

VIOLATIONS OF WOMENS' REPRODUCTIVE RIGHTS IN NIGERIA

Abstract

In 1995, 187 United Nations Member States met in China to think about the broad issues and links between population, sustained economic growth, sustainable development and advances in health as well as education, economic status and empowerment of women. The agreement reached at this meeting was expressed as a 20-year Program of Action. This document gave a foundation to the discussion on sexual and reproductive health as against the former which limited the terms of family planning. However, more than twenty years after the Beijing and International Conference on Population and Development (ICPD), women are still not in control of their sexual and reproductive health rights. This is the situation in Nigeria as evidenced by the number of cases of women's rights abuses, including their innate lack of right to decide on their sexual health and the continued ignorance on issues of women's reproductive health and rights both within the private and public spheres. For reproductive health rights to be attained like other human rights, women must be able to claim full control over reproductive and sexual rights issues as these have a direct impact on their physical, emotional and psychological well-being. While motherhood is a thing of joy, it is a source of sadness to many households as many women lose their lives giving birth in Nigeria. The International Conference on Population and Development (ICPD) held in Cairo in 1994, marked a paradigm shift in the focus of population programs and underscored the need to meet the reproductive health needs of individuals and couples as a key approach to improving quality of lives of people and stabilizing the world population. This paper examines the nature and scope of reproductive health, examines reproductive health as a human rights issue as well as access of women to reproductive health and analyses factors militating against the attainment of reproductive health rights in Nigeria. The paper found that the state of access to reproductive health in Nigeria is still below internationally acceptable standards and government efforts aimed at improving same is noncommittal.

Key Words: “Human Rights”, “Reproductive Rights”, “Reproductive Health”, “Freedom”

1 Introduction

1.1 What is Reproductive Health?

There is no universal definition of reproductive health. According to the ICPD, reproductive health is ‘*a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, in all matters related to the reproductive system and to its functions and processes*’.¹ The concept is centered on human needs and development throughout the entire life cycle, “from the womb to the tomb” including everything that affects reproduction for instance, safe motherhood, preventing and treating sexually transmitted diseases, avoiding unwanted pregnancies and promoting responsible sexual behavior.² It extends to the need for universal education, to gender issues such as male support for women’s reproductive health and to protection of girl children to enhance their growth and healthy life as well as equality with their male counterparts.³

1.2 What are Reproductive Rights?

The term “*reproductive rights*” was coined in 1984 during the International Meeting on Women and Health in Amsterdam. The event was seen as the starting point of the struggle to expand the scope of the concept of human rights to reproductive rights. Reproductive rights has been defined as *certain human rights recognized in national and international legal and human rights documents and other consensus documents including the basic rights of all couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so, the right to attain the highest standard of sexual and reproductive health, the right to make decisions concerning reproduction free of discrimination, coercion and violence*’.⁴

Reproductive health implies that people are able to have a satisfying and safe sexual life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. It includes access to voluntary, qualitative and sexual health information and education and services. Reproductive rights embrace the rights of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as other methods of their choice for regulation of fertility which are not against the law, the right to appropriate healthcare services which will enable women go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. Reproductive health is thus a constellation of methods, techniques and services that contribute to reproductive health and wellbeing by preventing and solving reproductive health

¹ ICPD(culled from Programme of Action of the International Conference on Population and Development(ICPD) Cairo, Egypt, September 5-13 1994, paras 7.2, UN Doc A/CONF.171/13/Rev. 1(1995)retrieved from www.unfpa.org on 12/09/2019.

²*ibid*

³*ibid*

⁴The Beijing Platform for Action (BPFA) and the ICPD documents are

problem.⁵ Reproductive health rights thus represent a paradigm shift from maternal and child health and family planning as it is broader and more comprehensive.⁶

1.3 Scope of Reproductive Health

Reproductive health care covers a wide range of services. These services are defined in the ICPD Programme of Action (PoA) as including family planning counseling, information, education, communication and services, education and services for antenatal care, safe delivery and post-natal care, and infant and women's health care; prevention and treatment of infertility; prevention and treatment of infections, sexually transmitted diseases, including HIV/AIDS; breast cancer and cancers of the reproductive system, and other reproductive health conditions; and active discouragement of harmful traditional practices, such as female genital mutilation. According to the ICPD, reproductive rights ...embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.

It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.⁷ Thus the essential elements of a comprehensive reproductive health package are: comprehensive sexuality education, access to contraception, safe abortion, maternity care, and diagnosis and treatment of sexually transmitted infections (STIs), including HIV, diagnosis and treatment of breast and cervical cancers and other cancers that affect the reproductive system. This package of services enables girls and women to decide whether and when to get pregnant, to decide whether to carry a pregnancy to term, and to experience pregnancy and childbirth safely.⁸

1.4 Certain Aspects of Reproductive Health

1.4.1 Maternal Health

Maternal health refers to the health of women during pregnancy, childbirth and the postpartum period. It implies safe motherhood and reduction of maternal mortality and morbidity through the provision of maternal health services in the context of primary health care based on the concept of informed choice, including education, information and safe abortions. It also encompasses the health care dimensions of family planning, pre-conception, prenatal, and postnatal care in order to reduce maternal morbidity and mortality. Preconception care includes education, health

⁵ A Atsenuwa., et al, *Reproductive Health and Right Education: A Compilation of Resources*, (Lagos: Legal Research and Resources Development Centre, 2004) p12.

⁶ A B C Nwoso; *Foreword to National Reproductive Health Policy and Strategy to Achieve Quality Reproductive and Sexual Health for all Nigerians*, Federal Ministry of Health, Abuja.

⁷ Principle 7.3 of the International Conference on Population and Development Programme of Action

⁸ International Women's Health Coalition (IWHC) (2008), *Five Sexual and Reproductive Health Services that Will Make Pregnancy Safer for All*, retrieved from http://www.iwhc.org/index.php?option=com_content&task=view&id=3604&Itemid=1140 on 12/09/2019.

promotion, screening and other interventions among women of reproductive age to reduce risk factors that might affect future pregnancies. Prenatal care aims at detecting any potential complication of pregnancy early, to prevent them if possible, and to direct the woman to appropriate specialist medical services as appropriate. Postnatal care issues include recovery from childbirth, concerns about newborn care, nutrition, breast-feeding and family planning. The Management Science for Health (MSH) lists the scope of maternal health as follows:

- a. Prenatal care, safe delivery, and postpartum care
- b. Treatment of infertility
- c. Comprehensive family planning service delivery and post-abortion counseling
- d. Diagnosis and treatment of complications of pregnancy, delivery, and abortion
- e. Women's nutrition and gynecologic health care, including cervical cancer screening

While motherhood is often a positive and fulfilling experience, for too many women in Nigeria, it is associated with suffering, ill health and even death. The major direct causes of maternal morbidity and mortality include hemorrhage, infection, high blood pressure, unsafe abortion, and obstructed labor. These are often caused by lack of adequate prenatal care and access to competent midwifery facility and personnel. The health situation of most women in Nigeria is often very precarious and receives very limited attention from the responsible health authorities. There are not enough health facilities especially in rural areas within the reach of the rural poor. Most women, particularly pregnant women, cannot afford health services. Many of the local health centers and rural clinics are not functional and those that are open to the communities are poorly equipped and poorly staffed.

Typically, in rural health centers, there is often not more than one nurse at any given time and there are no doctors. The nurse or midwife in such an institution is usually forced to double as a doctor. In serious cases, patient referrals to bigger hospitals are delayed primarily because of the absence of a qualified doctor to do so. Many women out of poverty are forced to attend traditional maternity centers that mostly do not have the required facilities to cater for the needs of the woman and unborn child. Even in urban centers, public health facilities are grossly inadequate with many being merely consulting clinics on account of lack of necessary infrastructure. Many private health institutions also do not have the requisite infrastructure and personnel and the few that have such infrastructure are out of the reach of the average woman.

The right to maternal health is one of the foremost reproductive rights. Though not specifically legislated in Nigeria, it may be inferred from the provisions of the 1999 Constitution. The government is obliged to direct its policies to ensure adequate medical and health facilities for all persons; ensure that the health, safety and welfare of all persons in employment are not endangered or abused.⁹The right to life is also entrenched in the 1999 Constitution. The emerging trend in international law is that governments, in protecting the right to life have to take positive measures that will include provision of adequate health facilities for all, especially women and children. It is therefore submitted that the constitutional provision that guarantees the right to life may be construed as guaranteeing also the right to health, which includes the

⁹The Constitution of the Federal Republic of Nigeria, 1999 section 17.

provision of adequate health facilities accessible to all. However, recognition and taking positive steps to ensure implementation are different things. Further, the Labor Act in section 54 recognizes maternal health by making provisions for maternity leave before and after confinement.¹⁰

1.4.2 Rape and Assaults

The right to reject or accept a man's advances is the most fundamental right a woman can have. Rape is an unlawful carnal knowledge of another, most especially a woman or girl without her consent, or with her consent if that is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by impersonating her husband.¹¹ Spousal rape is not recognized as a crime in Nigeria¹² as a woman is deemed to have given blanket consent to sexual intercourse by virtue of marriage. In *R v. Mille*,¹³ it was held that there is implied consent to intercourse which the wife gives at marriage which can only be revoked by order of court or by a separation agreement. However, since a husband was not entitled to use force or violence for exercising his right of intercourse, he may be liable for assault. It was not until the 1992 case of *Regina v. R*¹⁴ that the House of Lords in a landmark decision overruled the previous common law position that a man could not rape his wife. However, until the amendment of S.6 of the Criminal Code, the applicability of this case in Nigeria is doubtful.

To ground a conviction in rape, the testimony of the victim must be corroborated. This can be quite frustrating and often the criminals/rapists get away with offences they have committed for lack of corroboration. For the female victims of rape, they become doubly jeopardized and traumatized. Also because of the secondary victimization attached to it, rape cases often go unreported and the victim has to bear the burden for the rest of her life. It is therefore submitted that the need for corroboration should be expunged from the Criminal Code Act. A high number of women and girls suffer sexual assault, both within and outside marriage and in the context of sex work. Such rapes put them at risk of both HIV/STI infection and unwanted pregnancies. Much greater efforts are needed to expand access to post-exposure prophylaxis for rape survivors, as well as STI diagnosis and treatment and availability of emergency contraception for female survivors of assault.¹⁵

1.4.3 HIV/AIDS, Other Sexually Transmitted Infections and Other Reproductive Tract Infections

The right to health also includes protection from and treatment of sexually transmitted diseases and other reproductive tract infections. The incidence of HIV infection is steadily rising in Nigeria. It is particularly high among the youth. At least 80 percent of HIV infections in Nigeria are contracted through sexual intercourse. Other causes of infection are through unsterile injections and the inadvertent transfusion of unsafe blood and body piercing, scarification or

¹⁰ Labour Act, Cap L1, LFN, 2004, section 24.

¹¹ The Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004, section 357

¹² The Criminal Code Act, section 6.

¹³ (1954) 2 QB 282

¹⁴ (1992) 1 AC 599

¹⁵ Sections 360, 361, 362, and 363 of the Criminal Code (*ibid*) also attempt to protect women and girls from indecent assault and abduction.

cutting. The HIV situation in Nigeria is fuelled by a number of factors including ignorance, denial, stigmatization of the infected people, inappropriate health care practices (including traditional ones); inadequate number of, and lack of access to voluntary testing and counseling facilities; lack of appropriate care for infected people; and, false claims about cure. The low level of education among females and generally low social and economic status of women in the Nigerian society also play a part in the rising HIV rate as well as other reproductive problems. Urbanization, unemployment and poverty have fuelled high-risk sexual behaviors including prostitution, thereby contributing to the increasing rate of HIV infection.

Other health challenges facing women are cervical cancer, breast cancer and issues of menopause in the elderly. Although there have been recent efforts at raising awareness on breast and cervical cancer especially in the electronic media, these efforts would not amount to much without adequate facilities for early detection and treatment of both breast and cervical cancer.

1.4.5 Adolescent Reproductive Health

Another important feature of reproductive health rights is adolescent reproductive health. The reproductive health status of the Nigerian adolescent is poor. Paramount among the factors responsible for the current high levels of reproductive ill-health among adolescents is lack of sexuality education. Most adolescents do not have access to sexuality education. This is a result of the African attitude to discussions on sex. Discussions on sex are believed to be an adult preserve and children are shut out from such discussions. Facts about sexuality are usually shrouded in myths and misrepresented to the adolescents. They often have to find out on their own what sexuality is all about and often with dire consequences. The average age of first intercourse has declined and there is greater practice of unprotected sexual intercourse with multiple and casual partners by both boys and girls. It is not uncommon to find girls of 12 years who are sexually active. As such, there is a high rate of teenage pregnancy most of which end up in induced abortions, with majority being carried out by quacks and in unsafe environment.

The high rate of teenage pregnancy also contributes to a high rate of school dropouts. As a result of increasing poverty and other adverse social conditions, there is an increasing rate of antisocial practices including drug abuse and violent crimes such as rape and armed robbery. Lack of parental care and monitoring also contribute to this menace.

Many elite parents leave their children unattended to in the quest for wealth. On the other hand, the pervading poverty in the country also contributes to this problem. Many young girls have to help augment family income by hawking as a result of which they are often exposed to situations where they are sexually exploited. There is need to expose children to sex education appropriate to their age to reduce incidence of teenage pregnancies as well as sexually transmitted diseases. Cultural values that encourage sexual abstinence until marriage should be encouraged and promoted.

1.4.6 Female Genital Mutilation

Female genital mutilation (FGM), traumatic puberty initiation rites and group circumcision could facilitate the spread of HIV. Female genital mutilation/cutting is practiced in many states in Nigeria in various forms from infancy to adulthood. The reason often cited for the practice of FGM is to reduce promiscuity among women. These practices cut across religious and cultural boundaries and the victims are unaware of the associated potential dangers such as hemorrhage, shock, and infections including Hepatitis B and HIV/AIDS. The long-term complications include psychological consequences, recurrent urinary tract infections, sexual dysfunction, chronic pelvic infection, infertility, and prolonged obstructed labor, Vesico-vagina Fistula (VVF) and Recto-Vagina Fistula (RVF). Though there are several legislations against FGM in Nigeria, it is still prevalent because it is culturally rooted in the beliefs of the people. Further, Article 5 of the Protocol to the African Charter on Human and Peoples' Rights (ACHPR) on Women's Rights in Africa enjoins state parties to take legislative and other measures to prohibit FGM in all its ramifications.

1.4.7 Early forced Marriage

This is also another cultural practice with negative reproductive consequences. The Child Rights Act 2003¹⁶ prohibits the marriage of a girl under the age of 18 years, and it is an offence for the father/ guardian and the husband punishable with imprisonment. However, child marriage still abounds in the country, especially in the northern part of the country. Some time ago, a senator in the National Assembly got married to an under-aged girl. Though the marriage generated public outrage, the senator was never arraigned before any law court. It brings to question the sincerity of our legislators and policy makers. If a senator who pledged to uphold the Constitution and the laws of the country could flout it with impunity without any reprisal, then, there really is a problem.

1.4.8 Gender Based Violence

This is another harmful practice that is prevalent in Nigeria. Violence against women is defined as "any act that results in, or is likely to result in, physical, sexual and psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life". Most African cultures allow a man to chastise his wife by beating her. This is sometimes backed by law.

For instance, the Penal Code claiming to be based on Sharia Legal system allows a man to chastise his wife as long as it does not amount to grievous hurt. This, it is submitted, is a misrepresentation of the Sharia. Violence has both short and long-term detrimental effects on women's health, thus violating the right to the enjoyment of the highest attainable standard of physical and mental health. There have been calls to legislate against this societal malaise which have not yielded much fruits.

2 Reproductive Health Right as A Fundamental Right

It is a popular saying that health is wealth and a healthy nation is a wealthy nation. Thus, health is an issue of central concern to all countries and societies as it is a crucial cornerstone for socio-economic development and progress. The struggle to provide good health care to all in the

¹⁶Child Rights Act (CRA) No. 26 of 2003.

society is epitomized by position that health “is a fundamental human right” and its attainment is a “most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.”¹⁷

The right to health is the right to an effective and integrated health system which is accessible to and affordable by all members of the society. Underpinned by the right to health, an effective health system is a core social institution, no less than a court system or a political system. However, in spite of the fact that the right to health is fundamental and indispensable for the enjoyment of other human rights, there is no specific legislation on the right to health in Nigeria. Chapter IV of the 1999 Constitution which provides for the fundamental human rights makes no provisions for the right to health in spite of the fact that the right to life is only meaningful to a person who is healthy and the right to freedom of movement has no value for a person who is rendered immobile by a preventable disease.

Provisions for healthcare are contained in Chapter II of the Constitution which embodies the economic and social policies of the country. Section 17 (3) (c) provides that the State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons. However, the provisions of Chapter II of the Constitution have been excluded from adjudication by the courts thus, no right of action can ensue from the breach of the provisions of the said chapter by the government. The courts have consistently in a plethora of cases upheld the non-justice ability of the provisions of the chapter.¹⁸

The foregoing notwithstanding, the right to health has been recognized in numerous international instruments to which Nigeria is a State party. The Universal Declaration of Human Rights (UDHR) affirms that “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.”¹⁹The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most comprehensive article on the right to health in international human rights law. It provides that State parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.²⁰The Covenant enumerates a number of steps to be taken by the States parties to achieve the full realization of this right. These include:²¹

(a) Availability: Functioning public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State party.

(b) Accessibility: Health facilities, goods and services have to be accessible to everyone without discrimination, within

¹⁷ The Alma Ata declaration of 1978

¹⁸ See generally *Okogie v. A.G. Lagos State* [1981] 2 NCLR, 337; *Adewole v. Jakande* [1981] 1NCLR, 262; *Ehimare v. Governor of Lagos State* [1981] 2, NCLR, 166

¹⁹ The Universal Declaration of Human Rights (UDHR), Article 25(1)

²⁰The ICESCR, Article 12(1).

²¹The ICESCR, Article 12(2).

the jurisdiction of the State party. Accessibility has four overlapping dimensions:

i. Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

ii. Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

iii. Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

iv. Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) Acceptability: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as

well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality: As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

The right to health is also recognized, *inter alia*, in the International Convention on the Elimination of All Forms of Racial Discrimination of 1965,²² the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979²³ and in the Convention on the Rights of the Child of 1989.²⁴

CEDAW devotes a major attention to women's reproductive rights. The preamble stated that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. It advocates, , "a proper understanding of maternity as a social function" and demands fully shared responsibility for child rearing by both sexes.²⁵ Several provisions of CEDAW hinge on the reproductive health rights of women which include the right to maternity protection and child-care, access to adequate health care facilities, including information, counseling and services in family planning,²⁶ rights to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights".²⁷

The right to health is also embodied in the African Charter on Human and Peoples' Rights (ACHPR).²⁸ It provides that every individual shall have the right to enjoy the best attainable state of physical and mental health.²⁹ The ACHPR further provides that State Parties shall take the necessary measures to protect the health of their people and to ensure that they receive medical

²² Article 5 (e) (iv)

²³ Articles 11(1) (f) and 12 of

²⁴ Article 24

²⁵ CEDAW article 5

²⁶ Article 14(1)(f) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979

²⁷ Article 16(e) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979

²⁸ African Charter on Human and Peoples' Rights (ACHPR), article 16.

²⁹ *ibid*

attention when they are sick.³⁰ The Protocol to the ACHPR on the Rights of Women in Africa protects women from harmful cultural practices such as Female Genital Mutilation.³¹

The Protocol enjoins State parties to protect women, especially the girl child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices.³² The Protocol specifically provides for the reproductive health rights of women.³³

Nigeria is a State party to these conventions. Nigeria ratified CEDAW without fully domesticating same yet.³⁴ She has also domesticated the ACHPR by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act³⁵ This makes the provisions of the ACHPR enforceable in Nigeria. As recently as 2008, the ACHPR reiterated the commitment of the African Union to reproductive health rights.

3 Nigerian Policy and Access to Reproductive Health

Nigeria has a number of policies in the health sector that are relevant to reproductive health. Foremost among these, is the National Health Policy and Strategy.³⁶ The National Health Policy has a number of provisions which, if strictly implemented, could have led to improved access to basic health services including reproductive services for all population groups. However, the current level of access does not reflect strict adherence to this policy. Other relevant policies include the National Policy on Population for Development, Unity, Progress and Self Reliance;³⁷ Maternal and Child Health Policy;³⁸ National Adolescent Health Policy;³⁹ National Policy on HIV/AIDS/STIs Control;⁴⁰ National Policy on the Elimination of Female Genital Mutilation;⁴¹ and Breastfeeding Policy.⁴² The reproductive health policy is set within the framework of the Nigerian health policy, which upholds primary health care as the key to health development in Nigeria. This policy also recognizes that the implementation of reproductive health should be in the context of primary health care, as stated at the ICPD. The Nigerian policy statement on reproductive health include among others:

1. Protection of reproductive rights through the creation of an enabling legal environment by, the amendment and repeal of all laws contradicting reproductive rights principles and the enactment of appropriate legislation;

³⁰ *ibid*

³¹ The Protocol to the ACHPR on the Rights of Women in Africa, Article 5

³² The Protocol to the ACHPR on the Rights of Women in Africa, article 12 (1) (c),

³³ *op cit.* article 14

³⁴ Culled from F A Anyogu; *Access to Justice in Nigeria: A Gender Perspective*. 2nd edition, (Enugu: Ebenezer Productions Ltd, 2013) p.394.

³⁵ The African Charter Act of 1990.

³⁶ 1988 and 1999.

³⁷ 1988.

³⁸ 1994.

³⁹ 1995.

⁴⁰ 1997.

⁴¹ 1998.

⁴² 1994.

2. Protection of the rights of all people to make and act on decisions about their own reproductive health free from coercion or violence, and based on full information within the framework of acceptable ethical standards;
3. Formulation and enforcement of legal instruments to support activities aimed at eliminating the practice of female genital mutilation and other forms of harmful practices such as gender-based violence especially sexual violence and rape, through intensified focus on public education and involvement of health care providers in the recognition and management of the problems
4. Ensuring access of the public to scientifically proven preventive and curative reproductive health conditions including HIV/AIDS and protect them from unproven claims.
5. Removal of all forms of barriers that limit access to comprehensive, integrated and qualitative reproductive health care;
6. Adaptation of health facilities to the new concept of reproductive health as part of primary, health care through expansion and strengthening of outreach efforts at community level;
7. Establishment of appropriate mechanisms for the review of relevant curricula and training manuals of schools of medicine, nursing and health technology in order to incorporate reproductive health concepts, principles, strategies and methodologies.⁴³

The policy aims to serve as an effective national platform for strengthening reproductive health activities in Nigeria and facilitating the achievement of relevant global and regional goals in the interest of improved health, well-being, and overall quality of lives of all peoples in Nigeria. While the provisions of many of these policies are relevant to promotion of reproductive health, the existing relevant laws do not support some of the principles enunciated in this policies whilst some are non-committal. Despite the laudable provisions of the policies, reproductive health care in the country is still far below international standards. The State has failed to meet the basic standards set by Article 12 (2) of the ICESCR which provides for the general wellbeing of members of the countries of State parties.

4 Impediments to Realizations of Reproductive Health Rights

A number of factors inhibit the provision and availability of maternal health and reproductive health care in Nigeria. Chief among this is the non-justifiability of the economic and social rights. Thus, the provisions of the facilities and infrastructure necessary for the enjoyment of

⁴³ICPD Nigerian Policy Statement on Reproductive Health

reproductive health rights are left to the whims and caprices of the government. Under international law, States that are party to a variety of different treaties assume tripartite obligations:

1. to respect the right to health by refraining from direct violations, such as systemic discrimination within the health system;
2. to protect the right from interference by third parties, through such measures as environmental
3. to fulfill the right by adopting deliberate measures aimed at achieving universal access to care, as well as to preconditions for health.

Mostly what the government in Nigeria is doing is mainly the first aspect which refraining from direct violations. The third aspect of the right which is fulfillment of the right by adoption of measures to achieve universal access to care has not enjoyed the necessary attention by the government. Though the right to health does not mean a right to be healthy, it contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. The right to reproductive health in Nigeria seems to be a mirage. The inadequacy or lack of implementation of laws and policies, the prevalence of systemic corruption, weak infrastructure, ineffective health services, and the lack of access to skilled health-care providers worsened by separation of responsibilities for the provision of health care among the country's three tiers of government are among the factors militating against the enjoyment of the rights.⁴⁴

The vast scale of maternal death in Nigeria and the lack of necessary government commitment to effectively address the problem have more than just public health implications; they also constitute serious violations of human rights that are protected under national, regional, and international law. Fundamental human rights that the government of Nigeria is obligated to guarantee include the rights to life and health; the right to nondiscrimination; the right to dignity; and the right to information.

Although the ACHPR has been domesticated, Chapter II of the Constitution has overriding effect on the Act, thus no right of action can lie against the state for breach of the provisions of social economic rights. However, the courts are awakening to their responsibility as they have construed the right to life to extend to the right to a healthy environment.⁴⁴

Another major constraint to the attainment of reproductive health in Nigeria is the poverty level of women. About 70% percent of the population lives below the poverty line,

⁴⁴ S Ogundipe., C Obinna, *Maternal Death: Caging the Terror of Nigerian Women*, (2009), retrieved from www.vanguardngr.com accessed on 12/09/2019

⁴⁴ *Gbemre v Shell Petroleum Development Company Nigeria Limited & Ors* (2005) AHRLR 151 (NJHC 2005). The decision in the case is a welcome development. The right to life can thus be construed to include the right to health and by extension the right to reproductive health

majority of who are women. Women's disproportionate poverty, low social status, and reproductive role expose them to high health risks, resulting in needless and largely preventable suffering and deaths. Many of the women and girls who die each year during pregnancy and childbirth could have been saved by relatively low-cost improvements in reproductive healthcare. Women's right to health and reproductive health in particular, is essential to gender equality and female empowerment. The benefits of better reproductive health for both women and men can easily be demonstrated, from the point of view of society as well as the individual. In addition to saving lives and preventing infection and suffering, better reproductive health will lead to smaller families and slower population growth.

An emphasis on human rights obligations is a tool in the battle to secure reproductive and sexual health. It reinforces the fundamental point that reproductive health programs are essential to protect the dignity of men and women, something governments are obligated to do. Unequal access of women to resources including healthcare is a major problem in Nigeria. Although women are economically active, their industry is poorly remunerated due to lack of education and formal training. Many poverty alleviation programs aimed at improving the lives of women are often half-hearted. Many of such programs are often used by politicians to canvass for votes and do not get to the targeted audience.

The above inequalities severely constrain the ability of women and adolescent girls to acquire good health and women centered health services. At the household level, these disparities translate to a lack of autonomy and control over household resources. Women have little decision-making authority, and freedoms of movement, few women including working women have control over household economic resources. In the Northern parts of the country, many women are in seclusion and require the permission of their husbands to go out. Women's reproductive health is affected by a number of socio-cultural and biological factors. Underlying the poor reproductive health of women is their poor economic status and inadequate delivery system.

4.1 Cultural and Religious Impediments: It is nearly impossible to consider sexual and reproductive health and rights without simultaneously considering the role of religion and culture. Religious teachings deeply influence personal conduct, especially in the areas of sexuality, marriage, gender, childbearing, and parental-children relationships. Moreover, secular notions of justice and rights draw upon interpretations of religious morality. Not only does religion shape the values of individuals and the cultures of societies, it has the power to influence government policy. It affects public policies through the involvement of religion in political processes and also through the religious beliefs of political leaders, policy makers, and civil servants. The influence of religion is pervasive, from the national government to small villages. Several practices that infringe on women's reproductive health rights are culturally acceptable. For instance, Female Genital Mutilation (FGM) is a practice that has defied attempts by government to eradicate because it is culturally etched in the society. Even the victims of FGM would rather suffer the pain than face societal disapproval and or ostracism.

Perhaps, the issue that has generated the most heated conflict between religion and reproductive health is the issue of abortion. In almost every part of the world, abortions have

been the subject of religious, social, political and legal discourses. Under Nigerian law, interfering with pregnancy no matter how early in the course of the pregnancy is criminal unless such interference is undertaken to preserve the mother's life as prescribed by the Criminal and Penal Codes. The foetus is regarded as a human life from the moment the ovum is fertilized and one in which the society has an interest that must be protected by law.

It is only when the mother's life is at risk that it is conceded that there is an overriding interest that allows abortion to be tolerated. The abortion debate train is also gaining ground in Nigeria. While some advocate for liberalizing abortion laws, others fight for outright legalization of abortion and others still want the *status quo* to remain. For those who want abortion legalized or the law liberalized, the argument is along two main lines – “the health argumentation and the rights argumentation.” While the former thinking contends that the existing abortion laws are too restrictive in the prescription of what constitutes therapeutic reasons, the latter thinking is that the existing abortion law reflects “an unwarranted, unsupportable infringement of women's right to privacy” and an attempt at legislating morality.

The argument is that restrictive abortion law opens up more people to the risk of unsafe abortion as a large number of abortions take place in spite of the law. Unsafe abortion is one of the greatest dangers to women's reproductive health and cause of the high rate of mortality in the female adolescent population. A report by the Federal Ministry of Health estimates that for every maternal death due to unsafe abortion, thirty more women suffered long-term injuries and disabilities due to unsafe abortion.⁴⁵ The argument goes further that the restriction of the grounds upon which abortion may be performed to saving the woman's life is too narrow and may be insensitive to the difficulties posed by peculiar experiences of women. For example, a rape victim who becomes pregnant is not entitled to abortion even though this is clearly a case of unwanted and forced pregnancy. The trauma experienced by rape victims who find themselves pregnant should be sufficient to ground liberalization of abortion laws so that they can have access to legal abortion. When it is appreciated that rape carries with it risk also of HIV infection, the least the law could do is be sensitive to the danger and consequent fears of the victims of rape.

The ACHPR Protocol on Women's rights in Africa provides that State parties shall protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.⁴⁶ It is submitted that the Nigerian law on abortion should be amended in line with the provisions of the ACHPR Protocol on women's rights.

It is submitted further that women's struggle should not be on legalizing abortion but should be at reducing the incidence of unwanted pregnancies. Efforts should be made at inculcating moral values in our adolescents. In the struggle for their rights, women should also seek to maintain their dignity and womanhood. Sexual promiscuity should be discouraged and the root causes of sexual promiscuity amongst the adolescents addressed. Efforts at promoting abstinence and sexual discipline should be increased. This would not only reduce the risk of

⁴⁵ L Sekinah, 'ACHPR Faults Nigeria's Report', *National Mirror*, 2012, 15/02/2012 retrieved from <http://nationalmirroronline.net/health/health-news/31359.html> accessed on 12/09/2019.

⁴⁶ Art 14(2)©

unwanted pregnancies, but also reduce the risk of sexually transmitted illnesses. Further, there should be increased access to family planning information and methods. Religious and cultural practices that enhance the dignity of women should be encouraged.

In addition, the traditional beliefs of many Nigerian affect their attitude to healthcare issues and with dire consequences. Many people still believe in witches, witchcraft and evil spirits as the causative agents of most diseases in Nigeria and thus would rather visit the herbalist or spiritual home rather than patronize orthodox hospitals and health centers.

4.2 Statutory impediments: Aside from the cultural forms of discrimination, there are also several discriminatory legislations against women's reproductive health rights. For instance, the Nigeria Police Regulation⁴⁷ provides the qualification which must be possessed by a woman in order to be eligible for enlistment in the Nigerian Police Force as a recruit Constable. It was also provided that the woman must be unmarried.⁴⁸ Thus, married women are precluded from enlistment. Meanwhile no similar provision is applicable to their male counterparts.

Regulation 127 also provides that an unmarried woman police who becomes pregnant shall be discharged from the force and shall not be re-enlisted except with the approval of the Inspector General of Police. A woman Police desirous of marrying shall apply to the Commissioner of Police for the State Command in which she is serving requesting to marry and also supply the name, address and occupation of the spouse to be. Permission may be granted if the intended spouse is adjudged to be of good character and the woman police has served for not less than three years. No similar provision is applicable again, to their male counterparts.⁴⁹ It has been argued that the 1999 Constitution in Section 42 (3) gives backing to what would otherwise be an unconstitutional provision. On the one hand Section 42 (1) provides that:

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinion are not made subject.”

However, what the Constitution gave with one hand, it took with the other by the provisions of subsection (3) which states that:

⁴⁷ Regulation 118, pursuant to the Police Act, Cap P19, Laws of the Federation of Nigeria, 2004

⁴⁸ Nigeria Police Regulation No 118 Subsection (g)

⁴⁹ Regulation 124, *ibid.* However, the regulation in the recent case brought before the Federal High Court by the Women Empowerment and Legal Aid Initiative (WELA), has been annulled by being unconstitutional and at variance with the Constitution by virtue of Section 1 (3) and Section 42 of the Constitution and by discriminating between female and male police officers which should not be.

Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force to any office in the service of a body corporate established directly by any law in force in Nigeria.

Also, the Criminal Code contains discriminatory legislation against women. According to Section 353 “Any person who unlawfully and indecently assaults any male person is guilty of a felony and is liable to imprisonment for three years” while Section 360 on the other hand provides that “any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor and is liable to imprisonment for two years”. One wonders at the rationale behind the distinction. It is thus advocated that the Criminal Code should be amended to remove the distinction.

5 Conclusion

The state of access to reproductive health in Nigeria is still below internationally acceptable standards and government efforts aimed at improving same is noncommittal. Achieving MDG 5 clearly requires that all women and men have ready access to contraceptive choices that are affordable and acceptable through services that are readily available and based on confidentiality and informed consent. Access to reproductive health rights is a major component of reducing maternal mortality and morbidity in Nigeria. When women have access to good information and health care, they are in a position to make sensible choices about marriage and the size of their family.

Such individual decisions can add up to better lives for women and their families, a more robust job market, and, ultimately a stronger national economy. When young people are able to obtain reproductive health information and services, they increase their chances to make a successful transition to adulthood. Saving women's lives requires a functioning health system to deliver the package of sexual and reproductive health services. Health system investments in women's sexual and reproductive health services provide a strong foundation for health services for all. With accessibility to comprehensive reproductive health services, women are less likely to die in pregnancy, more likely to have healthier children and better able to balance their family and work life. Reproductive health is thus sine qua non to economic and social development.

6 Suggestions for Reforms

Comprehensive sexuality education programs must be implemented in communities and schools, beginning in the primary grades, of course at the level of their understanding. Comprehensive sexuality education should not just give young people biological information about their health, it must teach them about sex, contraception, and pregnancy, as well as communication and decision-making. It would help them learn how to establish equality in relationships, respect the right to consent in both sex and marriage, and end violence and sexual coercion.

Men play a key role in bringing about gender equality, thus, it is imperative to educate men on the need for reproductive health. It is essential to improve communication between men and

women on issues of sexuality and reproductive health, and the understanding of their joint responsibilities, so that men and women are equal partners in public and private life. Government should take positive steps to implement the existing laws and treaties on women's rights in line with the suggestions made earlier.

It is imperative to domesticate CEDAW in Nigeria. Laws that are discriminatory against women should be amended or repealed as the case may be in line with international standards. The National Assembly and the State Assemblies must enact laws prohibiting violence against women as a matter of urgency. Breast and cervical cancer screening should be made available at all health centers, public hospitals, antenatal and postnatal clinics for ease of access, early detection and treatment.

The National Health Bill which has had a chequered history must be passed into law. This would further increase access to health rights. Most importantly, the 1999 Constitution must be amended to make socio-economic rights justiciable.