

A LEGAL FRAMEWORK FOR THE ENHANCEMENT OF WOMEN'S REPRODUCTIVE HEALTH AS A MEANS TO ATTAINING SUSTAINABLE DEVELOPMENT IN NIGERIA

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Abstract

Reproductive health is a lifetime concern for all mankind. Respect for women's reproductive rights and provision for reproductive health services provide the basis for the overall well-being of the family. The health of a society cannot be assured unless women's right to equality and full participation are assured.

The reproductive health and rights of women impact on the overall socio-economic development of any nation. The world is currently in search of a development agenda of ensuring universal access to sexual and reproductive health and reproductive rights. There is therefore an urgent need to build knowledge and evidence based jurisprudence that will generate commitments in ensuring that women gain the right to health and life. This calls for a redefinition and a re-conceptualization of reproductive health as a development question, especially at this time when the world is seeking to put in place a post 2015 development agenda. This paper is focused on seeking a legal framework that will promote women's reproductive health in Nigeria.

In this paper, there will be a chronicle of laws and policies as well as practices which determines and impacts on women's reproductive health and rights in Nigeria. Legal and policy reforms required to improve women's reproductive rights will also be suggested.

Keywords: Women, Reproductive Health, Sustainable Development

1.0 Introduction

The health of 8 million women is threatened by serious health problems and more than 20 million women experience ill health on a yearly basis as a result of pregnancy. The percentage of potentially healthy years of life lost by women in reproductive age is put at 17% (World Health Organisation, 2001) The state of human well-being is recognized internationally as a human right. Respect for the reproductive health of women and provision of reproductive health services provide the basis for neo-natal health and survival, not only for the health and development of children, but also for the over-all well-being of the human family. The health of a society cannot be assured unless women equality and full participation are assured. Unfortunately, reproductive health is often compromised as a result of the powerless state of women and infringement on their human rights. Women play the role of primary health care providers for families and communities as a whole. Despite this, there are many social, cultural which negatively impact on the health of women.

Nigeria needs a health system that responds to the social needs and health challenges of women reproductive health. A sustainable health care system which guarantees equity of access to essential reproductive health of women is essential if Nigeria is to attain a sustainable economic and social transformation.

2.0 Reproductive Health

Health is increasingly being recognized as an important indicator of the standard of living of a country as well as the well-being of its citizens. Health is not just the absence of disease and infirmity, but a state of complete physical, mental and social well-being. Good health is essential to human welfare and peoples' health contributes to a better quality of their lives and is also essential to human welfare for the sustained economic and social development of the country as a whole. Health sector delivery presents a major challenge in Nigeria involving complex legal, institutional and multi-sectoral arrangements that govern health service delivery at all levels of governance. The approach of this paper is how to enhance women reproductive health in order to attain sustained economic and social growth.

Reproductive health is a fundamental aspect of the well-being of women. Fatallah (1988) defined as a state of complete, physical, social and mental well-being in all matters relating to the reproductive system and to its functions and processes. It is also defined at the African Protocol of Women's Rights (2003) as the constellation of methods, techniques and services which contribute to reproductive health and well-being through preventing and solving reproductive health problem (International Conference on Population and Development 1994). To Gbadamosi (2007), the concept of reproductive health is centered on human needs and development throughout the life circle from the womb to the tomb.

Reproductive health is integral to human rights and very essential for the enjoyment of full human potentials as well as physical, mental, and emotional well-being. It is therefore germane to pay urgent attention to issues of inequity and inequality in women's reproductive health in the global quest for the post 2015 development agenda. (Oluwole, 2001)

Reproductive health is both a fundamental human right as well as a social and economic imperative and a means to the attainment of sustainable development. The achievement of reproductive health is of immense benefit for the economic and social life of Nigeria as it plays an indispensable role in the war against poverty.

Women's health status is often undermined by infringements on their human rights. Reproductive health enable women to fully exercise their reproductive and other fundamental human rights. Reproductive health care is measured both by the quality of healthcare as well as socio-economic levels, lifestyles and the status of women in society.

Right based approach to reproductive health is a reflection of a global policy consensus on the relationships between population policy and reproductive health and rights. The empowerment of women and the recognition of people's need for reproductive health and rights will help to stabilize population as a matter of choice and opportunity.

3.0 Reproductive Rights

Reproductive rights encompass the right to reproductive health care, which includes the right to regular access to safe, high quality reproductive health care services, and the right to reproductive self-determination (Reproductive Rights 2000). This includes the right to plan one's family, freedom from interference in reproductive decision making and the right to be free from all forms of violence and discrimination which affect the reproductive life of a woman. The concept of reproductive rights rests on the recognition of the basic rights of all couples and individuals to reproductive health, among other things. Human rights include the right of women to control their sexuality and reproduction. The exercise of this right requires that the needs of present and future children and their responsibilities towards the communities should be taken into account (Beijing Fourth World Conference on Women 1995). Reproductive rights is defined as the respect for women's bodily integrity and decision making, the right to express their sexuality with pleasure and without fear, abuse, disease or discrimination (International Women's Health Conference 1994).

Reproductive rights are crucial to the advancement of women's rights and the growth of any nation. Such rights rest on the basic right of all couples and individuals to have the necessary information and the right to attain the highest standard of sexual and reproductive health. These rights are rooted firmly in basic human rights principles and predicated on the constitutional rights to dignity, equality and freedom from discrimination.

Set-backs to the promotion of reproductive rights of women in Nigeria include inappropriate and poor quality reproductive health information and services as well as the negative attitude of society towards women and the girl child. The linkage between reproductive health and human rights is often ignored in Nigeria. As a result reproductive health is compromised and the human rights of women are infringed upon with its adverse consequences on health. There is also lack of understanding on how to invoke human rights to prevent and remedy violation through the application of reproductive rights.

Women play a vital role in all areas of sustainable development. The rights of women to control their fertility not only form an important basis for the enjoyment of other rights, it is also central to the overall development and empowerment. Women represent major agents of change and they are drivers of sustainable development. Health has a very powerful link with long term economic growth. The absence of sustainable systems in every sector of socio-economic life particularly at the health sector undermines health ultimately and poor health is an impediment to the realization of sustainable development. Improved health care is capable of reducing poverty

at the family level. The absence of an effective public health service system can lead to a debt trap that impoverishes families and this can also undermine the potential for development.

4.0 The Impact of Reproductive Health and Reproductive Rights on Economic Development

Good health is essential for development and health is an indicator of what development is about as it reflects progress across economic, social, environmental and security endeavours of life. An ideal health situation is one where the entire population lives to an advanced age, free of disease and disability. Reproductive health and rights are vital to the improvement of the status of maternal health and women's reproductive health. The enhancement of the reproductive health and reproductive rights of women is central in poverty reduction as well as enhancement of economic development. All members of society especially women, must be involved in any development effort for it to be sustainable. Empowering women through women reproductive health and rights will help to combat poverty, diseases as well as stimulate economic activities. The promotion of women's equal access to and full participation in decision making, mainstreaming gender perspectives in all policies and strategies and improving the status, health and economic welfare of women through full and equal access to economic opportunities and health care services are some of the commitments made at Johannesburg.

Development means that everyone is able to achieve their full potential, and lead productive and creative lives with dignity according to their needs and choices, while fulfilling their obligations and realizing their rights. The neglect of women's reproductive rights limits the opportunities of women in public and private life. (IFRC 2010)

Reproductive rights are human rights which are inalienable and inseparable from other basic rights. Women's right to reproductive health is essential to gender equality and female empowerment. Health rights and well-being of the people lie at the core of sustainable development. Reproductive health programmes are essential to protect the dignity of men and women. Governments have submitted to a programme of action to ensure that everyone have access to reproductive health care by the year 2015 and a twenty year plan has been adopted to ensure that the rights of all to reproductive and sexual health is protected.

5.0 Legal and Institutional Framework on Reproductive Health in Nigeria

5.1 The 1999 Constitution of the Federal Republic of Nigeria

The Nigerian Constitution confers everyone with the right to life and respect of human dignity. According to the Constitution, it shall be the duty of every citizen to respect the dignity of other citizens and the rights and legitimate interests of others and live in unity and harmony in the spirit of common brotherhood. The Constitution also guarantees the right to private and family life and women are conferred with the right to freedom from discrimination on account of their sex, origin and religion. The social objective of the Constitution is founded on the ideals of freedom, equality and justice. The sanctity of the human person is recognized by the constitution and it pledges to maintain and enhance human dignity. The Nigerian State pledges to direct her policy towards ensuring that the health, safety and welfare of all persons in employment are safe-guarded and not endangered or abused as well as the provision of adequate medical and healthcare facilities for all.

5.2 African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights confers on every one the right to respect of his dignity inherent in any human being, and to the recognition of his legal status. Every individual is also conferred with the right to enjoy the highest attainable state of physical and mental health and State parties are required to take every necessary measure to ensure that the health of their people are protected and that that medical attention is made available to their people. States are also urged to ensure that every form of discrimination against women are eliminated, and the protection of the rights of women and the child. (The African Charter on and Peoples' Rights) Nigeria has ratified the above Charter as the African Human and Peoples' Rights (Ratification and Enforcement) Act.

5.3 The Nigerian Health Policy

The Nigerian health Policy aims at comprehensively providing a protective, preventive, restorative and rehabilitative primary health care, within available resources of government. The objectives of the Policy includes the encouragement of a participatory approach to health development, in order to increase the involvement of women in health decision making, the provision of accessible, affordable and well equipped

health facilities, legislating and enforcing appropriate protective measures for women workers, elimination of harmful traditional practices which negatively affect the health of women and girls, etc. The policy commits the federal state and local governments of Nigeria and all the people to intensive action to attain the goal of health for all citizens to a level of health that permits all citizens to lead socially and economically productive live at the highest possible level by the year 2000 and beyond. The national health policy is a gender sensitive policy, aimed at strengthening the national health system to enable it provide effective and efficient service quality, affordable and accessible health services that will improve the health of Nigerians through the achievement of the Millennium Development Goals.

5.4 Convention For the Elimination of All Forms of Discrimination Against Women (CEDAW)

The above named convention reaffirms faith in the fundamental human rights, dignity and worth of the human person as well as the equal rights of men and women. The Convention declares that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Convention without any form of distinction. As stipulated in the Convention, “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”

Imo State Law on the Elimination of All Forms of Discrimination and Other Matters Connected Therewith

Since health is on the concurrent list under the Nigerian constitution, each state of the federation is at liberty to decide on its health priorities. There is the therefore Imo State law on the elimination of all forms of discrimination and other matters connected therewith, prohibiting the dismissal of any women from work on grounds of marriage pregnancy, maternity leave/marital status.

5.5 The Criminal and Penal Codes

The above codes are the major statutes which define offences and prescribe punitive measures for the commission of offences such as rape, sexual assault as well as other offences which constitute fatal infringement on women’s reproductive rights. Under these Codes, a person charged for a sexual offence cannot be convicted on the uncorroborated testimony of one witness despite the difficulty inherent in providing corroboration on the cases of sexual offences.

5.6 The Criminal Procedure Act

The Criminal Procedure Act gave recognition to the reproductive rights of a woman by mandating that an enquiry be made in respect of a women convicted of a capital offence, if she is pregnant or not before pronouncing a sentence of death upon her. Sentence of death cannot be passed on a pregnant women. Instead, she is sentenced to life imprisonment.

6.0 An Appraisal of the Performance of the Framework on Reproductive Health

Although Nigeria has ratified the Convention for the elimination of all forms of discrimination against women and as such CEDAW cannot be given recognition in Nigeria as the provisions of this Convention are yet to be domesticated nor implemented under Nigerian laws as no treaty can have the force of law until it is enacted into law by the National Assembly.

Rape is a crime against humanity and a violation of the right to privacy and dignity of the human person and a violent infringement on the sexual rights of the female person. Giving the difficulty inherent in providing corroboration in sexual offences, the requirement of corroboration in such offences have mellowed down the effect of the Codes.

As good as the Nigerian Health Policy may sound, the Policy does not integrate contraception provision into the health care programmes of adolescents and it also fails to make provision for comprehensive reproductive health concern, which focuses primarily on family planning and child care.

7.0 A Sustainable Framework on Women Reproductive Health

The quality of care and attention a woman gets during pregnancy tells a lot about any society. Government has the responsibility to ensure that the right to health of women as well as their reproductive health is not only

respected, but also promoted. The promotion of reproductive health and rights is a global mandate and it is the responsibility of government to advance, protect and promote reproductive health and rights.

7.1 The Place of Law in Reproductive Health

Laws and policies are crucial indicators of the commitment of government to the promotion and protection of the reproductive rights of women. It takes the instrumentality of law for government to regulate the affairs of a given society. It is through the means of law that the State can give the desired effect to the reproductive health policies. Law helps to shape the social world of women and provides the tool for the conceptualization, promotion and protection of reproductive rights of women. Law and policies create the framework through which the behavior of people is affected by government. It takes the operation of law to ensure free access to reproductive health care services. Nigeria needs health laws that will strengthen the health care system and such that will mobilize government to correct injustice to women. Sound gender sensitive laws, policies and enforceable legislation that promote full enjoyment of the reproductive rights of women should be strengthened, while those that inhibit full exercise of reproductive rights should be changed.

7.2 Participation

Empowering women to make their own reproductive choices creates healthier women and a healthier society. The health of a society cannot be assured unless the right of women to equality and full participation are assured. Health programmes in Nigeria must come to terms with this reality in order to have a healthy society in Nigeria. Interference with the right of women to decide on matters affecting them have serious implications on their personal liberty. Active participation in reproductive health issues will aid in providing solutions to the problems of reproductive health.

7.3 Awareness Creation

It was reiterated at Cairo (1994) that adults have reproductive and sexual health issues which are hardly voiced and which are not readily addressed. In the same vein, adolescents are particularly vulnerable to abuse of their reproductive rights as a result of lack of information as well as access to relevant services. Awareness of sex education should be raised among boys and girls so as to sensitize them on the ills of careless sexual habits. As recommended in Mexico (1975), social education which aims at teaching respect for physical integrity should be embraced.

7.4 Right Based Approach to Reproductive Health

Health based approach to reproductive health is an important end in itself. Human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality and reproductive health, free from coercion, discrimination and violence. Client based right based approach reflecting gender equity and equality, reproductive rights and reproductive healthcare should be adopted. Such a right based approach should link human health and human rights in order to make a strong case for the health of women and young people.

7.5 Information

Information is power. Access to information and health care is one of the factors that influence the health of any population. According to Cook (1992), States have the obligation to address issues related to women's reproductive health, as they are required at the 1995 Beijing platform of Action to take all appropriate measures to provide access to information, education and means to exercise the rights of men and women to control reproduction. A framework that enhances the Nigerian health system, and one which provide the necessary information and health services which address the sexual and reproductive health of women and all human rights is imperative. This will enable all people to have access to the information they need to protect their sexual and reproductive health services.

7.6 Integration of Reproductive Health into National Health Policies and Programmes

The health system is a factor in maintaining people's health. Nigerian health system should be such that emphasize the need for the provision of universal access to reproductive health. Women reproductive health should be integrated into national strategies and programmes on health. This will serve to ensure the promotion of the reproductive health of women and advance gender equality. Health systems and disease programmes and

research must be recognized as a necessity for improving health system performance. Nigerian health system should be strengthened towards the provision of equitable universal coverage through increased health financing, recruitment, training. Priority should be placed in financing reproductive health care. In this regard, donors and financial institutions should be influenced to play supportive in the efforts to integrate or mainstream women reproductive health in their budgets. Health infrastructures should be strengthened to make comprehensive health care widely available.

Renewed Efforts to Domesticating the Provisions of CEDAW

All arms of government including the media as well as civil society groups need to form a synergy to achieve the goal of localizing the provisions of CEDAW in Nigeria.

8.0 Conclusion

Health is a precondition for all dimensions of sustainable development. The goals of sustainable development can only be achieved in the absence of high prevalence of disease conditions and where populations can reach a state of physical, mental and social well-being. The world is currently in search of a development agenda that ensures universal access to sexual and reproductive health and reproductive rights. Right based approach to reproductive health is a reflection of a global policy consensus on the relationships between population policy and reproductive health and rights.

People and women especially are at the heart of sustainable development. Action on the social determinants of women reproductive health is very crucial in the creation of inclusive, equitable, economically productive and healthy society. There is an urgent need to address the reproductive health needs of Nigerian women in order to effectively tackle the health challenges for sustainable development in the twenty-first century. Nigeria should be committed to the promotion of a just, equitable and inclusive society by giving women reproductive health and rights the rightful place. Nigeria should reaffirm her respect for human rights and fundamental freedom by adopting the right approach to women reproductive health and rights. This will help to secure the future we want for both present and future generations of Nigerians.

9.0 Recommendation

Responsible exercise of the reproductive rights of women should be made the fundamental basis for government and community supported policies and programmes in the area of reproductive health. Health policies which promote reproductive health and rights in their design and implementation should be made in order to reduce vulnerability and impact of reproductive ill-health. Provision should be made for sufficient financial resources for comprehensive reproductive healthcare facilities in Nigeria.

Full attention should be given to mutually respectful and equitable gender relations especially in the area of meeting the educational and service needs of the youths in Nigeria. This will enable them to positively and responsibly tackle the challenges of their sexuality. Awareness of sex education should be raised among boys and girls so as to sensitize them on the ills of careless sexual habits.

Gender equality and effective participation of women are important for effective action on all aspects of sustainable development. Priority should be given to women reproductive health so as to unlock their potentials as agents of change and drivers of sustainable development.

Reproductive and sexual health is a matter of social justice which can be achieved by improved application of internal human rights law. Reproductive health and rights should be given high priority through advocacy to enable women exercise their reproductive rights of access to quality reproductive health services. The principles of the International Conference on Population and Development which recognize reproductive rights as human rights should be domesticated and incorporated in Nigerian laws

Discrimination against women is a violation of the principles of equality of rights and respect for human dignity. Having ratified CEDAW, Nigeria is bound legally to domesticate its provision and to abolish all discriminatory practices against women. Tribunals and other public institutions that ensure effective protection of women should be established in order to ensure elimination of every form of discrimination against women in Nigeria.

The national health system in Nigeria needs to be strengthened to enable it provide effective and efficient service delivery as well as affordable and accessible health services that will improve the health of Nigerians.

This requires the establishment of a new comprehensive health policy to replace the long over-due National Health Policy in order to effectively address emerging practices.

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