lawful,” so long as there is no “infliction of grievous hurt.” However, Section 241 of the code defines ‘grievous hurt’ as:

[E]masculation; permanent deprivation of the sight of an eye, of the hearing of an ear or the power of speech; deprivation of any member or joint; destruction or permanent impairing of the powers of any member or joint; permanent disfiguration of the head or face; fracture or dislocation of a bone or tooth; any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits” (Cornell Law School, n.d.).

The Child Rights Act 2023 protects Nigerian children (below 18 years). It provides such rights as the dignity of the person, freedom from discrimination, and the prohibition of child marriage and betrothal, sexual abuse and exploitation, exploitative labor, and the use of children in criminal activities. The law does not accommodate the defense of “child consent” or “ignorance” for perpetrators (Ogunlana et al., 2021).

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2003. Amend. 2005, and re-enacted 2015 criminalizes trafficking in persons. It also contains specific provisions for the criminalization of organ harvesting. Section 20 of the law spells out incarceration for persons who induce victim consent, procure, or assist with illegal organ removal through coercion or abuse of a position of power or vulnerable situation.

Nigeria’s Violence Against Persons (Prohibition) Act, 2015 (VAPP) is the newest law that “eliminates violence in private and public life, prohibits all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders; and for related matters” (VAPP, 2015). It prohibits offenses such as rape, inflicting physical injury, coercion, willingly placing a person in fear of physical injury, forceful ejection from home, liberty deprivation, economic abuse, forced isolation, emotional, verbal, and psychological abuse, harmful widowhood practices, stalking, intimidation, spousal battery, and violence by state actors. This law is applicable in the Federal Capital Territory (FCT) and some states in Nigeria.

WHY DOES NIGERIA NEED A FEMICIDE LAW?

FEMALE HOMICIDE VERSUS FEMICIDE

Nigeria’s Criminal Act 1990. Amend. 2003, and the Penal Code of 1960 criminalizes homicide. *Female Homicide* is used to describe a direct act of killing committed by a female (when a female is the perpetrator) or the murder of a female (when a female is the victim). The second definition tilts towards femicide. However, it includes all cases of female murder, whether motivated by gender or not. Femicide, on the other hand, is based on gender-motivated killings. Since femicide begins with the violent processes leading to a woman’s death, it is gender-motivated if there is a history of one-off, repeated, or sustained forms of violence such as physical, sexual, emotional, and/or economic abuse before death. Sometimes, whether intentional or not, these acts are slow death measures, such as health complications from psychological trauma and injuries from rape that lead to death over time (Hefti, 2022). Under Female Homicides, the laws do not fully account for these violent histories as gender-motivated, thus reducing the severity of the punishment.

In addition, existing laws on Female Homicide ignore Collateral Murders, such as killing a female’s relatives, children, or friends while trying to kill her or killing people related to the female with the intent to emotionally and psychologically destroy her (Toledo, 2017). The second shows that femicide is not only the gender-motivated killing of a targeted female. She may be alive, but the crime is a Femicide when her loved ones are murdered to punish her. These actions are motivated by a desire to control, dominate, or harm the woman, and therefore, they carry gendered undertones that align with the definition of femicide. In this case, it becomes an environment where it is almost impossible for the psychologically damaged female to live. That is, the destruction of her support system and the constant fear of further violence creates a

state of terror that can be as damaging as physical violence, often leading to severe mental health issues or even suicide.

CRIMES OF LANGUAGE

Certain violent acts against females are unaddressed in statutory languages (Hefti, 2022). Section 55 (1d) of the Penal Code Act (1960) criminalizes rape and murder. However, it clearly states that a man having sexual intercourse with his wife is not rape (Ogunlana et al., 2021). That means non-consensual marital sex is not a crime and would be considered a homicide rather than a femicide if the female dies directly from the action or complications from that action. This section commits the crime of language by legalizing marital rape.

Section 218 of the Criminal Act 1990. Amend. 2003 outlines that “any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for life, with or without caning.” Although the law does not accommodate a defense to this charge – a strategic argument that attempts to challenge the validity and sufficiency of the prosecution’s evidence (Law Offices of Seth Kretzer) – for girls under 16 years, the inclusion of ‘unlawful’ infers the possibility of legal carnal knowledge of under 16-year-olds (underage girls). Though it does not define what unlawful and lawful means for such cases, there is a possibility that the defilement of a girl under 16 may go unpunished if proven to be lawful because of the ambiguity of the word ‘unlawful.’ If the ‘lawful’ defilement in quote causes death, the perpetrator may only be charged with homicide, reducing the crime’s severity.

Section 33(1) of the Constitution of the Federal Republic of Nigeria (1999) guarantees its citizens the fundamental “right to life, and no one shall be deprived intentionally of his life...” The use of “intentional” obscures situations where past and present violent experiences unintentionally produce death. Although possible murder may not be premeditated, such acts often produce fatal consequences such as an “accidental” direct death or indirectly from health complications of such violent acts. The spontaneity of the violence, which perpetrators may argue was not intentionally to produce death but to teach her a lesson or force submission, does not isolate the result of death. The language of Section 33(1) of Nigeria’s constitution undermines this situation. Acknowledging such cases as a femicide in a femicide Law will foreground a spectrum of gendered violence, including situations that produce accidental deaths.

DISCRIMINATORY PRACTICES AND EXPLICIT ASSUMPTION

Section 219 of the Criminal Code Act 1990. Amend. 2003 criminalizes a householder permitting the defilement of young girls under 16 years on “his” premises. “His” assumes that only “males” (Nigeria law equates sex and gender) can aid female defilement, and such defilements have the potential to cause deaths. It also hints at property ownership discrimination, where only males can own, occupy, manage, and control properties. The assumption restricts who can be complicit in gendered violence acts and projects gender discrimination. It greases the wheels of misogyny and sustains a legal environment that is blind to females’ unique vulnerabilities, especially those leading to femicide.

Section 16(2d) of the Constitution of Nigeria commits to the welfare of disabled people, including females. However, with recent linguistic shifts, many scholars have argued that the word “disability” is discriminatory because it denotes a sense of helplessness and a total inability to function (Andrews et al., 2019; Gottlieb, 2001). Meanwhile, it might just be an organ impairment. Gender intersects with disability,

heightening the risk of femicide in many cases (Chowdhury, 2023). Suggested terms offering a more inclusive and respectful language are “differently abled” (Chhabra, 2016) or “people with special accommodations.” A femicide Law will acknowledge the peculiar challenges of differently abled females and also criminalize gender-motivated murders as femicide by requiring significant and committed legal attention. In addition, such a legal framework should embody a clear definition/criteria for what constitutes “special accommodations,” ensuring Femicide risk factors for differently abled females are considered. This would strengthen current protective measures and help to disassemble structural, cultural, and social barriers exacerbating their vulnerability to femicide.

CONCLUSION

Every other day, the media seeks information about missing Nigerian females and reports that their corpses have been dumped on the streets with their genitalia (a femicide once reproductive organs are extracted) harvested (Chinonye, 2024). Some females die in later months from complications resulting from losing their nipples and breasts to illegal organ harvesters (Chinonye, 2024). In other cases, domestic violence and other forms of violence against females in the public sphere have directly or indirectly murdered females. Also, gender-motivated murders have been targeted at females’ loved ones rather than the females to punish them psychologically.

The absence of a femicide law in Nigeria has obscured these indicators of femicide and has downplayed the severity of the crimes by categorizing them as homicides. Also, criminalizing these crimes as homicides infers “intrinsic individualistic” (Hefti, 2022, p.21) acts where the only perpetrator is the person who commits the direct act of killing, intended or unintended. It does not fully account for the existing structural inequities that make females victims of femicide and cultural ideologies that justify or condone the death.

Nigeria’s adoption of a femicide law will adequately name all forms of manifestation of the problem, the violent history and social processes (cultural marginalization and, in some cases, exaltation) that plunge females into death, all groups of perpetrators, and all victims (females and her loved ones if gender-motivated). It will also give equal weight to punitive and preventive laws that are non-discriminatory and free of assumptions and unaddressed statutory language that reinforce harm.

The state can begin its accountability process by adopting stringent, effective, and sustainable measures to address the country’s socioeconomic challenges (multidimensional poverty, insecurity, unemployment, poor/limited infrastructure, unfavorable business environments, and weak educational systems) (Salihu et al., 2019; Adeyemo, 2022), and the notorious social indicators that have facilitated the death of its females. Conceptualizing femicide as a law in Nigeria has the potential to minimize the resource strain in the justice system and welfare support services (Nwakanma et al., 2020). It will also improve the life expectancy of females in Nigeria.

AUTHOR BIOGRAPHY

Jessica Ojiugo Chinonye is a Ph.D. Anthropology student at the University of Kentucky, USA, specializing in disaster and space anthropology. Jessica’s work and research have focused on gender-based violence and the climate change-disaster-gender-livelihood-migration nexus in West Africa, East Africa, and South Asia. She was also a researcher on two United States Agency for International Development (USAID)-funded projects investigating disaster vulnerabilities

across several regions. She researches potential space exploration-induced disasters, emphasizing the impacts of space junk contamination in terrestrial and extraterrestrial environments, including the effects of rocket fuel residues from burned-up rockets upon reentry into Earth.

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