

# A Critique of Incessant Violations of Women's Health and Reproductive Rights in Nigeria

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## Abstract

The paper attempts a critique of the incessant violations of women's health, and reproductive right in Nigeria. The paper inter alia dissects, the meaning and historical origin of health and reproductive rights of woman in Nigeria. It further reviews the legal frameworks and policies at the national, regional and at the international levels aimed at protecting the reproductive health rights of women in Nigeria. The paper also identifies and analyses the factors that have impeded the full realization of health and reproductive rights of Nigerian women. The paper concludes by proffering recommendations on the way forward in order to promote, and safeguard the health and reproductive right of women in Nigeria.

**Keywords:** Women, Nigeria, Abortion, Health and Reproductive Rights, Violence

## 1. Introduction

The concept of reproductive health rights is relatively new in Nigeria. It entails a complete physical, mental social wellbeing and not merely the absence of disease or infirmity in the reproductive system, functions and processes. Reproductive right implies that people have the right to reproduce, regulate their fertility practice and enjoy sexual relationship

In Nigeria, and indeed most African countries however, the reality is that, women's rights to the enjoyment of highest standard of health is highly jeopardized and threatened by many legal social, religious and cultural impediments. In consequence thereof most Nigerian women; especially in the rural areas have suffered incessant violations of their health and reproductive rights. This unfortunately persists despite the fact that a plethora of laws have been put in place at both the national, regional and international levels targeting quality reproductive rights of women. (Ladan, 2006)

It is quite disheartening and amazing that after over thirty years of Beijing conference in China and the international conference on sexual and reproductive health rights (ICPD), held in Cairo, Nigerian women, unlike their counterparts in other civilized countries of the world are still not in control of their sexual and reproductive health rights (Nwusa-Juba et al). High maternal deaths are still recorded, for instance, in Lagos, almost 60,000 women die every year from preventable pregnancy – related causes, because Nigerian government has grossly failed to implement and fully enforce its policies on maternal health (WHO Report). Besides our legal system still fails to recognize that marital rape is a criminal offence despite the global trend towards criminalization of marital rape in over 50 countries of the world since 1997 (Ifemeje 2011).

This paper therefore aims at examining and criticizing the various factors that have exacerbated the persistent flagrant violations of women's health and reproductive rights in both public and private spheres in Nigeria. In fact the plight of Nigerian women is best summarized by the following observation (Gbadamosi, 2010):

*“Generally, women's rights to reproductive health and autonomy in all decisions relating to rights are frequently violated. The Nigerian women like her counterparts in other parts of Africa are in every context socially, culturally, economically, and politically the victims of politics of exclusion, which oppresses women to the advantage of men who readily exploit entrenched cultural, social and religion prejudices to marginalize, discriminate and disempower women”.*

### 1.1 The Meaning and Historical Origin of Health and Reproductive Health Rights of Women

The concept of reproductive health rights is very fundamental to the human society. Reproductive health and rights is found on the premise that all couples and individuals have the basic rights to decide freely and responsibly the

number, spacing and timing of their children and to have the information and means to do so in order to attain the highest standard of sexual and reproductive health

#### 1.1.1. What is Reproductive Rights?

The term reproductive rights have been defined in the Beijing Platform for Action (BPFA) (1995) and the International Conference on Population and Development ICPD (2005) documents as:

*“Certain human rights recognized in the national and international legend and human rights documents and other consensus documents including the basic rights of all couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so, the right to attain the highest standard of sexual and reproductive health: the rights to make decision concerning reproduction free of discrimination, coercion and violence”.*

Examples of reproductive rights are right to self protection against sexually transmitted infections; the right to family planning education and the right to decide on the number and spacing of children; the right to adequate, accessible and affordable health services including information and communication programmes to women.

The term reproductive health on the other hand is defined as:

*“A state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and process”*

In terms of scope, reproductive health consists of the following:<sup>7</sup>

- a) Safe motherhood comprising of prenatal care, safe delivery, essential obstetrics care, prenatal and neonatal care and breastfeeding;
- b) Family planning information and services;
- c) Prevention and management of complications of abortion;
- d) The prevention and management of infertility and sexual dysfunction in both men and women;
- e) Provision of safe abortion services where the law permits;
- f) Prevention and management of reproductive tract infections, especially sexually transmitted infections (STIS), including HIV/AIDS;
- g) Promotion of healthy sexual maturation as from pre-adolescence, responsible and safe sex throughout the lifetime and gender equality;
- h) Elimination of harmful practices such as female genital mutilation (FGM), premature marriage and domestic and sexual violence against women.
- i) Management of non-infectious conditions of the reproductive conditions of the reproductive system, such as genital fistula, cervical cancer, complications of FGM and reproductive health problems associated

#### 1.1.2 Historical Developments of the Concepts of Reproductive Health and Rights

##### Heading 3

Reproductive rights are internationally grouped under the longest recognized human rights, however the explicit international recognition of women’s right to make choice in matters of reproduction can be traced to the late 1960s. In 1968, the first international conference on human rights held in Teharan, recognized that, “parents have a basic human rights to determine freely and responsibly the number and spacing of their children and a right to adequate education and information to do so.”

This right was equally recognized in the CEDAW which was adopted in 1979 during the UN Decade for women

In 1992, the UN conference on environment and development held in Rio de Tameiro reiterated in its agenda the right to decide on the spacing of one’s children.

In 1993, at Vienna, Austrian government recognized the basis of equality between women and men a woman’s right to accessible and adequate healthcare and the widest range of family planning services, as well as equal access to education at all levels.

In 1994, at the ICPD held in Cairo, the ICPD Programme of Action noted for the first time that “reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents”. It further states that reproductive rights include the right to highest standard of sexual and reproductive health”, and right “to make decisions concerning reproduction free of discrimination, coercion and

violence.

In 1995, the Beijing conference gave birth to two documents named; “Beijing Declaration” and “Beijing Platform for Action”, which reaffirmed the principles adopted in Cairo. The Beijing platform not only reiterated the key language from ICPD Programme of Action discussed above, it also went a step further to affirm women’s rights to control their own sexuality and sexual relations and to decide upon these matters on an equal basis with men.

In 1995, the international community expanded its recognition of reproductive rights under international law and further re-affirmed its commitment to the declarations made at international conferences. The Rome Treaty of 1998 recognized that rape and other forms of sexual violence are among serious crimes under international humanitarian law<sup>13</sup>

Finally in 1999, the international community met and formulated important strategies for promoting reproductive rights. Nigeria was among the over 180 countries of the world which approved the historic Programme of Action which was an offshoot of ICPD.

### **1.1.3 A Review of Legal Frameworks and Policies on Reproductive Health and Rights in Nigeria** **i 1999 Nigerian Constitution**

The Nigerian 1999 Constitution, has no specific provision on health and reproductive rights, however it could be rightly argued that some sections of the Constitution have indirectly made allusions to the recognition of health and reproductive rights of its citizenry. For instance, section 17 of the Constitution dealing with Social objectives of the Nigerian State, obligates government to direct its policies to ensure adequate medical and health facilities for all persons. Section 33 equally recognizes right to life, while section 35 recognizes right to liberty.

Section 42 of the Constitution further prohibits sexual discrimination. This invariably means that women are entitled to good health and a decent environment on equal basis as men. Furthermore, sections 37 and 39 respectively guarantee women’s right to privacy and right to freedom of expression including freedom to hold opinion and to receive and impart ideas and information without interference. This of course include, right to seek, receive and impart HIV-related prevention and antenatal care information.

It has been posited (Ladan2006), that if these sections of the Nigerian Constitution are properly implemented they would work to promote and protect women’s health and reproductive rights in Nigeria.

#### **ii Labor Act**

Section 54 of Nigerian Labour Act<sup>1</sup> makes provision for maternity leave ,six weeks before and six weeks after a would – be mother is put to bed. This of course reflects the traditional sensitivity towards women’s obstetric demands.

### **1.1.4 International Legal Instruments that are Relevant to Women’s Health and Reproductive Rights**

Nigeria signed and ratified the following treaties and therefore, she is legally bound to ensure the full implementation of their provisions. The following international instruments Nigeria signed are relevant to the topic under discourse;

- i. The Protocol on the Rights of Women in Africa
- ii. The Africa Charter on Human and People’s Rights.
- iii. African Union Charter on the Rights and Welfare of the Child
- iv. UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- v. UN Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (CAT)
- vi. UN Convention on the Rights of the Child (CRC)
- vii. International Covenant on Civil and Political Rights (ICCPR)
- viii. International Covenant on Political Rights (ICCPR)

#### **1.1.5 Non-Binding instruments.**

The following international instruments relevant to reproductive health and rights that are applicable to Nigeria but not binding are;

- i. The 1993 Vienna Declaration and Programme of Action
- ii. The Programme of Action of the 1993 ,UN International Conference on Population and Development (ICPD)
- iii. The 1995 Beijing Declaration and Platform for action.(UN Fourth World Conference on women).

## **2. Factors that have impeded the Full Attainment of the Highest Standard of Health and Reproductive Rights of Women in Nigeria**

Despite the above national, international legal frameworks and policies that have been formulated in Nigeria to promote the health and reproductive rights of women in the country, yet Nigerian women and the girl-children are persistently subjected to incessant gross violation of their health and reproductive rights. They are still subjected to child/forced marriage; female genital mutilation and all manner of sexual harassment, ranging from rape in peace and conflict situations, defilement and incest, they are also exposed to unsafe – abortion; wife-inheritance; male-preference syndrome and high mortality rate in consequence of entrenched, gender discrimination in the system.

It is widely believed that, legal, political, social, economic, and cultural factors have exacerbated the incessant and unabated violation of the health and reproductive rights of women in Nigeria. The paper shall presently examine these factors and their linkages to the topic under discourse.

## **2.1 Legal factors (Gender Discriminatory Indigenous Statutory Laws).**

### **i Restrictive Abortion Laws .**

Sections 228 and 229 of the Criminal Code of Nigeria, criminalizes abortion. Under Nigerian law, unlawful interference with pregnancy, no matter the stage, is perceived as a criminal offence, except it is shown that such interference is for therapeutic reasons as permitted by the Nigeria Criminal and Penal Codes i.e. it must have been procured in good faith to preserve the mother's life.

It is beyond dispute that the legalization of abortion has been a sensitive and hotly debated global issue for decades now. The Catholic Church for instance, is known for its rigid and uncompromising stand against liberalization of abortion while pro-abortionist movements demand for total liberalization of abortion law; they believe that existing abortion laws are unwarranted, unsupportable instrument against women's health and reproductive rights and their right to privacy. They further argue that restrictive abortion leads to unsafe abortion and this according to them invariably constitute serious delimitation of women's reproductive rights, as women resort more often than not to quack, inexperienced persons for abortion, in unhygienic environment where substandard instruments and medications are often used. This certainly on the long run has adverse health implication for women and girls, as some of them experience complications, such as perforation of the womb, inability to conceive in future. Therefore, given Nigeria's high rate of mortality, in female adolescent population in consequence of abortion, it has been argued (Ladan 2006) that there is the need for urgent and serious rethink of restrictive abortion laws in Nigeria in order to discourage women from resorting to quacks. In US, for instance, in *Roe v Wade*, 405 US 438, the US Supreme Court, has decided that US constitutional "right of privacy... is broad enough to encompass a woman's decision whether or not to terminate her pregnancy".

From the foregoing discourse, it is evident that in Nigeria, the issue of abortion is a very volatile one that has attracted religious, cultural and political debate. It is submitted that it was time, the Nigerian legislators attempt to strike a balance between the need to preserve the sacredness of life and also to safeguard women's health and reproductive rights in order to avoid the present high mortality rate of women as a result of unsafe abortion in the hands of quacks in consequence of Nigeria's restrictive laws on abortion. While it is concealed that a total unrestricted abortion on the long run will likely lead to undesired moral depravity especially arming Nigerian youths. There is therefore every need to strike a balance between the numerous conflicting interests in Nigeria

### **2.1.1 Legalized Marital Rape**

Section 6, of the Nigerian Criminal Code and section 282, of the Nigeria Penal Code have by implication expressly legalized spousal rape. The section provides that "unlawful carnal knowledge means carnal connection which takes place otherwise than between husband and wife". It follows therefore that in Nigeria, a man can never be found culpable of raping his wife. It is glaring therefore that this section is a gross violation of women's health and reproductive rights, the Nigerian law as it is, is obsolete and highly oppressive to women.

The section is obviously, not in consonance with contemporary international instruments on health and reproductive rights, which laws have conceded to women the right to highest standard of health and spacing out of their children. It is submitted that on no account should a woman be forced by her husband to submit to sexual relation with him, when it is apparent she is not emotionally or medically fit. In fact, the 1993, United Nations Declaration on the Elimination of Violence against Women (Report of the Security General 2006) established marital rape as a human rights violation. In 1997, UNICEF reported that 17 states had criminalized marital rape and in 2003, 50 States followed suit (UNICEF, 1997). It is therefore beyond dispute that these sections of the Nigerian criminal statutes are a gross violation of women's health and reproductive right

### 2.1.2. Nigerian Strict Laws on Proof of Rape

It is evident, that the section 138 of the Nigerian Evidence Act, which is founded on adversarial system of criminal justice, has made it virtually impossible to successfully secure conviction of rapists. The section in question lays the onus on the victims of rape to present proof beyond all reasonable doubt. This is definitely a herculean task which has in practice proved insurmountable as the rape is often committed behind closed doors. In reality, rapists succeed in violating the health and reproductive rights of women and yet go scot free. A relaxation of Nigerian adversarial system will definitely attract more rape convictions and thereby deter incessant violations of women's reproductive rights in Nigeria

### 2.1.3 Few Specific Health and Reproductive Rights Based Laws at the National Level

Nigeria, as observed earlier is a signatory to virtually all international instruments on health and reproduction, but unfortunately, it is regrettable that Nigeria has not toed the line of many civilized countries of the world by enacting elaborate and comprehensive national health and reproductive rights based specific laws. Women whose health and reproductive rights are violated often resort to the omnibus constitutional provisions and very few Nigerian Criminal Code provisions which are grossly inadequate and discriminatory. It is noteworthy that some states in Nigeria have become very sensitive to the plight of women in recent times and have proactively enacted laws at state levels to curb such violations. Edo state or instance, has enacted law against female genital mutilation, Cross Rivers state, has also outlawed girl-child marriage in 2000. At the federal level in 2003, Nigeria enacted the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 which prohibits and prescribes punishment of traffic in persons, particularly women and children. The Child's Rights Law 2003, equally out-lawed child/forced marriage in Nigeria.

Also Nigerian Labour Act, provides protection to pregnant workers and their right to maternity leave. Besides, the Factory Act, makes detailed provisions for the health, safety and welfare of workers but failed to take into consideration the sensitivity and susceptibility of the female reproductive health rights/functions and the need to protect the unborn child from the effect of toxic substances.

### 2.1.4 Non-Domestication by Nigerian Government of International Instruments on Gender Rights and Health Reproductive Rights.

Nigerian government, though a signatory to virtually all international instruments on gender rights and reproductive rights have failed to domesticate same, as her municipal laws, consequently, these international instruments by virtue of section 12 of the Nigerian Constitution are not legally enforceable and therefore cannot be relied on by Nigerian women for the purposes of enforcement of their health and reproductive rights, where they threatened or likely to be threatened. Therefore, Nigerian women apparently lack wide or sufficient platform for the enforcement of their rights under discourse.

### 2.1.5 .Cultural Factor (Harmful Traditional Practices).

In Nigeria, deeply entrenched powerful cultural and traditional forces have greatly impeded women's enjoyment of their health and reproductive rights. These practices include; female genital mutilation; child and forced marriage; wife inheritance denial of women's inheritance rights; preference of sons and trafficking in women and girls. Furthermore, women under our culture are not permitted to make an input as far as the spacing and number of children a couple may wish to have. It is sole prerogative of the men to determine the size of the family, even when it is very obvious that further childbearing would endanger or jeopardize her life or job security.

### 2.1.6. Educational Factors/Economic Factors

Male-child preference syndrome in Nigeria as embedded in African culture has grossly impeded the reproductive rights of women. Parents prefer training their sons in schools in order to acquire the Golden Fleece in preference to their daughters. While their daughters are trafficked in order to generate funds and in the process often exposed to all manner of sexual harassment. Their right to education is thereby jeopardized and grossly violated. It is widely believed especially in the rural areas that the place of the woman is in the kitchen and therefore she is denied the right to legal education and married off early in life and therefore by implication she is not only economically disempowered but also exposed to early-marriage associated ailments like, Vesico Vaginal Fistula and Recto Vaginal Fistula mutilation controllable passage of urine).

### 3. Conclusion and Recommendations

From the foregoing discourse, it is quite glaring that Nigerian women are confronted by huge institutionalized challenges strongly embedded in the system, which have grossly impeded the full realization of their health and



reproductive rights, over the years.

The paper therefore proposes the following recommendations as a way forward

1. Improved access to quality healthcare service in Nigeria for women.
2. Improved access to information on health, including reproductive health and family planning
3. Slight relaxation of abortion laws
4. Overhauling of all gender discriminatory laws and cultural practices
5. Aggressive combating of all forms of sexual assault or violence against women in every sphere of the society, including the home front, workplace, educational sector and health care delivery sector
6. Improved working conditions of service for women e.g. increased maternity leave and benefits, and protection of pregnant women in their workplace from hazardous task
7. Constant and continuous assessment of health concerns should be embarked upon by the Nigerian government.
8. Finally Nigerian women should be urgently sensitized on their health reproductive rights by the Nigerian government and all stake-holders.
9. Nigerian legislators should as a matter of urgency endeavour to domesticate all international instruments on health and reproductive rights she has rat

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