Kaduna’s extraordinary rape law

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Barometer  
  
Frustrated and angered by the state’s rising cases of rape of minors, Kaduna State House of Assembly and Governor Nasir el-Rufai have amended the state’s rape law to provide for castration and execution of offenders. It is a drastic solution to a drastic and unremitting problem. In Kaduna, minors are defined as those below the age of 14. Male rapists are to be castrated and executed, while female rapists are to have their fallopian tubes removed through a procedure called bilateral salpingectomy. If the victims are 14 years and above, their rapists are to suffer castration and life imprisonment. The law also makes it easier for victims to testify.  
  
Predictably, given some shocking cases of rape in the state, the amended law has been applauded by many. After all, if you are not a rapist, why should you care about the harshness of the law. However, some critics of the new law have describe it as sadistic. Overall, there is little in the law that sets out its philosophical underpinnings, explains why the former law was inadequate, or asserts why the legislation would this time meet the expectations of its framers. There is nothing also in the amended law to explain why the arbitrary figure of 14 years was chosen as the age of minors, though it is known that the Nigerian Young Persons’ Act defines a minor as anyone between the ages of 14 and 17. In the face of many northern states’ refusal to domesticate the Child Rights Act of 2003, which was itself domesticated from the Convention on the Rights of the Child, it is not clear how the definition of rape would be set out precisely and convincingly. After all, a former governor in the region once married a 13-year-old girl.  
  
Rape does not just involve the issue of consent, it also involves the issue of age, especially the controversy surrounding who is a minor or an adult. However, given the disturbing incidence of rape in Nigeria, assuming the age of consent problem can be resolved, there is urgent need for states to reassess their half-hearted campaigns against rape. Kaduna State has taken the bull by the horns, and has shown a determination to put its money where its mouth is. For the two categories of rape contained in the amended law, to wit, rape of minors and rape of adults — it is not clear whether the provisions apply without remedy in marital rape — castration is ineluctable, followed by either life imprisonment or death penalty. But why castrate offenders when they would be executed? To forestall rape in the afterlife?  
  
Rape is a serious and psychologically destructive crime. But Kaduna, particularly under its rhetorically flamboyant governor, has become an acrimonious and impassioned state. Nothing is done in moderation, especially when that issue involves a crime as pernicious as rape. It often takes far less provocation to arouse the ire and feistiness of Mallam el-Rufai. When rape is thrown into the mix, there is no restraining the governor. By 2019, Kaduna State was yet to domesticate the Child Rights Act, but it has some related laws such as the Children and Young Person’s Law of Kaduna State, and the Kaduna State Infant Edict. If this information is right, it is hard to explain why the state has skirted around the Act but prefers to work aggressively around its periphery.  
  
Kaduna seems to lack the patience of drafting laws that take cognisance of both the short and long run, not to say conforming with global standards. It is true Pakistan, the United States, and one or two European Union countries have flirted with castration, particularly voluntary or chemical castration, but it is doubtful whether Kaduna has availed itself of the benefits of the arguments for or against extreme, irreversible punishments for the crime. Like other states, Kaduna is agitated by the rising incidence of rape, but there is nothing in the amended Kaduna law to suggest that the state is guided by the failure of extreme rape laws to either mitigate, extirpate or minimize rape from its epidemic status.  
  
Indeed, there are laws and attendant penalties, not only in Kaduna but also nationally, that have become either inoperable or redundant because of their extremeness or lack of scientific diligence. Armed robbery is a capital crime, but robbery has continued unabated, with even militancy and insurgency capping the problem. Kidnapping has also become a capital crime in many states, and the country has sadly resigned itself to its metastatic and savage new form. Contrary to the undergirding logic of extreme penalty in many Nigerian states, where the severity of a law is thought to be enough deterrence, providing for severe penalties does not necessarily deter criminals. Rape laws need to be tough, and offenders need to be deterred. But it is hard to see how castrating male and female offenders, not to say instituting the death penalty, will deter or reduce the crime. It is also hard to understand the logic of making 14 years the age of consent, rather than 16 years or 18 years.  
  
If the former 21 years jail term did not deter rape, and capital punishment does not deter robbery and kidnapping, why does anyone think rape would be deterred by a more extreme punishment simply because of the outrage that follows rape, particularly rape of minors?  
  
Until the Nigerian criminal justice system is reformed and modernised to global standards, Kaduna and other states that enact extreme laws and penalties will find themselves playing dangerously on the borders of recklessness and atavism. With the amended Kaduna rape law, reporting of the crime may decline, and as the policing of COVID-19 lockdown showed, will simply become prone to manipulation and corruption. No state should emulate Kaduna. Rape is too serious and traumatising a crime to be subjected to emotive and unscientific considerations, both of which will end up, like Kaduna’s approach to the almajiri system, a futile exercise.