

**APPRAISAL OF THE LEGAL FRAMEWORK OF THE
SEXUAL AND REPRODUCTIVE HEALTH RIGHTS OF
WOMEN IN NIGERIA**

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Abstract

Sexual and Reproductive Health Rights (SRHR) of women is the state of the physiological wellness of the female organs for sexual intercourse, conception and childbirth which are naturally endowed and could be legally protected. However, there are perennial bottlenecks to effective legal regimes in Nigeria to spearhead this. Sequel to these cankerworms, the aim of this article and the major objective, was to appraise the legal framework of the sexual and reproductive health rights of women in Nigeria. The research methodology was doctrinal approach, using expository and analytical research design. It was observed that some Nigerian laws are inimical to women's reproductive rights; also most illnesses among women of 15 to 40years old in Nigeria are related to pregnancy, abortion, childbirth, reproductive tract infections, HIV/AIDS, domestic sexual violence and other culturally associated issues. The main sources of data collection were various legal literatures, both from the physical library and the e-library. Therefore, it was recommended among others that Nigerian legislators and the judiciary should adopt the sound principles and related provisions in foreign jurisdictions to advance women's sexual and reproductive rights. Finally, this article

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was made to be significant to all stakeholders in human right and feminism.

Keywords: reproductive right, sexual right, human right, contraceptive, abortion, infectious diseases.

1. Introduction

The World Health Organization (WHO) defines sexual health as a state of physical, emotional, mental and social wellbeing in relation to sexuality. It is not just the absence of disease, dysfunction or infirmity. Sexual Health requires a positive and respectful approach to sexuality and sexual relations, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.¹For sexual health to be attained and maintained the sexual rights of all persons must be respected, protected and fulfilled.² Most adults are sexually active and good sexual health matters to individuals and communities. Sexual health needs vary according to factors such as age, gender, sexual orientation and ethnicity.

However there are certain core needs common to everyone, including high quality information and education enabling people to make informed responsible decisions and access to high-quality services, treatment and interventions.³ This article examines women's rights to sexual and reproductive health as recognized by the ICPD and

¹'Sexual and Reproductive Health and HIV: Applying All Our' *Online Database*<<https://www.gov.uk.2022sexualandreproductivepublication>> accessed on 15th April, 2022.

²*Ibid.*

³*Ibid.*

expressed in the Women's Convention and other international human rights documents. Rights relating to reproductive and sexual health include the rights to life, liberty, and the security of the person; to health care and information; and to nondiscrimination in the allocation of resources to health services and in their availability and accessibility. Of central importance are the rights to autonomy and privacy in making sexual and reproductive decisions, as well as the responsibility of health care providers to ensure informed consent and confidentiality in relation to health services. The article presents country examples from States parties' periodic reports under the Women's Convention that reflect systemic violations of the above rights in varied forms.

Sexual and reproductive health rights are crucial entitlements relating to women and girls' sexual and reproductive health⁴ These rights address the prevention of sexually transmitted diseases, including HIV, gender-based violence, maternal mortality and provision of essential health services⁵ Since the International Conference on Population and Development (1994) and the Beijing Platform for Action (1995), national SRHR policies have been demonstrated to

⁴UNFPA, 'Sexual and Reproductive Health' *Online Database*<<http://www.unfpa.org/sexual-reproductive-health.unfpa.2020>>accesses on 13th April, 2022.

⁵UNFPA, *Sexual and Reproductive Health and Rights: An Essential Elements of Universal Health Coverage* (UNFPA Publication, 2019); M Temmerman, R Khosla and L Say, *Sexual and Reproductive health and Rights: A Global Development, Health and Human Rights Priority* (Lancet, 2014) 384; C Garcia Moreno *et al*, 'WHO Multi- Country Study on Women's Health and Domestic Violence Against Women' *Report in the first Results* (World Health Organization, 2005).

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support societies and contribute to a country's wealth⁶. The importance of SRHR is further underscored by section 5.6 of Sustainable Development Goal 5, dedicated to achieving SRHR for all.⁷

Every woman is entitled to good sexual and reproductive health. This involves being free from sexually transmitted infections, gender-based violence and maternal mortality, and able to access essential health services. In low and middle-income countries, adolescents comprise a fifth of the population, yet their sexual and reproductive health needs are often overlooked. Adolescent girls and young women are more likely to experience gender-based violence, sexually transmitted infections and poor access to sexual and reproductive health services. Those living in slums have even worse outcomes, but little evidence exists regarding the opportunities and barriers to improving sexual and reproductive health among adolescent girls and young women in a slum setting. Further discoveries have revealed that one third of the illness among women between the ages of fifteen to forty four in Nigeria and most developing countries are related to pregnancy, childbirth, abortion, reproductive tract infections including HIV/AIDS and gender based violence and others which are issues of sexual and reproductive health.

⁶ UNFPA (n5); M Temmerman (n5); F Bustreo *et al*, 'Women's and Children's Health: Evidence of Impact of Human Rights' <<http://apps.who.int/iris/bitstream/geneva.2013/10665/84203/1/9789241505>> accessed on 13th April, 2022; A M Starrs *et al*, 'Accelerate Progress-Sexual and Reproductive Health and Rights for all' *Report of the Guttmacher- Lancet Commission* (Lancet, 2018) 391.

⁷ 'United Nations: Transforming Our World' *The 2030 Agenda for Sustainable Development* (UN, 2015).

Based on these backdrops, this article shall be committed to appraising the legal framework of the sexual and reproductive health rights of women in Nigeria. Its objectives shall be to examine the fulcrum of the legal framework of the sexual and reproductive health rights of women in Nigeria, appraise the challenges, and make some recommendations as the way-forward.

2. Fulcrum of the Legal Framework of the Sexual and Reproductive Health Rights of Women in Nigeria

Strictly assessing, apart from the legislation referring to general rights of children⁸ and partners in marriage,⁹ there is no specific legislation on sexual and reproductive health rights of women in Nigeria. However, while that is in view, it is expedient to examine what informs the basis and pivot to such legal framework.

2.1 Human Rights Activism

The use of human rights to advance women reproductive health and self-determination first appeared in the International Conference on Population and Development (ICPD) held at Cairo in 1994, and the fourth World Conference on Women held in Beijing China in 1995. The conferences focused on empowering women with their families and communities and protecting their human rights especially those related to reproductive health while focusing on eliminating gender inequalities and harmful social factors that impede reproductive rights.¹⁰

⁸ Child's Rights Act 2003

⁹ *Marriage Act*, Cap. M6, LFN, 2004, and *Matrimonial Causes Act*

¹⁰ N Aniebue, *Reproductive Health Rights of Nigerian Women* (Institute for Development, 2008) 4.

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2.2 Woman Empowerment

The empowerment of women has been recognized through many international, regional and national conferences as a basic human right and also imperative for national development, population stabilization global wellbeing. Empowering of women was a central policy goal of both the International Conference on Population and Development (ICPD) in Cairo in 1994 and the fourth World Conference on Women (FWCW) held in Beijing China in 1995. Both Conferences recognized and re-affirmed that reproductive health is an indispensable part of women empowerment.

The importance of including the issue of women empowerment as an aspect of all programs and policies relating to women's sexual and reproductive health rights cannot be over emphasized. Empowered women, that is, women with equal access to education, health care, financial options, employment opportunity, and legal resources, are women able to make the best choices for themselves, their families and their communities, without being limited by discrimination, imbalanced power relations or institutionalized inequalities.¹¹ Good sexual and reproductive health is a state of complete physical, mental and social well-being in all matters relating to the reproductive system.

It implies that people are able to have a satisfying and safe sex life, the capability to reproduce, and the freedom to decide if, when, and how often to do so. To maintain one's sexual and reproductive health,

¹¹UN/ECOSOC, 'The Right to Reproductive and Sexual Health' *Online Database* <<http://www.un.org/ecosoc.dev/gen/info>> accessed on 14th April, 2022.

people need access to accurate information and the safe, effective, affordable and acceptable contraception method of their choice. They must be informed and empowered to protect themselves from sexually transmitted infections. And when they decide to have children, women must have access to skilled health care providers and services that can help them have a fit pregnancy, safe birth and healthy baby. Every individual has the right to make their own choices about their sexual and reproductive health. UNFPA, together with a wide range of partners, works toward the goal of universal access to sexual and reproductive health and rights including family planning.¹²

Women's sexual and reproductive health is related to multiple human rights to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have both clearly indicated that women's right to health includes their sexual and reproductive health. This means that States have obligations to respect, protect and fulfill rights related to women's sexual and reproductive health. The special rapport on the right to health maintains that women are entitled to reproductive health care services and good facilities that are available in adequate numbers, accessible physically and economically without discrimination and of good quality.¹³

¹²Sexual and Reproductive Health: United Nations Population Fund' *Online Database*<<https://www.unfpa.orgsexual-repr.>> accessed on 15th April, 2022.

¹³United Nations Human Rights Office of the High Commissioner, Sexual and Reproductive Health and Rights; OHCHR and Women's Human Rights and Gender Equality' *Online Database*<[https://www.ochchr.org>node>sex...](https://www.ochchr.org/node>sex...>)> accessed on 15th April, 2022.

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The WHO considered reproductive health services, including care during pregnancy and child birth as an essential health service and that women's choices and rights to sexual and reproductive health care should be respected including access to contraception and safe abortion to full extent of the law.¹⁴ They also considered service delivery approaches, antenatal care, labour and delivery, postnatal care, contraceptive service, safe abortion, management of rape survivors and assisted reproductive technology services.¹⁵

2.3 Gender Equality

Gender equality is the view that men and women should receive equal treatment and should not be discriminated against based on sex.¹⁶ This is the objective of United Nations Universal Declaration of Human Rights, which seeks to create equality in law and in social situations, such as in democratic activities and securing equal pay for equal work. World bodies have defined gender equality in terms of human rights, especially women's rights and economic development.¹⁷ Gender equality contributes significantly to improving the wellbeing of all countries, communities and globally hence the Beijing Plat For Action, postulates that "equality between male and female is a matter of human rights and a condition for social justice and is also a

¹⁴Guidelines and Best Practices Recommendations on Reproductive' Online Database <<https://bnccpublichealth.biomedcentral.com>>accessed on 15th April, 2022.

¹⁵*Ibid.*

¹⁶United Nations, *Report of the Economics and Social Council for 1997(A/53/3*, 18th September, 1997) 28.

¹⁷ World Bank, *Gender Equality as Smart Economics: A World Bank Group Action Plan* (World Bank Publication of Fiscal Year 2007).

necessary and fundamental prerequisite for equality, development and peace.”¹⁸

A transformed partnership based on equality between women and men is a condition for people centered sustainable development. A sustained and long-term commitment is essential, so that women and men can work together for themselves for their children and for society. Equality for women in their reproductive and sexual lives improves the conditions of men and children as well. When these human rights are respected in society, the standard of living is higher, birth rate are lower and health care better.¹⁹

2.4 Family Planning

The concept of family planning has been defined as the regulation of the number of children couples should bear as well as appropriate spacing, timing and the assurance that each child shall be wanted and prepared for.²⁰ Families can avert death by enabling young, sexually active women to delay their first pregnancy until they are older and more physically and emotionally matured. Family planning will help to reduce abortion and maternal deaths, infant death and rapid rise in unwanted births. The potential reward from universal access to family planning are numerous or indisputable. Research²¹ shows that family planning can empower a woman and transform her life through higher income and educational attainment, better health and greater involvement in her community and in her own household’s affair.

¹⁸*Ibid.*

¹⁹J Mertuset al, *Local Action: Global Change* (UNIFEM Publishers, 1999) 60.

²⁰I Chigba, *Menstral Disorder* (Heinemann Publishers, 1990) 17.

²¹*Ibid.*

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Family planning is clearly one of the most critically important investments that Nigeria can make in health, in women's rights and in the trajectories of young people.

2.5 Judicial Activism

Judicial activism is constructive in theory. It assumes that legislation has a purpose and that a constitution is a social charter of a dynamic society. In interpreting the constitution it seeks to ascertain these underlying principles and to give effect to them.²² Justice P.N Bhagwati, Chief Justice of India, who during his tenure led the crusade for the upsurge of judicial activism in India, observed that greatness on the bench lies on creativity and is only through bold and imaginative interpretation that the law can be molded and developed²³ Despite its potential for far-reaching impact, judicial activism has yet to be systematically used to better protect and ensure reproductive and sexual rights of women.

2.6 Constitutional Protections

The Constitution provides for the protection of the following; right to health,²⁴ right to life,²⁵ right to dignity and right to freedom from torture, cruel or inhuman or degrading treatment,²⁶ right to personal liberty,²⁷ right to privacy,²⁸ right to receive and impact

²²C Oputa, *Our Temple of Justice* (Friends Law Publisher Ltd, 1993) 38.

²³PN Bhagwati, 'The Judge of Law Maker' *Key Note Address* (Fourth International Appellate Conference, Kuaia Lumpur, 1987) 4.

²⁴*Constitution of Federal Republic of Nigeria*, 1999 (as altered), section 17.

²⁵*Ibid*, section 33.

²⁶*Ibid*, section 34.

²⁷*Ibid*, section 35.

²⁸*Ibid*, section 37.

information,²⁹ right to freedom of association,³⁰ right to freedom of movement,³¹ right to non-discrimination on ground of sex.³² These constitutional provisions empowers women in making reproductive health decisions and helps create the economic and social conditions conducive to good sexual and reproductive health.

3. Appraising the Challenges to the Legal Framework of the Sexual and Reproductive Health Rights of Women in Nigeria

3.1 Religious Extremism

Religious extremism and fundamentalism pose serious challenges to the advancement of women sexual and reproductive rights.³³ Many Nigeria women live in parts of the country where officials rely on interpretations of dominant religion to justify infringements and violation of these rights. Although there is considerable debate in most religions about key issues of morality, including sexual and reproductive rights, this debate is frequently silenced by religious extremists. For instance, some Christian denominations oppose the use of contraceptives and family planning. Islamic law encourages Muslims to marry more than one wife. Most of the discriminatory and traditional practices are religious in orientation. All these practices and beliefs constitutes threats and challenges to the sexual and

²⁹*Ibid*, section 39.

³⁰*Ibid*, section 40.

³¹*Ibid*, section 41.

³²*Ibid*, section 42.

³³‘International Interfaith Network for Development and Reproductive Health: A Commitment to Women Rights and Reproductive Health’ *Online Database*<<http://www.un.ngls.org/unsummit-interfaith>>accessed on 15th April, 2022.

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reproductive rights of women, as rights to making choices and decision on issue of sex and reproduction are seriously eluded.

3.2 Economic Barrier

Many women are dependent on men financially and materially and this has made it difficult for this women to have freedom to decide when, with whom and in what circumstances they have sex, as denial of sex may lead to financial and material deprivation. Advocacy for the rights to reproductive health, takes place within the context of dire poverty. Paucity of economic means culminates to high level of illiteracy and low social status, resulting in most women having inadequate knowledge about human sexuality and inappropriate or poor quality reproductive health information and services. Nigeria is a patrilineal society and that is greatly emphasized in the pattern of ownership and inheritance of property which is skewed against women.

In some areas In Nigeria, especially among the Igbos, female cannot inherit anything from their deceased father's estate as was held in *Uboma v Ibeneme*.³⁴The law court have always insisted that a Nigerian woman in most areas outside the Islamic customs, can never inherit from her late husband's estate under the various customs as she herself is a property to be inherited by her deceased husband male relatives as part of her husband's estate.³⁵ In *Nezianya v Okagbue*³⁶ the court held that a married woman after the death of her husband can

³⁴*Uboma v Ibeneme* (1967) ENLR P 251.

³⁵ OVC Ikpeze, *Gender Dynamics of the Inheritance Rights in Nigeria: Need for Women Empowerment* (Folmech Printing and Publishing Ltd, 2009) 44.

³⁶*Nezianya v Okagbue* (1963) 1ALL NLR 352.

never under native law and custom be a stranger to her deceased husband's property, and she could not at any time acquire a distant possession of her own to oust the family's right of ownership over the property. It is apt to state that these discriminatory laws and practices regarding inheritance to property rights pose a great challenge and inheritance to women in their bid to advance and enforce their sexual and reproductive rights.

This is so because a nexus exist between inheritance and succession with empowerment and development as ownership of property equates to success, achievement and empowerment. It also guarantees confidence, security and development.³⁷ Similarly and of grave concern is the limited access to education and training of women. There is a wide gap between men and women in the educational sector. Nothing tells the story better than the illiteracy rate in the country. According to statistics, illiteracy rate for men is 41 per cent, while that of women is 64 per cent. Since education is the vehicle for social and career mobility, women lowly status in education accounts a great deal for their poverty and resultant dependence on men. Denial of access to cash and credit, limited access to employment in formal and informal sectors of the economy constitutes a serious drawback to women sexual and reproductive rights advancement and enjoyment.

The right of a woman to work and without discrimination is recognized and guaranteed in many national and international instruments. Section 42 of the Constitution³⁸ prohibits discrimination

³⁷Ikpeze (n 35).

³⁸*Constitution of Federal Republic of Nigeria*, 1999 (as altered), section 42.

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against women in the field of employment. So also Article 18(3) of the African Charter,³⁹ Article 11 of CEDAW⁴⁰ and Article 7 of ICESCR⁴¹. These legislations demands that men and women should enjoy the same employment opportunities, that there should be no discrimination against women in respect of choice of profession, employment opportunities, the right to promotion, equal remuneration, job security among others. However, legal, cultural and social constraints still militate against the enforcement of these legislations and ensure the entrenchment of discriminatory practice.

3.3 Legal Factors

Religion and custom-based laws governing marriage, divorce, inheritance, property ownership and sexual offences can institutionalize inequality within the marriage and society thus undermining women ability to exercise their constitutional rights to equality. Some laws are expressly discriminatory like section 26 (2) (a) of the Constitution⁴² which permits a wife of a Nigerian to acquire Nigerian citizenship unlike husband of a female Nigerian. This is express discrimination on the ground of sex. Of equal disadvantage to sexual and reproductive health of women is the unenforceability of the Chapter II of the Nigerian Constitution⁴³ which among other provisions obligates the government to direct its policies to ensure adequate medical and health facilities for all persons, but which

³⁹*African Charter on Human Peoples Right*,

⁴⁰*Convention on Elimination of All Forms of Discrimination against Women*.

⁴¹*International Covenant on Economic, Social and Cultural Right*, 1966.

⁴²*Constitution of Federal Republic of Nigeria*, 1999 (as altered), section 26 (2) (a).

⁴³*Ibid* Chapter II.

unfortunately was made non-justiciable because of the provisions of section 6 (6) (c) of the Constitution.⁴⁴

In fact, the non-justiciability of the chapter II has worsened the legal position of women. Section 6 (6) (c) states that:

The judicial powers vested in accordance with the following provisions of this section

*(c) shall not except as otherwise provided by the constitution extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or any judicial decision is in conformity with the fundamental objective and Directive principles of state policy set out in chapter 11 of this constitution.*⁴⁵

The provision has simply ousted the jurisdiction of Nigeria courts in inquiring into any breach of the provisions of chapter 11 of the constitution and by this state have comfortable landing positions on issues of non-provision of the socio-economic and cultural demands of the citizens.⁴⁶ Most unfortunately reproductive rights fall into this category and few cases predicated on the provisions of chapter 11 in Nigeria failed because of the non-justiciability clause.

In *Bosede Badejo v A G Federation*⁴⁷ a challenge against the lopsided quota system by Joint Admission and Matriculation Board met a brick

⁴⁴*Ibid* s 6 (6) (c).

⁴⁵*Ibid*.

⁴⁶C Arinze-Umobi, 'Reproductive Rights of Women: Fundamental or Illusory' (2011) (8) *UNZIK Law Journal*.

⁴⁷*Bosede Badejo v A G Federation* (1981) 2 NCLR 337.

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wall as the legal challenge was predicated on chapter 11 of the constitution. Also in *Archbishop Okogie v A G Lagos State*⁴⁸ the action was ill fated because the relief was based on chapter 11 of the constitution. The Marriage Act⁴⁹ permits any person male or female who is 21 years or more to contract a valid marriage without requiring a parental consent, but where any party to a marriage is under the age of 21, there is requirement of parental consent to be produced by such party. The non-provision of age for marriage by the Marriage Act but an age below which parental consent is required for marriage portrays the Act as tacitly condoning child marriage.

The Nigerian Police Force made extensive miscellaneous conditions of service for women. The Police Regulations 121, 122, 123, 124, 125, 126 and 127 made no pretension about its discrimination against women. For instance Regulation 127 holds that an unmarried female police officer who becomes pregnant shall be discharged from the force. By its Regulation 124, a female police officer that is desirous to marry must apply to the commissioner of police, giving the particulars of the person she intends to marry and if the person is found to be of good behavior, permission will be granted for the marriage. The import of this practice is that it constitutes a breach of the woman's constitutional right to choose her husband and found a family. The commissioner of police, now reserves the right to choose her partner for her. The definition of rape under the law is too narrow and does not recognize other sexual offences such as sodomy and the insertion of foreign objects into a woman's vagina. Nigerian legislations do not

⁴⁸*Archbishop Okogie v A G Lagos State* (1981) 1 NCLR 218.

⁴⁹*Marriage Act*, Cap, M6, LFN, 2004.

recognize rape within marriage as a crime whereas Nigerian customary law does not recognize the rape of a wife by the husband as an offence at all.

According to the UN Women's 2011 report, out of 179 countries for which data was available, 52 had amended their legislation to explicitly make marital rape a criminal offence. The remaining countries include those that make an exception for marital rape in their rape laws, as well as those where no such exception exists and where therefore the spouse can be prosecuted under the general rape laws.⁵⁰ Also the Delhi High Court was informed by women's rights activists that 52 countries in the world have criminalized marital rape as they sought a direction to make it a criminal offence. The court remarked that the exemption in the law granting immunity to a husband was very wide, giving him absolute freedom to do whatever he wanted in a marital bond. It was said that the number of women who experienced sexual violence by husbands was 40 times the number of women who experienced sexual violence by non-intimate perpetrators.⁵¹ Nearly 1 in 5 women aged 15 to 49 globally experienced physically and sexual abuse from a former or current partner or spouse, the report describes violence against women as

⁵⁰ 'Marital Rape a crime in many Countries and Exceptions' *Online Database* <<https://indianexpress.com/article/explained/marital-rape-a-crime-many-countries-an-exception-in-many-more-4821403/>> accessed on 16th April, 2022.

⁵¹ Business Standard News, '52 Countries Criminalized Marital Rape' *Online Database* <<https://www.business.standard.com>> accessed on 16th April, 2022.

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serious and ubiquitous,⁵² Moreover, prove of rape in Nigeria is very difficult.

3.4 Social / Cultural Factors

Nigerian culture is a major culprit that adversely affects women's sexual and reproductive rights. This manifests in various forms ranging from early and child marriages, female genital mutilation, obnoxious widowhood practices, sexual and domestic violence, unsafe traditional delivery practices, violence against women, polygamy, wife inheritance and others. The article seeks to show to what extent our legal framework has promoted in advancing the reproductive and sexual health rights of women in Nigeria. The study also advocates that socio-cultural factors contribute to the denial of women's right to health, According to Eze,⁵³ in spite of Article 18(3) of the African Charter which provides that states should ensure the elimination of discrimination against women and also ensure the protection of the rights of women and the child stipulated in International Declaration and Conventions, women are still being discriminated against in social, political, economic and cultural fields.

According to Adebayo,⁵⁴ there are certain age long socio-cultural practices that hinder women from fully enjoying their rights. He identifies these as cultural practices and attitudes passed from one

⁵²UN urges Countries to end Marital Rape and close Legal Loopholes' *Online Database*<<https://www.globalcitizen.org/un...>> Accessed on 16th April, 2022.

⁵³ O Eze, *Human Rights in Africa: Some Selected Problems* (Nigeria Institute of International Affairs, 1984) 149.

⁵⁴A Adebayo, *Africa Women in Development: Selected Speeches* (United Nations Economic Commission for Africa, Addis Ababa, 1989) 44.

generation to another which have been powerful obstacles to women's enjoyment of their human rights. Social and cultural factors pose great challenges to the advancement of the sexual and reproductive rights of women. Prominent in the list of social and cultural factors are gender-specific specialization that is cultural definition of appropriate sex roles, as values that gives males proprietary rights over females as well as acceptance of violence as a means of resolving family conflict by most Nigerian cultural groups. A man can chastise his wife as far as he does not inflict her with grievous wound.⁵⁵ That our customs are not particularly favourable to women is obvious.

However, widows, childless or women with only female children bear greater brunt of the disfavor. In the Eastern part of Nigeria, when couples are childless, custom compels the woman to marry a surrogate wife for her husband or for herself, if she is a widow. The surrogate wife procreates and raises children on behalf of the childless woman.⁵⁶ This custom was pronounced repugnant to natural justice, equity and good conscience in *Edet v Essien*⁵⁷ and *Odiwe v Aika*⁵⁸ but is still in practice. This custom exposes the surrogate wife to legalized prostitution which debases her person and violates the sexual and reproductive rights of women. Polygamy is another cultural practice that negates the sexual and reproductive rights of women.

⁵⁵*Penal Code*, Section 55.

⁵⁶National Centre for Women Development, *A Compilation of Customary Laws and Religious Laws Relating to Status of Women and Children Applicable in Nigeria* (NCWD, 2005) 66-67.

⁵⁷*Edet v Essien* (1932) 11 NLR (WACA).

⁵⁸*Odiwe v Aika* (Suit No. 4/24A/79) Unreported judgment of Hon. Justice Ohiwerei of Ubiaja judicial Division, former Bendel State, Delivered on Tuesday, 23 March 1882.

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The various sexual and reproductive rights provided for and protected by various national and international human rights instrument are being infringed by the obnoxious cultural practice of polygamy. Women's right to choose freely and responsibly their sexual partners are equally violated by the cultural practice of child marriage and inheritance of widows. Most nutritional taboos affect women and are based on misconceived and unfounded social/ cultural beliefs. Cultural practices such as denial of snail, crab, unripe plantain, eggs and so on, deprive pregnant women of essential nutrients, and as a result they tend to suffer from iron and protein deficiencies. Given the traditional domination of men in decision making in their sexual relations with their wives, men usually have the last say on family size.⁵⁹ In the area of having a satisfying and safe sex life, culture has introduced a restriction for women in the form of female genital mutilation (FGM). The practice of female genital mutilation is an affront to women's sexual and reproductive rights as well as their bodily integrity.

However, it is quite disheartening that only sparingly have these social and cultural factors that hinders the enjoyment of the sexual and reproductive health rights of Nigerian women have been challenged on grounds of their inconsistency with the human rights norms in the Constitution. This is in contrast with the developments in other jurisdictions where custom have been expressly challenged for not only infringing on constitutional provisions but also for flying in the face of International Conventions as was the case in *Ephrain v Pastory*

⁵⁹I Okagbue, *Human Right and Legal Status of Women in Nigeria* (Institute of Advanced Legal Studies) 21.

& Anor.⁶⁰ In this case, clan members' opposition to the sale of clan land by female clan member. The trial court held pursuant to the Declaration of Customary Law Tanzania, 1963, females can inherit clan land which they can use in usufruct that is for their life time. But they have no power to sell it, otherwise the sale is null and void. On appeal, the court held that the respondent's sale of clan land was valid, that the customary law flies in the face of the Bill of Rights as well as the international conventions and those female clan members have the same rights as male clan members. The court stated further that:

*it is abundantly clear that this traditional custom, which bars daughters from inheriting clan land and sometimes their own fathers' estate ... has outlived its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or colour.*⁶¹

3.5 Ignorance and Lack of Access to Adequate Information

In Beijing Platform for Action, it was stated that reproductive health elude many of the world's women because of such factors as; inadequate level of knowledge about human sexuality and inappropriate or poor quality reproductive health information and services, the prevalence of high risk sexual behaviors, discriminatory social practices, negative attitudes towards women and girls and the limited power many women and girls have over their sexual and reproductive lives. Adolescents are particularly vulnerable because of their lack of information and access to relevant services and in most

⁶⁰*Ephrain v Pastory & Anor* (1990) LRC Constution 757.

⁶¹*Ibid.*

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countries, older women distinct reproductive health issues, which are often inadequately addressed.⁶²

Many of them lack vital information with regards to menopause. Adolescent face cultural obstacles and financial problems in obtaining reproductive health care services and they cannot discuss sexual matters opening with their parents. The constitutional provision of equal educational opportunities will do women a lot of good but it is too farfetched for Nigerian women as many of them are forced into marriage when they should be in schools. Again in the absence of guaranteed free education, parents and wards are forced to choose which of the children to send to school and most will gladly choose sons. The effect is that women has limited awareness of pertinent issues concerning them and are unable to decipher solution where they are available in posters, newspapers and media.

Although the National Health Policy⁶³ defines family planning to include education, counseling, the provision of information on child spacing and fertility treatment, most governmental facilities only distribute contraceptives in clinics and general hospitals as well as in teaching hospitals. Antenatal classes are given to expectant mothers, on care of the woman during pregnancy and on the process of child birth. However, these classes do not address issues of birth spacing and limiting the number of one's children. Moreover, the talks given on the use of the various use of contraception do not include information on

⁶²Mertus (n19) 60.

⁶³*National Policy on Population for Development, Unity, Progress and Self Reliance* (1)(1988) p. 1.

the needs and right of women to space their children for reasons of personal development and health. Issues such as the preference for male children ought to be talked about at such classes to discourage multiple pregnancies, which a major factor on the high rate of maternal mortality.

4. Conclusion and Recommendations

It is apparent from the foregoing discourse that sexual and reproductive health indices of Nigerians remain poor and unimpressive. For advancing and promoting the SRHR the governments and all the stake holders must ensure universal access to challenging national malaise. Despite the above efforts by the government in creating structures for advancement of women's reproductive and sexual health rights, not much has been achieved due largely to customary and religious practices which negatively affect the situation of Nigeria women. Again, there are yet policies and laws which show prejudice and prevent women from accessing their sexual and reproductive rights.

Therefore, it is recommended that Nigerian legislators and the judiciary should adopt the sound principles and related provisions in foreign jurisdictions to promote and advance women's sexual and reproductive rights. Also, law reforms and constitutional review should be carried out to upgrade the right to health including reproductive and sexual rights of women as fundamental human right. Furthermore, the government should organize and enforced mandatory education of women, even in the remote villages. Also, the government at all levels should create a conducive environment for enlightenment programs by law enforcement agents, religious institutions, civil society organizations and other stakeholders in the

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campaign for the promotion and protection of the sexual and reproductive health of women. Additionally, the media should spearhead information campaigns to address some of the factors militating against women's reproductive and sexual health. Finally, the legal system should be fortified with appropriate laws to safeguard women's capacities to make independent choices about their sexualities and reproductive activities.