

LEGAL AND ECONOMIC IMPLICATIONS OF WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS*

Abstract

Every individual is entitled to the full protection of their rights because they are human beings. Men and women experience health challenges but because women go through some biological and social processes that carry health risks like pregnancy and child birth they require adequate health care to be able to fulfill these roles. Sexual and reproductive health right (SRHR) came to the fore against a background of increasing rates of liberal sexual behavior and activity, with its attendant reproductive health implications globally. Financial deprivation and spousal over-dependence have over the years triggered SRHR issues in Nigeria and COVID (19) pandemic was an enabler in that regard. This article examined the Legal and Economic Implications of Women's Sexual and Reproductive Right putting into perspective health services such as planned family, safe pregnancy, delivery care and treatment, contraceptives and prevention of sexually transmitted infections. The researchers aimed to examine women's Legal and Economic sexual and reproductive rights as a neglected issue that leads to maternal and infant mortality; to examine women's Sexual Reproductive Rights (SRR) as a fundamental human right which importance is such that no derogation should be encouraged and also to explain how poverty contribute to abuse of women's SRHR. The study adopted the doctrinal method of research while employing the analytical and comparative approaches. The primary and secondary sources of data collection were also resorted to through legislations, conventions, laws, case laws, and books, journal publications and policy papers respectively. We concluded by categorically stating that there are plethoras of international and national laws and instruments that aim at protecting women's sexual and Reproductive rights but lack of political will on the part of government and cultural beliefs hinder the enforcement of some of these laws. Recommendations were proffered that Nigerian government, in collaboration with non-governmental organizations are urged to meet the special needs of women and to establish appropriate programmes to respond to the economic, sexual and reproductive needs of women. Such programmes should include support mechanisms for the education and counseling of young girls, boys and women while making a conscious effort to empower women

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1. Introduction

Men and Women are entitled to the full protection of their rights because they are human beings.¹ At its most basic level, 'human rights' are safeguarded prerogative granted because a person is alive.² This means that all human beings have rights by virtue of human species membership. A right therefore is a claim to something (by the right holder) that can be exercised and enforced under a set of grounds or justifications without interference from others. The subject of right can be an individual or a group, and the object is that which is being laid claim to as a right.³ Human rights are, therefore, those rights that every human being possesses and is entitled to enjoy by virtue of being a human being.

Health has been defined by World Health Organization (WHO) 'as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity'.⁴ The preamble to the Constitution of the World Health Organization also proclaims that 'the enjoyment of the highest attainable standard of living is one of the fundamental rights of every human being without distinction of races, religion, and political belief, economic or social conditions'.⁵

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¹ I Okagbue, 'Women's Rights are Human Rights.(2006) Nigerian Institute of Advanced Legal Studies, Lagos p.1.

² OS Oyedele, 'Women's Rights in Africa: Myth or Reality,(2006) University of Benin Law Journal, Vol. 9(1) p.28.

³ Ibid.

⁴ World Health Organization, *Preamble to the Constitution the World Health Organization (1948)* adopted by the International Health Conference on July 1946. Opened for signature on July 22 1946, and entered into force on 7th April, 1948.

⁵ Ibid.

Reproductive health has been described as the total well being in all matters relating to the reproductive system, 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. Implicit in this last condition is the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility, which are not against the law and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.⁶

Women and men share many similar health challenges, but the differences are such that women deserve particular attention. They experience conditions that have negative impact on their wellbeing. Some of these are pregnancy and childbirth which are not diseases, but are biological and social processes that carry health risks and require health care. Throughout human history, pregnancy and child bearing have been major contributors to the health problem and disability among women. Maternal Mortality (the death of women during pregnancy, delivery or the post partum period) is a key indicator of women's health status.⁷ This indicator is very high in Nigeria, as it has been observed that over the past three and half decades, Nigeria has progressively shown one of the most abysmally poor reproductive health indexes in the world.⁸ Women's health should not be a problem only to women themselves, it is crucial to the health of the children they bear and their fitness for their roles both in the home and in public life. This underscores the importance of providing sound healthcare for women as an investment not just for the present but also for the continuity of future generations. From the above, it is crucial that the underlying social and economic determinants of women's health, including education and employment, are important for the survival, growth and development of children.

Culture in Nigeria is a major culprit that adversely affects women's rights. This manifests in various forms ranging from Female Genital Mutilation, early/child marriages, forced marriages, widowhood practices, unsafe traditional delivery practices, the preference of male children to female children, violence against women and so on. They contribute to the poor health index of the Nigerian women. The preference of male children to female children has direct impact on the psychological state of such female children as can be seen in this folksong: 'why did you come oh girl? When we wished for a boy? Take a jar and fill it from the sea, may you fall into it and drown'.⁹ The song shows the resentment of the girl child in some parts of Africa and Nigeria. The resentment places a heavy burden on the socio-economic and psychological well being of women in Nigeria.

This article seeks to show to what extent has Nigeria has been able to measure up to legally protecting women's sexual and reproductive rights as well as its economic implications. Our laws seem to be to a toothless bull dog.

2. Definition of Terms

For the purpose of this article, the term 'women' is defined as adult females from the age of 18 and above.

⁶United Nations. ICPD Programme of Action. Report of the International Conference on Population and Development, Cairo, Egypt, 5_13 September 1994, UN Doc. A/CONF.171/13/Rev.1, UN Sales No. 95, XIII, I8, 1995.

⁷ World Health Organization (2009), *Today's Women and Health Evidence, Tomorrow's Agenda*, WHO Press, Geneva, p.40.

⁸MT Ladan, 'Law and Policy on Health ,HIV-AIDS, Maternal Mortality and Reproductive Rights in Nigeria', (2007) Faith Printers and Publishers, Zaria, p.89.

⁹ OS Oyelade. op. cit. p.1.

In its simplest form 'Human rights' are those rights that every human being possesses and is entitled to enjoy by virtue of being human. 'Gender-based violence' is a profound abuse of human rights that also affects the enjoyment of reproductive rights because one is of a particular sex. 'Reproductive Health' is a state of complete physical, mental and social wellbeing, not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. 'Reproductive Health Care' is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. Reproductive health care includes care for sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.¹⁰ 'Reproductive Rights' embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.¹¹ 'Women empowerment' is a process through which women acquire skills and willingness to critically analyze their situation and take appropriate action to change their status in the society. It is a process of enabling women achieves control over their lives through expanded choice. It encompasses women's access to education, landed property, political positions and involvement in money-making activities and decision-making processes. It is a function of individual initiative which is facilitated by institutional change and support.

3. Concept of Sexual and Reproductive Rights

The term 'reproductive rights' was coined at the 1st International Meeting on Women and Health in Amsterdam, Holland, in 1984. There was, at the time, a global consensus that this designation would convey a more complete and adequate concept than 'health of women' for the broad agenda of women's reproductive self-determination.¹² The definition of reproductive rights, therefore, began to be formulated in a non-institutional framework, one of dismantling maternity as a duty through the struggle for the right to legal abortion and contraception in developed countries.¹³ From here, legal academics began to refine the concept of reproductive rights, in an attempt to give them a more precise definition. This is the case with Lynn Freedman and Stephen Isaacs, who identified the importance of reproductive choice as a universal human right.¹⁰ Rebecca Cook, meanwhile, defends the idea that laws that deny, obstruct or limit access to health services violate basic human rights protected by international conventions. She claims that for international human rights law to be truly universal, it must require states to take preventive and curative measures to protect women's reproductive health, affording them the possibility to exercise their reproductive self-determination.¹⁴

4. The Economic case for Women's Sexual Right and Reproductive

Good health is critical to advancing economic opportunities for women and the societies in which they live. Decades of data have already shown the power of good health to positively transform economies — and what poor health does to undermine them. The risk to women's health has effects that go far beyond an individual woman. A woman's health affects her household, community, and country. When women have access to the tools they need to control whether, when, and how often to have children, their families benefit too. Women invest 90 percent of their income back into their families, compared to 30-40 percent for men. Evidence also tells us that children who lose their mother are more likely to die before the age of 2 than those who don't, and if they do survive, they are more likely to be socially and economically disadvantaged for the rest of their lives. At the macro level, it's about economic

¹⁰ Ibid, chap. 7.A

¹¹ Ibid, para. 7.3.

¹²S Correa and MB Ávila, 'Direitos Sexuais e Reprodutivos - Pauta Global e Percursos Brasileiros'. In: BERQUÓ, E. (org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. Campinas, SP: Editora da UNICAMP, p. 17-78, (2003), p. 23.

¹³S Correa, 'Saúde Reprodutiva, Gênero e Sexualidade: legitimação e novas interrogações. In: Giffin, K.Y Costa, S.H. (orgs.). (1999) *Questões da Saúde Reprodutiva*. Rio de Janeiro: FIOCRUZ, p. 39-50, 1999, p. 41.

¹⁴ R COOK, 'International Human Rights and Women's Reproductive Health'(1993) *Studies in Family Planning* , v. 24, n. 2, p. 73-86, Mar-Apr. 1993

security. Existing studies show that prioritizing women's health is tied to long-term productivity. It results in improved population health, better-educated societies, and increased household finances. If women are able to participate in the labor force in the same way that men are, there could be a \$28 trillion increase in global GDP by 2025¹⁵. Further evidence indicates that investments of just \$5 per person per year in 74 countries — those that hold 95 percent of the global burden of maternal and child mortality—would yield up to nine times the economic and social benefit by 2035¹⁶.

5. Socio-Cultural Factors and Women's Sexual and Reproductive Rights

The study advocates that socio-cultural factors contribute to the denial of women's right to health. According to Eze¹⁷ in spite of Article 18(3) of the African Charter which provides that states should ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child stipulated in International Declarations and Conventions, women are still being discriminated against in social, political, economic and cultural fields. From the view of Adebayo¹⁸, 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 generation to another which have been powerful obstacles to women's enjoyment of their human rights which includes early child marriage, Female Genital Mutilation(FGM), Domestic violence etc.

6. Existing Domestic Legislative Framework Protecting Women's sexual and Reproductive Rights in Nigeria

Violence against Persons (Prohibitions) Act (VAPP ACT)

The Violence against Persons (Prohibition) Act (hereinafter known as 'the VAPP Act') came into force on 25th May, 2015. The VAPP Act is comprised of 48 sections and 9 schedules consisting of six forms. According to the long titled of the Act, the object of the VAPP Act is to eliminate violence in private and public life, by providing maximum protection and effective remedies for victims and punishment of offenders. It is the first criminal legislation in Nigeria to expand the concept of rape beyond penetration of the vaginal and anus by the penis and to include penetration of the mouth by the penis. The VAPP Act is also the first instrument to prohibit and punish female genital mutilation, forced eviction by a person of his/her spouse and children, verbal, emotional and psychological abuses, harmful widowhood practices, political violence, etc. The VAPP Act also provide for protection order to protect victims of domestic violence. The VAPP law really addressed women's sexual and reproductive rights issues. Under the VAPP Act, rape¹⁹, spousal battery²⁰, forceful ejection from home²¹, forced financial dependence or economic abuse²², harmful widowhood practices²³, female circumcision or genital mutilation²⁴, abandonment of children²⁵, harmful traditional practices²⁶, harmful substance attacks²⁷ such as acid baths, political violence²⁸, forced isolation and separation from family and friends²⁹, depriving persons of their liberty³⁰, incest³¹, indecent exposure³² and violence by state actors³³ (especially government security forces) among others are punishable offences

¹⁵ https://www.mckinsey.com/media/featuredinsights/Employment_growth/How_advancing_women's_equality_can_add_12_trillion_to_global_growth/MGI_power_of_parity_Executive_summary_2015

¹⁶ <https://www.ncbi.nlm.nih.gov/pubmed/24263249>

¹⁷ O Eze, 'Human Rights in Africa: Some Selected Problems, (1984) Nigeria Institute of International Affairs, Lagos, p.149.

¹⁸ Adebayo, 'African Women in Development, Selected Speeches', (1989)United Nations Economic Commission for Africa, Addis Ababa, p.44.

¹⁹ Section 1

²⁰ Section 19

²¹ Section 9

²² Section 12

²³ Section 15

²⁴ Section 6

²⁵Section 16

²⁶ Section 20

²⁷ Section 21

²⁸ Section 23

²⁹ Section 13

³⁰ Section 10

³¹ Section 25

³² Section 26

³³ Section 24

Constitution of the Federal Republic of Nigeria 1999³⁴

This is the ground norm, that is, the supreme law of the land. It does not make explicit provisions for the protection of women's sexual and reproductive right, but such right can be adduced from some of its provisions. Section 33(1)³⁵ provides that: 'Every person has a right to life, no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria'. This can be interpreted as protection of the sexual and reproductive right and by extension women's right to health. In protecting the right to life the government is under obligation to provide adequate health facilities for all especially women and children as have been spelt out in a plethora of International Conventions on the right to health. Therefore, a situation where women die in pregnancy and childbirth of preventable causes is a clear violation of their right to health and life.

Criminal Code

The Criminal Code ³⁶ in Chapter 21 provides for offences that touch on the reproductive health and rights of women and girls. Section 218 provides that: Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and liable to imprisonment for life, with or without canning. Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for fourteen years with or without canning. A prosecution for other of the offences defined in this section of this Code shall be begun within two months after the offence is committed. A person cannot be convicted of either offence defined in this section of the Code upon the uncorroborated testimony of one witness.

Marriage Act and Matrimonial Causes Act

Section 18 of the Marriage Act³⁷ provides for the requirement of parental consent if a party contracting the marriage is under the age of 21 years not being a widower or widow. This presupposes that the prescribed age of marriage is 21 years and above. However, the requirement of parental consent for parties less than 21 years for a valid marriage tends to give approval to child marriage as parents can consent to the marriage of their under aged children. The Matrimonial Causes Act³⁸ did not stipulate the age of marriage but rather used the phrase 'marriageable age'. Section 3(1) (1) (e) of the Act provides that 'a marriage shall be void if anyone of the parties is not of a marriageable age'. Despite the lacuna in this law, it is submitted that Section 3(I) (I)(e) of the MCA and Section 18 of the MA seek to prevent the negative Health Consequences of girl-child marriage.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁹

This was adopted by the United Nations General Assembly in 1979 and is often described as an international bill of rights for women. The Committee on CEDAW notes that it is the duty of State parties to ensure Women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.⁴⁰ State parties are urged to provide free services to women in order to ensure safe pregnancies, childbirth and post-partum periods. CEDAW also provides that ⁴¹ State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular shall ensure to such women the right to have access to adequate health care facilities, including information, counseling and services in family planning.

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended).

³⁵ CFRN *ibid*.

³⁶ Cap. C38, LFN, 2004.

³⁷ Cap. M6, LFN, 2004.

³⁸ Cap M7. LFN, 2004

³⁹ United Nations CEDAW (1979).

⁴⁰ *Ibid*, 24 Para. 17.

⁴¹ Art. 14(2).

7. Effect of Covid-19 Pandemic on Women's Sexual and Reproductive Rights

In the state of global chaos around the COVID-19 crisis, the impact on girls and women's sexual and reproductive health and rights did not make any headlines. But the reality is that the crisis will have a truly devastating impact on the futures of millions of girls and young women. Girls and young women faced significant barriers in accessing essential sexual and reproductive health information and services before the COVID-19 crisis. Now, the pandemic strained even the most robust of healthcare systems, how much more sexual and reproductive rights of women. A rapid assessment of the impact of the lockdown on women across the country conducted by The Rule of Law and Empowerment Initiative also known as Partners West Africa Nigeria (PWAN), has revealed amongst other issues, that there has been an increase in reporting of sexual and gender-based violence related offences across the country since the lockdown began. The economy of the country has not been spared, the organized private sector which plays host to the airlines, bank, fashion and manufacturing industry to name a few; the small-scale businesses are not exempted.⁴²The lockdown lead to a shadow pandemic of gender-based violence – and rates of child marriage, teenage pregnancy and FGM predicted and increased exponentially – information and services that protect and promote girls' and young women's sexual and reproductive health and rights where needed more than ever.

8. Conclusion and Recommendations

After a thorough research into this unique topic with contemporary importance to the economic and legal framework for women's sexual and reproductive Rights in Nigeria, the study finds that there is partial/non-application of the laws relating to women's sexual and reproductive rights; and that there is a non existing workable comprehensive legal framework in Nigeria. We only have laws which end in paper and have not aided women in making any headway in achieving a paradigm shift from the anachronistic culture they were born into. There are threats, obstacles and deficits ranging from retrogressive laws, policies and practices; financial, social and practical barriers; harmful gender stereotypes, social norms and stigma; violence, threats, hate speech and smear campaigns against people and organisations defending women's rights; lack of access to mandatory comprehensive sexuality education; lack of access to modern contraception, including lack of subsidization or reimbursement, poor quality information and misconceptions, and requirements for third-party authorization; lack of adequate standards of healthcare and respect for women's rights in childbirth, including in some cases coercive and discriminatory practices in maternal healthcare. The infringements are particularly acute for marginalized groups of women, including poor women, women with disabilities and several others. There is also inadequate access to effective remedies and reparation for victims of sexual and reproductive coercion, including past human rights abuse such as forced sterilization of Roma women in some countries.

SRHR is often ignored, neglected, or actively written out of government policies, this omission is typically justified by a seeming lack of consistent public support for SRHR or by the labeling of elements within the SRHR agenda as 'controversial'. The exclusion of these key elements of SRHR disproportionately affects the most vulnerable and marginalized populations. These areas include: women and adolescent SRHR including comprehensive sexuality education, comprehensive contraceptive care, safe abortion care, and advocacy for SRHR and SRHR in emergency settings. Sexual and reproductive health problems remain a leading cause of ill health and death worldwide especially among women of reproductive age. Governments and other stakeholders must increase their efforts to alleviate the consequences of poor S&RH on individuals, families, and society at large.

In the light of the forgoing, it is apparent from the foregoing discourse that the SRH indices of Nigerians remain poor and unimpressive. We therefore call for urgent policies and actions to address them otherwise the future is best captured in the seminal words of the past Secretary General of the United Nations - Kofi Annan - aptly summed up this way: 'The Millennium Development Goals, particularly the eradication of poverty and hunger, cannot be achieved if questions of population and reproductive health are not squarely addressed.' We therefore recommend the following as urgent steps that must be taken to address the challenging national malaise. The government and all relevant stakeholders must ensure universal access to SRH services for all through the primary health care system to the highest levels of care. SRH should also be made an integral part of national development planning and included within the national monitoring and progress reporting. Additionally, the government should build and strengthen the capacity of primary health care systems, from communities to hospitals, to facilitate the delivery of quality, user -friendly SRH services.

⁴² <https://www.partnersnigeria.org/the-impacts-of-covid-19-on-nigerian-women/> accessed on 21st January 2021

There is also the need to strengthen linkages between SRH and HIV/AIDS in legislation, policies and programs. This will give some impetus and make commitment on the part of government agencies and relevant stakeholders mandatory. There is also the need to ensure the supply of SRH commodities, including a full range of safe, effective contraceptives and particularly male and female condoms, with secure and increased funding to cover all existing shortfalls in this regard. Priority should also be given to meet the SRH needs of poor and marginalized groups, including adolescents and people living with HIV/AIDS, and health care providers should be sensitized to their peculiar needs. The government should make sexuality and reproductive health education a mandatory part of school curricula and accessible to out-of-school youths. Some states in Northern Nigeria have domesticated this as 'Family Life and HIV/AIDS Education programme with impressive outcomes. There is the need to prevail on government and all relevant stakeholders to implement fully and effectively all international treaties on SRH. Girl child education, which is the bed rock of female empowerment, and the right to choice by women, is also recommended for urgent and priority attention by the government at all levels especially in the Northern part of the country. Finally, the government at all levels must increase budgetary allocations and donor contributions for SRH services, information and education to meet - at a minimum - the ICPD commitments of our quota of US \$21.7 billion in 2015. The right of every citizen, particularly women, to lead the highest standard of health must be secured as good health, in particular SRH, is a sine qua non for productive and fulfilling life. The right of all citizens, especially women, to control all aspects of their health, in particular their own fertility, is basic to their empowerment.