

Impediments to the Realization of the Reproductive Health and Rights of Women in Northern Nigeria

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Abstract

More than twenty years ago after the Beijing and International Conference on Population and Development (ICPD), women in Nigeria, particularly from the northern part are still not in control of their sexual and reproductive health rights. Even though, reproductive health rights are not expressly stated in the Nigerian constitution, it can be implied from a community reading of chapter four of the 1999 constitution. Aside the constitution, there are several other legislations as well as government policies that are aimed at promoting the reproductive health rights of women in Nigeria, yet, achieving same remains a mirage. Several factors are responsible for the setback in realizing such rights. It was found out in this article that some of the factors responsible are: lack of robust legal framework, poverty, illiteracy, cultural and religious factors just to mention a few. The article concluded by making some recommendations that will be helpful in the realizations of these rights by women of northern Nigeria.

Key words: ‘Human Rights’, ‘Reproductive Rights’, ‘Reproductive Health’.

1. Introduction

Reproductive health rights are some of the rights impeded in Nigeria, especially in regards to women who because of their gender bear the brunt most times in sexual and reproductive matters and especially in Northern Nigeria where women are discriminated and viewed as less important than men. The world has gone past seeing reproductive health right in the light of population alone. Since the International Conference on Population and Development (ICPD) in 1994 to the United Nations General Assembly in 2019, governments

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of many countries including Nigeria agreed that human rights including sexual and reproductive rights are fundamental to development and population and further committed to achieve universal access to sexual and reproductive health services and rights. These rights are an essential part of the Universal Health Coverage (UHC) targets in the Sustainable Development Goals (SDGs) which are in accordance with the ICPD Program of Action. All individual especially women now have certain sexual and reproductive rights which are universal and unalienable. Some of these rights include the right of women to make decisions governing their body, make choices about their sexual and reproductive health which implies that a woman should be able to have a satisfying sexual life ability to reproduce and freedom to decide if when and how often to do so. The realization of this agreement in Nigeria is at low ebb but the Northern part of Nigeria is far behind because of some of the statutory, cultural, religious and infrastructural impediments. In this paper, we will look at some of the impediments that have prevented the realization of the reproductive health rights of women in Nigeria narrowing it down to Northern part where the highest level of maternal mortality, sexual abuse and underage marriage recorded¹. Thereafter, Solution and measures are discussed to enable a new line of action in accordance to prevalent global practices.

2. Conceptual Analysis of Sexual and Reproductive Health Right

According to the Guttmacher-Lancet Commission² sexual and reproductive health is a state of physical, emotional, mental and social well-being in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction or infirmity. Sexual and reproductive health encompasses the well-being of an individual generally in everything regarding the pleasure of sexual relation and any other resultant effect like reproducing or not. It covers the wellness and balance of a person in both the physical and psychological aspect of things that has to do with sexuality and reproduction whether in the state of a disease,

¹ Situation of Women and Children in Nigeria: Challenges faced by Women and Children in Nigeria UNICEF <<https://www.unicef.org/nigeria/situation-women-and-children-nigeria> > accessed 13 June 2021.

² Stars, Ann and others (2018). Accelerate progress-Sexual and Reproductive Health and Rights for all: Report of the Guttmacher-Lancet Commission. Lancet, vol.391 < <https://www.thelancet.com/commissions/sexual-and-reproductive-health-and-right> > accessed 13 June 2021.

dysfunction or not. Reproductive health is a state of complete physical, mental and social well-being in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.³

The achievement of sexual and reproductive health relies on the realization of sexual and reproductive rights which includes the right of individuals to bodily integrity, privacy, decide whether and when to be sexually active, choose their sexual partners, decide whether and when to marry, decide whether, when and by what means to have a child or children, and how many children to have, have access over their lifetime to the information, resources, services and support necessary to achieve all of the above, free from discrimination, coercion, exploitation and violence.⁴ This then mean that sexual and reproductive health right are the rights an individual has to enable such an individual's wellbeing in all matters relating to the reproductive system and to its functions and processes. Sexual and reproductive health right is the right of an individual to choose how, when and what happens in his or her sexual and reproductive life, right to choose what happens in his or her body, have a satisfying sex life, choose how, when to reproduce.

Sexual and reproductive health right therefore provides that all individuals especially women, who bear the brunt in reproductive matters have the right to freely decide when to have sexual relationships, whom to do so with, the number, spacing and timing of their children if they choose to reproduce. In addition, women have the right to access the information and means to attain the highest standard of sexual and reproductive health. Every individual has the right to make his or her own choices about his or her sexual and reproductive health, which implies that people should be able to have satisfying and safe sex life, the capability to reproduce and the freedom to decide if, when and how often to do so.⁵ Sexual and reproductive health rights including access to sexual and reproductive health care and information, as well as autonomy in

³ Sexual and Reproductive Health and Rights, Continental Policy Framework African Union Commission < http://au.int/sites/default/file/documents/30921-doc-srhr_english_9.pdf> accessed 13 June 2021.

⁴ Ibid (2)

⁵ United Nations Population Fund, 2014; WHO, 2004)

sexual and reproductive decision-making, they are human rights/ they are universal, indivisible and undeniable.⁶

Most women especially married women in Nigeria and especially in the Northern part of the country are denied these reproductive rights because a woman is seen as a commodity which has been purchased by her husband through a bride price and therefore, the husband only can decide when and the number of children the women should reproduced. This is against the women's fundamental rights and is repulsive to natural justice. If the woman bears the child, she should be able to make decisions as to what happens to her body. A woman has the right to make decisions concerning reproduction free of any form of discrimination, coercion and violence. She also has the right to essential sexual and reproductive health care services, which must meet public health and human rights standards, including the availability, accessibility, acceptability and quality framework of the right to health. According to the WHO sexual reproductive health involves five key components, namely:

- i. Ensuring contraceptive choice and safety and infertility services;
- ii. Improving maternal and new born health;
- iii. Reducing sexually transmitted infections, including HIV, and other reproductive morbidities. Eliminating unsafe abortion and providing post-abortion care; and
- iv. Promoting healthy sexuality, including adolescent health, and reducing harmful practices.

2.1 Reproductive Health Rights and Human Rights

There has been argument as to whether reproductive health rights are human rights or not. sexual and reproductive rights are human rights. They are universal, indivisible, and undeniable rights, which every individual whether men, women or children are entitled to. The ICPD Programme of Action affirms that sexual and reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents.⁷ In Nigeria, the Chapter IV of the 1999

⁶ Sexual and Reproductive rights fact sheet, Amnesty International USA < <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/> accessed 14 June 2021

⁷ Reproductive Rights Are Human Rights, a Handbook for National Human Rights Institutions by United Nations Population Fund (UNFPA) 2014 available at < <https://www.ohchr.org/documents/publications/nhrihandbook.pdf>> accessed 14 June 2021

Constitution which contains the fundamental human rights does not expressly make provision for reproductive and sexual rights. However, reproductive and sexual health right can come under other provisions in the Constitution, like the provision for right to private and family life, right to freedom from discrimination and others. Nigeria being a signatory to many international treaties and conventions is also bound to guarantee its citizens certain sexual and reproductive health rights. Sexual and reproductive rights are grounded in other essential human rights, including the right to health, the right to be free from discrimination, the right to privacy, the right not to be subjected to torture or ill-treatment, the right to determine the number and spacing of one's children, and the right to be free from sexual violence.⁸ Sexual and reproductive health right is an essential component of the universal right to the highest attainable standard of physical and mental health, enshrined in the universal Declaration of Human Rights and in other international human rights conventions, declarations, and Consensus agreements.⁹

3. The State of Reproductive and Sexual Health Rights in Northern Nigeria

There are many provisions of the law that provide for sexual and reproductive health rights of women in Nigeria and in the Northern part of Nigeria. Although no provision of law expressly states those provisions, one can imply them from other provisions. The sad thing is that most of the provisions are mere content of laws that are hardly observed or considered. This especially in the Northern part of Nigeria where women are seen as sex tools and childbearing machines. In this part of the paper we will look at the various laws that makes provisions for reproductive and sexual health rights of women with particular focus on the northern part of Nigeria and examining the current state of the level of implementation and attention given to them as far as the Northern part is concerned. Some of the laws that are examined are not entirely peculiar to the northern part of Nigeria alone but the level of enforcement and practicability of the provisions in the Northern part of the country is what would be examined.

⁸ Sexual and Reproductive Health and Rights: an Essential Element of Universal Health Coverage, Background Document for the Nairobi Summit on ICPD25- Accelerating the Promise, UNFPA 2019 available at < <https://www.nairobisummiticpd.org/programme/sexual-and-reproductive-health-and-rights> > accessed 15 June 2021.

⁹ Ibid (6)

4. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

Health, especially reproductive and sexual health, is one of the most important aspect of human life that the law especially a ground norm of a country is supposed to make provision for and enforce with high level of seriousness. Unfortunately, the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁰ does not make express provision for reproductive health rights as stated earlier. One can only imply reproductive health rights from provisions in the Constitution and content of various conventions and treaties Nigeria is signatory to. Reproductive health rights can be implied from the provisions.

- a. Right to Life: One has to have life before she can enjoy other rights. A woman's right to life entitles her access basic reproductive health care services and necessary information to ensure sexual and reproductive wellbeing. The right to life is protected under section 33 of the Constitution,¹¹ Article 4 of the African Convention on Human and People's Rights ACHPR).¹² States by this right are obligated to provide reproductive health care services and information that will safe guard women during sexual and reproductive processes. The reduction of maternal mortality, prevention and treatment of illnesses such as HIV/AIDS, cancer, and other reproductive and sexual illnesses that promotes women's right to life are elements of sexual and reproductive health rights. The world health organization described Nigeria as a country where nearly 20% of all global maternal deaths happen. Between 2005 and 2015, over 600,000 maternal deaths and about 900.000 maternal near-miss cases occurred in Nigeria.¹³ The North by many surveys is said to have worse performance than the south on maternal mortality and other health outcomes.¹⁴ The Boko Haram insurgency and the

¹⁰ Laws of the Federation of Nigeria (LFN), chap C24, 2004.

¹¹ *ibid*

¹² See also Art. 3 of the Universal Declaration of Human Rights (UDHR), Art. 6 of the International Convention on Civil and Political Rights.

¹³ Nigeria's maternal mortality rate worst in the world Ehanire; Health wise.Punchng.com August, 25 2020 available at < <https://www.premiumtimesng.com/health/health-news/455216-lagos-maternity-centre-records-zero-mortality-in-tree-months.html> > accessed 16 June 2021

¹⁴ Wall LL. Dead Mothers and Injured Wives: the Social Context of Maternal Morbidity and Mortality Among the Hausa of Northern Nigeria. *Stud Fam Plan.* 1998; 23:23 available at < <https://pubmed.ncbi.nlm.nih.gov/9919629/> > accessed 17 June 2021.

insecurity in the North which lead to internally displaced persons, restricted access to health facilities thereby leading to an impediment on the right to life and consequently on women's sexual and reproductive rights of women in the Northern part of Nigeria.

- b. Right to freedom from discrimination: women are entitled to reproductive health rights derived from the right to freedom from discrimination based on gender whether married or not married. The right to freedom from discrimination is contained in Section 42 of the Constitution but women especially in the Northern part of Nigeria are discriminated and viewed as less important than men in sexual, reproductive matters and other areas of life. When health clinics for example deny treatment to women that do not have their husband's consent, the health clinics are violating the non-discrimination clause contained in the Constitution and other conventions.¹⁵ Women are not given certain jobs especially in the private sector because they may get pregnant and bear children; this is a violation of women's reproductive rights as well as a violation on women's right to freedom from discrimination. See also Article 1 and 5 of the Convention on the Elimination of all Forms of Discrimination against Women.
- c. Right to physical Integrity: contained in the Constitution as right to dignity of human persons,¹⁶ is the right of a person to freedom from torture, inhumane and degrading treatment and contains elements of sexual and reproductive rights. This right prohibits all forms of cultural practices like FGM, domestic violence, mental, physical torture and trafficking of women and girls. In the North, barbaric cultural practices like FGM are still practiced till date. At 27 per cent, the prevalence of female genital mutilation/cutting (FGM/C) among girls and women aged 15-49 years is lower than in many countries where the practices is carried out. Women have the right to choose what happens to their body and decide whether to give birth or not.
- d. Right to Marry and found a family: this right is a fundamental as well as a sexual and reproductive right contained in Section 37 of the Constitution. This involves the right of individuals to decide whether or not to marry, have children, when to have them and the space between them. According to Article 16 of the Convention on the Elimination of All Forms of Discrimination

¹⁵ See Art. 2(1), 3 & 26 of the ICCPR; Art. 2 of the ACHPR; Art. 2(2) of the ICESCR
¹⁶ S. 34 of the CFRN 1999(as amended); see also Art. 3 ACHPR, Art. 7 ICCPR

against Women, women have the right to enter into marriage, to freely choose a spouse and enter into marriage only with their free and full consent, to decide freely and responsibly on the number and spacing of their children.¹⁷ This right prohibits underage, forced and coerced marriages practiced in the Northern part of Nigeria. In Northern Nigeria, girls are betrothed into marriage at very tender ages unlike their male counterpart without bearing in mind their immaturity and the risk to their reproductive health. It has been advocated that the minimum age for marriage should be the same for girls and boys, different ages is furthermore a violation of women's right based on gender.¹⁸ The Child Rights Act 2003 was enacted to curb some of this impediments, unfortunately, the Act is still not been adopted by most of the states in the Northern part of Nigeria. At least eleven states in Northern Nigeria are yet to pass the Child Rights law in their states.¹⁹ According to the UNICEF²⁰ Nigeria has the largest number of child brides in Africa: 23 million girls and women were married as children in Nigeria. The subordination of women's roles in marriage to bearing and raising of children is also against their fundamental right and sexual and reproductive rights. Women must be seen as equal to men in marriage and can take up professional jobs and choose other activities to promote their personal development other than tending a home.²¹ This is largely not realizable in the Northern part of Nigeria due to some religious and cultural factors.

- e. Right to Privacy: this right is protected under section 37 of the Constitution and Article 11 of the ACHR. This right involves a woman's sexual and reproductive right to confidentiality of all matters involving her sexuality and reproduction. For example, the right to use of acceptable contraceptive methods, confidentiality of HIV/AIDS status, abortion. This therefore

¹⁷ Ibid (7)

¹⁸ ibid

¹⁹ 11 States in Northern Nigeria Yet to Pass Child Rights Law- UNICEF Official available at < <https://www.premiumtimesng.com/news/more-news/329511-12-states-in-northern-nigeria-yet-to-pass-child-rights-law-unicef-official.html> > accessed on 28 June 2021

²⁰ Situation of Women and Children in Nigeria: Challenges Faced by Women and Children in Nigeria, UNICEF. Available on < <https://www.unicef.org/nigeria/situation-women-and-children-nigeria> > accessed on 16 June 2021

²¹ Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 21, adopted in 1994, paras. 16 17 and 21

means that the obligation of doctors to report cases of women who have undergone abortion is against the women's right to privacy. Although abortion is prohibited in Northern Nigeria under the Penal Code,²² the European Court of Human Rights²³ has held it that certain aspect of reproductive right, such as the right to decide whether to have children and the space between them, fall within the sphere of the right to private and family life.

- f. Right to seek, receive and impart information: this right is a fundamental right as well as a sexual and reproductive right.²⁴ Every woman has the right to seek and receive information that will enable her attain the highest level of wellbeing in her sexual and reproductive health. Information like family planning, use of contraceptives, anti-natal and effect of certain cultural practice like FGM. Sadly, in Northern part of Nigeria most women are denied access to these information because of the lack of exposure to the media, education and certain religious practices like purdah that requires women to stay at home and avoid contact with strangers. Over 80% of women in the North are with little or no media exposure.²⁵ This means most women are not in touch with information that will be of benefit to them. Education is very vital to the realization of sexual and reproductive health right but in the North, girls still suffer more than boys do in terms of education. In the North-East of Nigeria only 41 per cent of eligible girls receive a primary education and 47 per cent in the North-West. ²⁶People in the Northern part of the Nigeria are more exposed to Qur'anic education, which does not include teachings about sexual and reproductive health. Women and girls ought to be exposed to education and information that should enable them to make decisions related to their sexual and reproductive life with full, free and informed consent.²⁷ Ignorance in sexual and reproductive matters is very

²² Section 235 of the Penal Code Code

²³ *Pretty v United Kingdom*, see also *Dudgeon v. The United Kingdom*, Judgment of 22 October 1981, series A No. 45 pp18-19

²⁴ Art. 19 of ICCPR, Art. 13 of ACHR

²⁵ Levels and Determinants of Maternal Mortality in Northern and Southern Nigeria available at < <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s2884-019-2471-8> > accessed 19 June 2021.

²⁶ Situation of Women and Children in Nigeria|UNICEF Nigeria, Challenges faced by Women and Children in Nigeria. available at www.unicef.org accessed 19 June 2021.

²⁷ *Ibid* (7)

detrimental and leads to many calamities for such girls and women.

- g. **Right to Health:** this is the right of women to have access to the highest attainable standard of health care. Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women guarantees women access to appropriate services in connection with pregnancy, confinement and the post-natal care, adequate access to health care facilities, including information, counseling and services in family planning. In the Nigerian Constitution, the provision of health care is enshrined in Chapter II as an obligation of the government.²⁸ The constitution makes provision for adequate medical and health facilities for all persons etc. However, this provision is no longer enforceable by the court as pronounced in the cases of *Okogie v A. G Lagos State* [1981] 2 NCLR 337.²⁹ This in a way account for the dilapidated health care facilities found most times in public hospitals and the lackadaisical attitude of government towards health care. Many women's sexual and reproductive health right has been impeded due inadequacies of the government to provide health care facilities and services that will enhance the realization of sexual and reproductive health rights.

Most authors on the topic of reproductive health rights have argued that these provisions are merely implications, which are in reality not enforceable or have made the implementation of reproductive health rights difficult. Others argue that this implied reasoning come because of the non-justiciability of the Chapter II of the Constitution which contains the fundamental objectives and obligations of the government. However, our view is that, if some components of reproductive health rights can be deciphered from some provisions of the Constitution and other International Conventions and Treaties ratified by Nigeria, then it means that it has been provided for by the constitution and therefore can implemented. What attention should be given to is not the enactment of novel provisions but seeking ways to facilitate the implementation of the reproductive health rights in line with global practices. This view is not with prejudice to the need of clear-cut provision, clearly making

²⁸ Section 17 of the Constitution, Art. 16 ACHR

²⁹ *Adewole v Jakande* [1981] 1NCLR, 262, *Ehimare v Governor of Lagos State* [1981] 2, NCLR, 166

provisions for reproductive health rights, more attention should rather be given to the implementation of the provisions.

5. Nigerian policies on Reproductive health

There are a number of policies made in the Nigerian health sector that make provision for reproductive health rights which are also relevant to the reproductive health rights of women in Northern Nigeria. The National Health Policy and Strategy 1988 and 1998, the National Policy on Population for Development, Unity, Progress and Self Reliance (1988), Maternal and Child Health Policy (1994), National Adolescent Health Policy (1995), National Policy on HIV/AIDS/ STIs Control (1997), National Policy on the Elimination of Female Genital Mutilation (1998), and Breastfeeding Policy (1994), Primary Health Care is another policy upheld by Nigeria as the key to health development in Nigeria in line with the ICPD POA which Nigeria is also part.

Other Policies or enactments on reproductive health in Nigeria in the following:

- a. **Violence against Persons Prohibition Act 2015:** this Act prohibits different violent practices against all Nigerians especially women and girls thereby ensuring reproductive health right of women and girls. The Act prohibits rape, emotional and psychological and verbal violence, harmful traditional practices that impede the reproductive health right of women, girls and any other person, female genital mutilation, forced marriage. These violent practices are not only prohibited but also punishable with years of imprisonment, fine or both.
- b. **The Labour Act**³⁰: section 54 of the Labour act also has provision for the reproductive health right of women. The rights of working class women to antenatal and post-natal care are reproductive rights. However, due to the high rate of unemployment and the lack of adherence of some of these provisions by some employers especially women employed by private establishments who threaten to sack pregnant women from work, many women are inclined to defer most of this rights in order to keep their jobs which is an infringement on their rights.

³⁰ Cap. L1 Laws of the Federation of Nigeria, 2004, See also the provisions of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003

6. Impediments to The Realization of Sexual and Reproductive Health Rights in Northern Nigeria

So many factors have prevented the realization of the sexual and reproductive health rights of women in Nigeria and especially women in the Northern part. This factors range from social, economic, religious, ethnic, geographic and statutory factors.

- a. **Statutory impediments:** Under statutory impediments, we shall be considering some provisions contained in some laws that has impeded reproductive health rights of women in the North. We shall also look at other provisions that are not provided for or non-justiciable that has also contributed to the impediment of reproductive health rights of women in the Northern Nigeria.
- b. **Prohibition of Abortion:** One of the components of sexual and reproductive health rights as outlined by the WHO is the right to decide whether, when and by what means to have a child or children and a safe and effective abortion services and care.³¹ Unfortunately, that cannot be achieved in Nigeria as some of the extant laws in Nigeria proscribe abortion. The Penal code³² the law that prescribes crimes and punishment in the Northern part of Nigeria in section 235 provides that:

Whoever before the birth of a child does an act with the intention of act thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or causes it to die after its birth, shall, if the act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both

This provision implies that the only instance where an individual can abort a child is only when the abortion is carried out to save the life of the mother any other instance abortion is carried out is a crime and is punishable with a term of imprisonment or a fine or both. This means that women in the Northern part of Nigeria cannot carry out an abortion when they do not want to have a child. This is against a woman's sexual and reproductive health right, as a woman according to the elements of sexual and reproductive health right should have access to abortion, post abortion care so as to be able exercise her

³¹ Ibid (2)

³² Cap. C38 Laws of the Federation of Nigeria, 2004

right to choose when to have a child or not. Provisions like the section stated above prevent the realization of some of the universal rights of women and the Sustainable Development Goals (SDGs) that has to do with universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the ICPD.³³ Several countries have move to give woman the right to abortion, as the right to private life is taken to incorporate the right to respect for a woman's decision both to become and not to become a parent as held by the Grand Chamber of the European Court of Justice in the case of *Evans v the United Kingdom*.³⁴

- c. **Lack of implementation of provision of some statutes:** The lack of implementation of the provision of some statutes like the Child Rights Act 2003 has contributed to the impediment of women's sexual and reproductive health right in the North. The Child Rights Act 2003 was enacted to prevent certain abuses against children like the child marriages practiced predominately in the Northern part of Nigeria and a host of other things. Unfortunately, the Act is still not being adopted by most of the states in the Northern part of Nigeria. At least eleven states in Northern Nigeria are yet to pass the Child Rights law in their states.³⁵ This accounts for the large number of violence against girls especially. Child marriages, which is commonplace in the North, promotes early childbearing, exposes young women to birth complications due to the immature nature of their bodies and prevents the education of girls.³⁶ When girls are married at tender ages it creates a huge gap of age differences between the husband and wife. This difference in age contributes to a woman's powerlessness with respect to sexuality and reproductive health decisions and situation of unequal power.³⁷ This practice is an impediment on the realization of sexual and reproductive health right of girls and women in the North who are given into marriages at early stages of their lives thereby

³³ Ibid (8)

³⁴ 6339/05. (10 April 2007), para. 71

³⁵ 11 States in Northern Nigeira Yet to Pass Child Rights Law- UNICEF Official, by Nike Adebowale, PremiumTimesng.com May 11, 2019 accessed on 28/06/2021 at

³⁶ Levels and Determinants of Maternal Mortality in Northern and Southern Nigeria, available at < <https://bmcpregnancychildbirth.biomedcentral.com/articles/> .>

³⁷ Hadiza Iza Bazza, Domestic Violence and Women's Rights in Nigeria, *Societies Without Borders* 4(2):175-192. Available at < <https://scholarlycommons.law.case.edu/swb/vol4/iss2/6> >

endangering their lives with unpleasant sexual experiences and complicated pregnancies. Marriage and childbearing are connected especially in Northern Nigeria. Consequently, the right to decide freely the number, spacing and timing of children also includes the right not to be married before reaching adulthood and the right not to be forced to marry.³⁸ The right not to be given into marriage at an immature stage is part of the sexual and reproductive health right that the implementation of the Child Rights Act would have promoted if being fully adopted and implemented by all states in Northern Nigeria.

Another not being implemented in the Northern that has impeded the realization of sexual and reproductive health right is the Violence against Persons (Prohibition) Act, 2015(VAPP Act). The Act prohibits all forms of violence against persons including physical, emotional and psychological forms of violence. This includes unlawful practices like forced marriage, domestic violence, female genital mutilation, and rape, which are against sexual and reproductive health rights of women. However, the Act is restricted in its application to the Federal Capital Territory Abuja even though it is the first instrument to prohibit some of the harmful practices that impede reproductive rights like female genital mutilation.³⁹ This has in a way opened the door for a lot of laxities and lack of concerns in the fight against violence against women there by limiting sexual and reproductive rights of women in Northern Nigeria. Nigeria has signed and ratified the bill of human rights for women (Convention for the Elimination of Discrimination Against Women (CEDAW) and made a little more effort to enact the VAPP Act but prevailing circumstances especially in the Northern part of Nigeria has made it clear that women's right is not given the regard that is needed.

The non-justiciability of Chapter II of the Constitution: The non justiciability of Chapter II of the Constitution is another impediment to the realization of sexual and reproductive health right of women in Northern Nigeria. This is because the chapter II contains the fundamental objectives and obligations of the government.⁴⁰ One of such obligations is the provision of health care services. The

³⁸ Reproductive Rights are Human Rights, a Handbook for National Human Rights Institutions by United Nations Population Fund (UNFPA) 2014 p. 23

³⁹ Anthony Nwazuo, 'A Critical Appraisal of the Violence Against Persons (Prohibition) Act, 2015' *Journal of Law, Policy and Globalisation* Vol. 47, 2016

⁴⁰ Section 17 of the Constitution

provision of health care services here also includes reproductive health care services, which is one of the core elements of sexual and reproductive health rights. But since this provision cannot be litigated upon it then means that women in the North cannot hold the government accountable to provide reproductive health care services for them. This may go a long way to explain the attitude of government towards providing reproductive health care services especially in the rural areas where there are infrastructural inadequacies. The inability of the government in this regard has led to the death of many pregnant women in the Northern part of Nigeria. Nigeria is among the top six countries in the world that contribute to more than 50% of all global maternal deaths.⁴¹ In 2008, Nigeria had the second largest recorded number of maternal deaths.⁴² The North has worse performance than the south on maternal mortality and other health outcomes.⁴³ In the South-West, MMR was 166 maternal death per 100,000 live births compared to 1549 maternal deaths per 100,000 live births in the North-East⁴⁴ the reason for the prevalence of MMR in the Northern part can be attributed to the non-availability of health care facilities and reproductive services like ante-natal, post-natal, abortion services, contraceptives, the prevention, detection and treatment of reproductive cancers etc. Since the government whose fundamental objective to provide these service cannot be held accountable to provide them, what becomes of women who need these services? Most times the only available options are the services provided by private hospitals that are most times very expensive and unaffordable by most women very dependent on their husbands or other family members.

- d. **No statutory provision and measure providing for sexual and reproductive health rights:** The absence of a particular provision for sexual and reproductive health right is another impediment argued by many authors. The absence of a clear-cut provision for sexual and reproductive health right of women particularly in a way shows the government's laxity or lack of concern to the reproductive rights of it citizens especially the women who bear more in reproductive matters. One is only left

⁴¹ Ibid (25)

⁴² WHO. Trends in Maternal Mortality: 1990 to 2008. Geneva: Estimate Developed by WHO, UNICEF, UNFPA and World Bank; 2010

⁴³ Ibid (14)

⁴⁴ Galadanci Idris and Sadauki Yakasai, 'Programs and Policies for Reducing Maternal Mortality in Kano State Nigeria: a Review' *African Journal of Reproductive Health*. 2010; 14:21-6 11, 15

to imply sexual and reproductive rights from other existing provisions that are not the best. There is a need to have an existing legislation making provision for sexual and reproductive health right and the machinery for its implementation provided for.

- e. **The attitude of women towards safeguarding their rights:** This is another impediment to sexual and reproductive rights. One cannot cry more than the bereaved. Most women are less concerned about what happens to them and more less concerned about what happens in their society. This attitude has impeded a lot of woman from knowing that there are certain rights like reproductive health rights they are entitled to that is inalienable. The lack of exposure of most women has also prevented them from knowing that they are several means of birth control, and means of seeking redress when employers or others trample upon certain rights. This ignorance and attitude is passed from generation to generation and the circle of unfortunate events keeps resurfacing. For there to be a move in the realization of sexual and reproductive health right, women must move from their comfort zone gain exposure and be enlighten about certain things concerning their rights and what happens in and around their society.
- f. **Poverty:** Poverty and financial incapacity is another factor that impedes the realization of sexual and reproductive rights in the Northern part of Nigeria. Most of the women in the Northern part of Nigeria are poor because they are not gainfully employed and poorly engaged economically. This is because most of them are not educated. Most are not allowed to take up any means of income because of religious practices that require a woman to stay at home. This often leads to total dependence on the men who now have more power when it comes to decision making in other aspect including sexual and reproductive decisions. In such a situation a woman who is dependent on her husband is less likely to participate in decision making about when, how and how many children to have, the use of birth control techniques and access to other reproductive service. A woman who is financially autonomous has more say about what happens to her body and what is should not happen.
- g. **Traditional and Customary practices in the North:** There are many traditional practices that are carried out in the Northern part of Nigeria that has contributed to the impediment of sexual

and reproductive rights of women in that part of Nigeria. These practices rang from early marriages of girls, female genital mutilation, discrimination of women based on their gender, domestic violence, polygamy and a host of other practices fueled by culture and tradition. An average Nigerian perceives a woman as a sex and childbearing machine talk less of the Northern part where the level of exposure of men is low because of the rate of illiteracy. The patriarchal nature of the Nigerian society is another factor that fuels the impediments of women's sexual and reproductive rights. Women are believed to exist solely for the benefit of men.⁴⁵ A study carried out shows that domestic violence is a practice that is accepted by men as normal in order to keep the women under control.⁴⁶ Women are mostly discriminated and involved less in decision-making. Most times this also extend to the area of their sexual and reproductive rights where the men make all the decision and the women just stay at home bearing children even when it is detrimental to their health. Due to some of these traditional practices, women in the north are not exposed to so many platforms where they can access information that will safeguard their sexual and reproductive rights.

- h. **Religious Factor:** Muslims dominate the Northern part of Nigeria. Some of the Islamic beliefs and practice inhibits the realization of the sexual and reproductive rights of women. Islam is a patriarchal religion in which women are subject to men. Most times a woman cannot make choices on her own without the approval of the male folk in her life. That is why practices like forced marriages; child marriages are prevalent in the northern part of Nigeria. A woman has the right to choose who she wants to get married to, this is a universal right that is inalienable. The betrothal of girls at a very tender age is against the reproductive rights of a woman. The Islamic religion also abrogates abortion and the use of contraceptives and other means of child birth control. Women who use contraceptives or practice

⁴⁵ Lilian Akhirome-Omonfuegbe, 'A Critical Appraisal of Women's Reproductive Rights in Nigeria' *Journal of Sustainable Development Law and Policy Afe Babolola University Vol10 issue 2, 2019.*

⁴⁶ Angye, et al. 2004, 'Baseline survey on the prevalence of domestic violence in the Walimayo ward of Makurdi Local Government Area and Mbawa ward of Guma Local Government Area of Benue state,[research conducted by Access to Justice in Nigeria in conjunction with Centre for Gender Studies. Benue State University, Makurdi, Nigeira.

other methods of child birth control are mostly treated as sinners and avoided. The stigma attributed to abortion is another grave impediment on sexual and reproductive health rights of women in the Northern part of Nigeria.

Islam also encourages polygamy. A man is allowed to have up to four wives and most times because of the rate of poverty, such a man may not be able to cater for all the wives especially when they become pregnant and are supposed to access certain reproductive services like antenatal care. This endangers the life of so many women who later suffer complications and other unfortunate illnesses associated with reproduction. From the backdrop of the factors discussed above, Muslim women in the North are more prone to maternal mortality and other violent practices that impede reproductive rights.

- i. **Infrastructural impediments:** One of the elements of reproductive health rights is that women should have access over their lifetime to the information, resources, services and support necessary to achieve all of the sexual and reproductive health right guaranteed.⁴⁷ It is the function of the state to make all the information, resources and services to achieve reproductive health right available to people by building hospitals, sensitization, provision of drugs, access to health care services and facilities and so many others. In Nigeria especially some part of the North, health care facilities are greatly lacking. The few that are available are either dilapidated, far from the inhabitant or short of medical personals. According to the WHO, essential sexual and reproductive health services must meet public health and human rights standards, including the availability, accessibility, acceptability and quality framework of the right to health.⁴⁸ Due to the infrastructural degradation of most part of Nigeria, women are not able to access reproductive health services that meet the standard stated above and this factor has

⁴⁷ Stars, Ann and others (2018). Accelerate progress-Sexual and Reproductive Health and Rights for all: Report of the Guttmacher-Lancet Commission. Lancet, vol.391 < <https://www.thelancet.com/commissions/sexual-and-reproductive-health-and-right> > accessed 13 June 2021.

⁴⁸ Reproductive Rights are Human Rights, a Handbook for National Human Rights Institutions by United Nations Population Fund (UNFPA) 2014 available at < <https://www.ohchr.org/documents/publications/nhrihandbook.pdf> > accessed 14 June 2021

gone a long way to inhibit the realization of sexual and reproductive health right of women in the North.

Measures to Be Taken to Ensure Reproductive Health Rights for Women in Northern Nigeria

- a. **Enactment of a relevant provision for reproductive and sexual rights:** there is a need for a clear-cut provision enacted to make provision for sexual and reproductive health right of women. This provision must also go further to provide for proactive ways to ensure the implementation of the rights provided for. There is a need for enactment of specific reproductive health laws in Nigeria with comprehensive provisions accompanied by strict penalties for default.⁴⁹ All Northern states in Nigeria should take steps to adopt some of the statute like the Child Right Act and the VAPP Act that has made provision preventing some of the impediments to sexual and reproductive health right. For universal access to SRHR to become a reality, national policies and implementation plans, need to take a comprehensive approach to SRHR.⁵⁰ The provision of Chapter II of the Constitution should be come justiciable so that the government can be made accountable to provide reproductive health care services for women in the North and all parts of Nigeria. The provision prohibiting abortion should be amended to cover other instances where abortion can be allowed in addition to saving the mother's life. This will reduce the rate of unsafe abortion and promote sexual and reproductive health rights.
- b. **Education of Men, women and girls:** Most of the issues faced in the society especially in the Northern part of Nigeria today can be attributed to illiteracy and lack of proper orientation. The deliberated and target exposition of men, women and girls by means of sensitization and education to the knowledge of the existence of reproductive rights and means to ensure the attainment of those rights will go a long way to contribute to the realization of sexual and reproductive health right. Men should be educated because in the North, men play a great role in the lives of their wives, daughters and sisters. If they are sensitized

⁴⁹ Lilian Akhirome-Omonfuegbe, 'A Critical Appraisal of Women's Reproductive Rights in Nigeria', *Journal of Sustainable Development Law and Policy Afe Babolola University Vol 10 issue 2, 2019. P279*

⁵⁰ Ibid (47)

to know that allowing their wives or daughters to enjoy certain reproductive health rights and the accompanying advantages, then it will go a long way to safe guard the lives of their women and bring about more development to their society. Women on the other hand, need the exposure to these sexual and reproductive health rights to avoid decisions that will be detrimental to their health and are able to access help when needed. When women have access to good information and education they are in a position to make sensible choices about marriage, the number of children to have and what happen to their body. Such individual decisions can add up to better lives for women and their families and more robust job market leading ultimately to a stronger national economy.⁵¹ Education of men and women about reproductive rights will also reduce the of violence perpetuated against women and girls in the North as women and men will learn the rights of each other and the boundaries that govern such right without the influence of traditional and religious factors. Children especially girls, should be given sexual education from the elementary stages of their education so that as they transcend to adulthood they know some of their sexual and reproductive rights and how to enforce them. 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.⁵²

- c. **Engaging religious leaders and organizations in the exposition of sexual and reproductive rights:** Religious and traditional leaders will great influence in the Northern part of Nigeria. This is because the people see them as mouthpiece and a link between them and God. Engaging religious leaders and organizations is critical to the promotion of reproductive rights as stated by the UNFPA.⁵³ Since religion and culture are obstacles to the realization of certain aspects of sexual and reproductive rights, it will be also vital to involve religious and traditional leaders in the fight for realization of sexual and

⁵¹ Oluwakemi Amudat Ayanleye, 'Women and Reproductive Health Rights in Nigeria'. Available at < <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-dev.html> >

⁵² Ibid

⁵³ Culture Matters: Lessen from a Legacy of Engaging Faith-Based Organisations", UNFPA, 2008, available at < www.unfpa.org/publication/hom > accessed on the 15/06/202

reproductive health rights for women. The use of indigenous languages in campaigns to buttress the importance of reproductive rights to women will also enhance understanding and in a way garner public acceptance. There is proviso to the use of religious and cultural leaders, which is the fact that working with religious leaders must not undermine the work of NHRIs in promoting gender equality, respecting the universal human rights of women and girls and promoting reproductive rights in general.

- d. **Improvement in infrastructure:** Government needs to increase its effort to increase the availability of health and medical facilities especially in the rural areas in the North. Therefore, those women will have access to sexual and reproductive health care services like contraceptives, facilities needed for the prevention, detection and treatment of sexually transmitted infections (STIs), including HIV infection, and other reproductive tract infections and illnesses.

Soliciting and harnessing more support from world organizations: getting support from world organizations like the WHO, UNICEF will contribute to improve the reproductive health right of women in the Northern part of Nigeria. These organizations have been known for collaborating with non-governmental organizations to achieve what government has not been able to achieve. The availability of sexual and reproductive health services like contraceptives, prevention, dictation of STIs and health care facilities can be made easy by these world organizations. Empowerment of women and girls can also be carried out by these organizations who have in their disposition an avalanche of experts and professionals. Measures should also be taken so that the help especially monetary funds received from these organizations are not embezzled by Nigerians for their selfish gain but channeled properly to the right beneficiaries.

Conclusion

The well-being of individual in matters of sexuality and reproduction is very vital to human existence that is why world organizations like the ICPD and others have moved to ensure universal access to sexual and reproductive health care and rights to individual all over the world. There are a lot of conventions and treaties that obligates state signatories to take measures to ensure the

realization of sexual and reproductive health rights to citizens in their state. Nigeria is a signatory to so many of those conventions. However, the realization of sexual and reproductive health right is still very insignificant in Nigeria especially in the Northern part of Nigeria. Some of the reasons that has impeded the realization of sexual and reproductive health rights in Northern Nigeria include the presence of some statutory provisions like the prohibition of abortion in the Penal Code and the non-implementation of some statutory provisions. Other factors impeding reproductive health rights including religious, cultural and infrastructural factors. To curb these impeding factors men, women and girls need to be more exposed to sexual and reproductive education rather than Islamic education alone. The attitude of women towards their welfare and growth has to change. Religious and cultural leaders need to also be involved in the move for the realization of sexual and reproductive rights for women and girls. Sexual and reproductive health rights are vital to the development and growth of a society, apart from population, the welfare of women who bear more in reproductive matters is very important to a nation's sense of seriousness.