

Appraisal of the Effects of Customary Practices on Reproductive Health Rights of Nigerian Women

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Abstract

Reproductive health rights, though an emerging rights issue, border on human rights, sexual rights, population control and development rights. Customary practices in Nigeria seem to contextualize all activities including reproductive health rights. This research proved the enormity of the weight of customs and norms on Nigerians with regards to reproduction especially on females who appeared to have no say on the issue of reproduction. Such customs include widow inheritance, polygyny/polygamy, girl child marriage and female genital mutilation. Maternal mortality ratio and child mortality rates remain high even in this 21st Century. Suggestions are proffered on the need for equal rights to reproduction by males and females, better family planning methods, provision and access to functional and accessible health facilities for all persons and demystifying the customary beliefs and practices which impede women's rights to reproduction.

Key Words: Customary Practices, Reproductive Health Rights, Widow Inheritance, Girl Child Marriage.

1. Introduction

Reproductive health rights as emerging rights encapsulate all forms of human rights, sexual rights as well as population and development rights. It is fundamental to life and living. It affects both men and women but there is no doubt that it has more effects on the Nigerian females (women and girl-children) who do not possess equality in status with the males within the confines of customary laws in all tribes within and outside Nigeria. Reproductive health rights relate to rights of couples to plan their family, take decisions on the number of children they desire, when and how to make children (Nweze 2008). In a nutshell the under listed issues are paramount to reproductive health rights:

- whether or not to bear children.
- the number of children to bear.
- the time to have the children.
- the treatment to seek before, during, after pregnancy, at delivery and to an extent post delivery.
- where to seek medical care.
- ensuring conducive environment at reproductive stage of life

Ordinarily reproductive health rights are protected in many human rights instruments (Nwankwo 2004), such as the Universal Declaration on Human Rights (UDHR 1948); The International Covenant on Civil and Political Rights (ICCPR) 1966; the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966). The three instruments are known as the International Bill of Rights. The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW 1979), to mention but a few. This study seeks to find to which extent such rights are protected under customary laws and practices. Some legal framework for ensuring reproductive rights of women will be explored. Furthermore, some of the impediments to full actualization of Reproductive Health Rights customarily are discussed. In the end, suggestions have been made on the way forward with the hope of laying a solid foundation for improved reproductive health and rights of women and development of the Nigerian State.

1.2 Some Explanations of Terms

For ease of appreciation of this research some keywords are espoused .

1.2.1 Analysis Customary Law

Customary law stems from custom; It is trite that custom is the way of life of a given people and generally accepted behaviour among members of a social group which is seen as binding on them. It is a society-enforced norm of conduct. Legally, custom over long usage acquires the force of law and becomes customary law (Ikpeze et al 2010). In *Oyewunmi v Ogunesan* (1990)3 NWLR (pt 147) 182, Obaseki: JSC as he then was, defined Customary law as

... the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static.

It is regulatory, in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of accepted usage by the people... over long usages attain the force of law.

...which is accepted as binding and basically unwritten but known by all and sundry.

In fact becomes judicially noticed by the Courts of law.

1.2.2 Understanding the Term Reproductive:

Reflects processes of reproduction which means the act of reproducing new organisms. That is the whole process whereby life continues from generation to generation or simply regeneration (Brookes 2006).

1.2.3 What is Meant by Health

The definition of health is both scientific and technical. Some of the accepted definitions are as enunciated by the United Nations World Health Organization (WHO), Whereof health was defined as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity (Ladan 2007). Again, it means the state of being sound or whole in body or soul or freedom from pain and sickness (Garner 1999).

1.2.4 Reproductive Health

Reproductive Health was popularized by Professor Mahmoud Fathalla (1988) and United Nations International Conference on Population and Development (ICPD 1994). It was further emphasized by the UN as well as the 4th world International Conference on Women in Beijing (1995), which evolved and adopted to mean a state of complete physical, mental and social well-being and...not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. (UNICPD 1994 and UN WICW 1995).

It is a broad concept which includes liberty to make decisive decisions on family planning methods. It includes the individual's right to knowledge and accessibility to secured, beneficial and affordable means of family planning as well as other means of regulating reproductive activities in accordance with the law (Olomjobi 2013).

1.2.5 What is meant by Reproductive Health Rights

Reproductive health rights refer to the rights of individuals and couples to have control to decide freely and responsibly on the number, timing and spacing of their children and have the information, education and means to do so; attain the highest standards of reproductive health, and make decisions about their sexuality reproduction free of discrimination, coercion and violence (Cook et al 2003).

Reproductive health therefore implies that people are able to have satisfying and safe sexual life and that they have the capability to reproduce and the freedom to decide if they will reproduce, when and how to embark on reproduction, whether by assisted reproduction using reproductive technologies in accordance with special legislations (McClean 1992).

It also implies men and women to be informed and have access to safe, effective, affordable and acceptance methods... to health care for safe pregnancy and child birth.

1.2.6 What do We Mean by the term Women

Women refers to females of the feminine gender and includes girls as defined by Article 1(K) of the Protocol to the African Charter on Human and Peoples' Right 2003 (Pro-ACHPR 2003)

1.2.7 Import of Rights

Rights mean those things or claims which every individual is entitled to and of which no one may be deprived without a great affront to justice and God (Ikpeze 2009). Rights represent demands and claims which are protected by law and have become part of the nation's laws (Lex lata) or Municipal law while others remain aspirations to be attained in future (Schuler 1997)

2. Methodology

Data for this study was obtained from existing literature, official documents especially of UN bodies, treaties etc; analysis of court decisions and other internet resources.

3. Objectives of the Research

1. To find out current effects of customary practices on reproductive rights in the Nigerian setting.
2. To determine and document rights of women in reproduction.

4. Fundamentals to Reproductive Health Rights

In Summary Issues on Reproductive Health includes:

- Sexuality

- Ability to reproduce
- Safe motherhood
- Family planning (safe sex enjoyment)
- Infertility Treatment and legal use of medically assisted reproduction (Robertson 1994)
- Infant and child survival and well-being
- Prevention of sexually Transmitted Diseases including Human Immunodeficiency Virus and Acquired Immuno-Deficiency Syndrome (HIV/AIDS).
- Safe Abortion
- Management of Infections.
- Malignancies Treatment of Malignancies.
- Female Genital Mutilation.
- Harmful Traditional Practices (particularly) to Women.
- Gender discrimination – perpetration of inequity and inequality between males and females under patriarchy
- Solution to Health problems associated with menopause (cessation of monthly menstruation) and andropause.

4.1 Implications of Sexuality to Reproduction

The full import of reproductive rights will be understood by analyzing sexuality. Human Sexuality explains the feelings and activities connected with a person's sexual desires and acts whether male or females (Wehmeier 2000). It includes one's image, behaviour, gender roles, relationships, affection, intimacy, genitals and social roles. Sexual behaviour can be exciting, satisfying and rewarding if well planned. It enhances human bonding, partner attraction to non-discrimination on grounds of sexual orientation (Wilets 1994).

It is obvious that such desires accrue to human beings by nature. Therefore they equate to innate rights that should not be eroded. Moreso, it is implicit in the process of reproductive health rights. Interestingly, customarily these sexual and reproductive rights are non-existent with regards to women in Nigeria for the reason that most Nigerian customs view women as inferior objects. Thereby not entitled to right of expression of any form of sexual feeling also such a woman is regarded as promiscuous.

A combination of these two definitions guarantees sexuality as a right must be expressed equally by men and women without any let or hindrance whatsoever, by whosoever and wheresoever.

4.2 Some Customary Practices Impeding Women's Reproductive Rights

Custom and Culture have been so notorious that they have been and are still variously pronounced upon by the Nigerian Judiciary. The Courts hesitate to apply customs that appear repugnant to natural justice, equity and good consciences.

The research revealed numerous customary entrenched practices that impede or hinder women's rights to reproduction as:

4.2.1 Patriarchy

This is the grundnorm of all violence perpetrated against women globally. Whether in the form of discrimination, customary practices or cartelization.

The position is fanned by an entrenched beliefs- it is a concept whereof the males assume the position of overlords over the females.

Patriarchy is a sociological ideology by which men Lord it over women, it dictates the roles to be played by men and women and subject women as inferior to men. It is the bedrock of all cultural and customary practices that entrench harmful traditional practices, violence and discrimination against women. Violence Against Women (VAW 1993) has been defined as:

Any act of gender – based violence that results in, or is likely to result in physical, sexual or psychological harm, or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life. (UN 1993)

Again, Violence Against women per Article 1(j) of Pro-ACHPR means:

all acts perpetrated against women which cause or could cause them physical sexual, psychological and economic harm, including the threat to take such acts or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflict

or war (Pro-ACHPR 2003)

In the same vane discrimination against women was defined in Articles od CEDAW as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (CEDAW 1979)

Thus any discriminatory customary practices not infringe constitutional rights of Nigerian women as provided in section 42(1) viz: A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he (she) is such a person.

41(1)(a) Be subjected either expressly by or in the practical application of any law in force in Nigeria... to disabilities or restriction to which citizens of other communities ethnic group, places of origin, sex, religion, political opinion are not made subject....

4.2.2 Widow Inheritance

It is a tradition whereby after the death of a woman's husband with the performance of some rites, the widow becomes a wife to one of her deceased husband's male relative. The tradition confirms that the widow is seen as property of the family that must be inherited along with her late husband's property. In fact, it is taken that the family bought her and she must remain in the family except the family decides to eject her.

An inherited widow traditionally is expected to bear children for her new husband. Otherwise she may lose what she had acquired with her deceased husband.

Interestingly, most male relatives opt for this widow so as to get hold of the deceased husband's property by pretending to care for the widow and her children.

This fact was buttressed in a plethora of cases. For instance in *Sunguro v. Sunguro* [1957] 2 FSC 5, the Federal Supreme Court per **Idowu Taylor J.** held that a woman is a chattel to be inherited by the late husband's relatives.

Same decision was held by the Supreme Court of Nigeria in *Akinnubi v. Akinnubi* [2000] 7 NWLR (Pt. 426) page 144 that:

It is a well known Yoruba tradition Nigerian that a widow is a chattel to be inherited by her late husband male relatives.

It is indeed outrageous that a human being is equated to chattels (property) and therefore, a hereditament.

Furthermore, widow inheritance carries with it the stress of forcing the widow to bear children for her new husband in order to secure her place in the new setting. The widow may have passed safe child bearing age. Therefore runs the risk of reproductive health hazards and /or giving birth to Mongol(s) which occur more when a woman has advanced in age but continues to bear children.

Moreso, the widow runs the risk of contacting HIV/AIDS due to multiple sex partners, as the new husband may be a carrier but the custom having subjected her, she lacks the capacity or ability to demand for the ideal HIV/AIDS Tests before commencing such marriage as she indeed lacks control over her own body being a property. The risk is palpable. No wonder the scourge of HIV/AIDS. Currently HIV/AIDS has caused global emergency and consumes great funds with the effect of recycling poverty particularly in the African continent including Nigeria. Moreso, the men do not usually disclose their HIV/AIDS status to their wives as matter of practice. The question is will a sex partner (husband or otherwise) who fails to disclose his/her status and uses unprotected sex not be liable. Held in the Canadian case of *R v Senyanga* (1992) to be liable and was sentenced to 3 years imprisonment (Obuekwu 2002) same was decided in *R. v Merger* (1995) and *R v Wentzella* (1998). They were sentenced ranging from 3 years to 11 years. This was condemned as by Resolution 49/1 of 1999 the International Human Rights Law urged that People living with HIV/AIDS (PLWHA) are not be discrimination against rather must be loved by all (Iwuanyanwu 2001)

Table 1. National HIV/AIDS and Reproductive Health Survey for Nigeria (2003)

Knowledge and Perception of HIV/AIDS in Nigeria	Female %	Male%
Awareness of AIDS	83.0	92.4
Perceived risk of getting AIDS is none	75.5	68.8
Knowledge of all routes to HIV/AIDS transmission	56.1	62.7
Sexual behaviour Changes made to avoid HIV/AIDS	Female	Male
Abstinence	65.0	74.9
Use of condoms every time	43.3	61.8
Restrict sex to one uninfected partner	75.0	86.4

Source: National HIV/AIDS and Reproductive Health Survey, 2003

This table illustrates that the men are better informed and in total control of themselves than women ; There is need for further research to know the actual death rate from HIV/AIDSs.

4.2.3 Polygamy

This is the act of marrying more than one wife at the same time. The customary practice interferes with women's rights to privacy and sound family life as constitutionally provided in section 37 of the 1999 Constitution under the fundamental rights provision. It often times subjects the multiple wives to unhealthy competition for sexual enjoyment within the family setting can one man actually satisfy many wives sexuality? The answer is no. This can lead the wives to promiscuity.

Moreso, the custom that a wife cannot deny her husband sex has made it difficult for women who suspect their husband of being carriers of any Sexually Transmitted Diseases (STDs) to say no when approached for sex.

Polygamy stimulates rivalry in the number of children as well as spacing of children. The more children, a wife is able to produce the more she can curry favour of her husband. Often times, the husband's merge resources cannot take care of the reproductive health services of the wives. Again the girl – children of such marriages are ignored in education thus empowerment. Moreso, where adequate nutrition cannot be provided, the female children suffer more.

It is noteworthy that if in the process of sharing husband any of the wives is unable to have children or has only females, she may be forced to procure her own wife for her husband or other males in the family in order to have male issues and be able to access her husband's property. That was the issue in *Okonkwio Vs Okagbue* (1994) 9 NWLR (pt 368)301 but the Supreme Court held that such act of woman to woman marriages was repugnant to that all justice, equity and good conscience.

4.2.4 Girl – Child Marriage and Reproductive Health

Until recently the there was no clear age for marriage. Now is put at 18years for females and 21years for males. Customarily, there is still no age for marriage. Some are betrothed as early as at birth, some at infancy, some before the age of 14 years and many at (16 to 17) years sixteen to seventeen. Noteworthy is the fact that in Nigeria once married, the girl – child automatically is presumed an adult. It is worrisome that, the 1999 Constitution of the Federal Republic of Nigeria (FRN) provided same in section 29 (4) (a) for the purposes of section 1 of this section “ full age” mean the age of eighteen years and above; (b) any woman who is married shall be deemed to be of full age. This premise was strongly applied by the Supreme Court(SC) of Nigeria in a rape case in *Muri v. The State* [1971] SC 8 where a seventy years old man raped a girl who was nine years. By the time the prosecution of the case got to the Supreme Court the rape victim had attained the age of 13, The SC then held that the Accused /Applicant who was then 74 years should marry the girl he raped as his punishment sentence. What a judgment? To say the least, it was a reward rather than a punishment. Of course the victim's sexuality and right of consent to marriage were never considered. How else could a rapist be given a wife unsolicited. In *Osamwoyin* [1973] INML 25. The court held that consent of the would be bride is paramount under customary law marriage. Therefore, the law is that no woman can be married against her will.

It was not only that the girl was forced into a girl –child marriage but that the heinous crime of rape was trivialized by making the final judgment order, a marriage gift of the victim to the accused under the pretence of (Islamic tradition) which allow girl child marriage. However it is now a settled Law that the ages of marriage is eighteen years notwithstanding qualification the qualification in section 29(4)(B).

It must be noted that girl-child marriages carry other risks, including but not limited to high risk of divorce but also psychological and emotional turmoil. The greatest risk is poverty in perpetuity due to lack of any form of training or education, empowerment and development.

4.2.4.1 Effects of Early Marriage

There is no gainsaying that the betrothed girl gets exposed early to sexual life and reproduction despite the fact that, the girl – child is not fully developed for sexual activities. The result is great health risks such as damage to the reproductive system, for example:

- Uterine rupture – tear of the uterus (womb) especially during labour which often is prolonged.
- Obstructed labour, due to immature pelvis and preventable caesarian section (operation) atimes, complications of such operation like adhesions and infertility .
- Premature births – giving birth before the pregnancy gets to term.
- Intra –uterine – death (IUD) – death of the fetus in the uterus or wombs.
- Still births – death in their womb.
- Moreso, the girl child in such marriage lacks the capacity to take any decision concerning her health. Her health will be managed by those who cannot feel what she will be feeling.
- it can also result to much prolonged labour leading: Vesico-Vaginal Fistula (VVF)- erosion of the vaginal wall and the bladder – causing leakage of urine by the female or Recto – Vaginal Fistula (RVF) causing leakage of fasces into the vagina.

4.2.5 Female Genital Mutilation (FGM)

This is also known as female circumcision or cutting. It is one of the harmful traditional Practices that is still very much sustained in our societies and remains socially greatly accepted. The procedure is characterized by a form of traditional surgical operation carried out by trained native attendants whereby the clitoris and /or other parts of the vagina is cut off depending on the prevalent type in practice.

The following are the classification on the mutilation which are dependent on demographic expression:

- Type I - A tip of the clitoris cut off.
- Type II - Good chunk of the clitoris.
- Type III - A good part of the clitoris together with parts of the labia majora are cut off.
- Type IV - A good part of the clitoris with the labia majora and part of the labia minora are cut off (Arinze-Umobi 2007).

Female Genital Mutilation can be performed after birth or at puberty as well as at adulthood after marriage. Why is FGM still practiced? It is sustained for the simple reason that the society at large seeks to instill sexual discipline on the female gender, thereby ensuring the customary status of FGM. The female are barred from contemplating sexual activity outside child bearing.

This blocks the female sexuality by limiting and sexual expression and enjoyment of the act of sex by women. It infringes on their fundamental rights to life liberty, freedom of information, as well as freedom from discrimination to private life (Constitution of Nigeria 1999).

However, the process has attendant risks of trauma and psychological agony. Of paramount effect is the resultant hemorrhage or bleeding during the procedure or at child birth. The haemorrhage at of child birth is caused by erosion and tear of the fibrosis (resulting from healing of the excised area by adhesions and occlusion of the vaginal orifice)S. It could lead further vesico-vaginal Fistula (VVF) or Recto – Vaginal Fistula (RVF) which are undesirable erosion of the uterine urinary tract and vaginal wall creating a hole into the vagina respectively, thus leaking urine or faeces (excreta) from the vagina. Any form of infection could occur, such as the common Urinary Tract Infection (UTI) with the associated kidney infection. It could also result to frequent sexually transmitted diseases (STDs) and permanent offensive odour.

However, some advocate that FGM is sustained for the belief that it limits female libido and inking to prostitution. It is also believed that the practice announces the attainment of womanhood and gives cosmetic effects on the vulvae. I must ask how? There is no evidence to support such beliefs.

It is obvious that the dangers of FGM are grave and rubbish any advocacy that FGM is of cosmetic intentions, curbing of libido or celebration of womanhood. In fact, it runs contrary to the fundamental rights provisions.

5.1 Legal Framework for Reproductive Health Rights

There is no gainsaying the effects of human rights instruments, on Reproductive Health rights. The Cairo Programme on reproductive of Action, the Beijing Platform for Action and Constitutional Provisions as well as Customary Laws impact greatly on Reproductive Health Rights practice in Nigeria. What remains is to find out which one influences Reproductive Health Rights more. Whether it lies in the statutory or customary Laws. Without more, the statutory provisions on health in relation to this discourse can be easily distilled from the following:

The Constitution of the Federal Republic of Nigeria (Nwankwo 2004) particularly in Section 17(1) states that; The state social order is founded on ideals of Freedom, Equality and Justice. Section 17(1)(b) The sanctity of the human person shall be recognized and Human dignity shall be maintained and enhanced:

It provides further 17 (3) (c) and (d) the health, safety and welfare of all persons in employments are safeguarded and not endangered or abused...

That there are adequate medical and health facilities for all person.

It must be noted that this Section of the Nigerian constitution 1999 falls within Fundamental Objectives And Directive Principles Of State Policy which is non-justiciable per se . However, by Section 33 of same constitution which provides that:

Every person has a right to life, and no one shall be deprived intentionally of his (her) life, save in execution of the sentence of a Court

Again section 34 provides that:

Every individual is entitled to respect for the dignity of his/her person...

Her is added here to demonstrate that the language of the Nigerian Constitution is highly discriminatory. Thus the need to review the Nigerian Constitution for clarity in terms.

Note that this is a fundamental rights provision and justiciable per se.

Reproductive Health rights are viewed as forming component part of Human Rights founded on the principles of right to life, dignity of the human person, equality and freedom from want or fear. The fear and want emanating from violence meted against women over the years which run contrary to the constitutionally provided rights ought to be stopped forthwith. There is need to promote Reproductive Health Rights by enactment of Laws prohibiting Violence Against Women (VAW) on health issues. After the enactment, government must engage in advocacy and sensitization of Nigerians.

Currently culture or custom includes technology, systems of exchange, social institutions and methods of production. Therefore by indigenous tradition and Customary Practices must of necessity incorporate the positive contents of culture. **Prof. Akin Ibidapo-Obe** had opined that :

In Contemporary Africa, interpretation of culture must have a developmental content as development is a comprehensive economic, social and political process. Ibidapo-Obe 2006)

5.2 Infertility

It is the most unacceptable situation in customary marriages in Nigeria. What is worrisome, is that the female spouse no matter what type of marriage is at fault for being infertile. In spite of the fact that the fault may be a male factor. To the extent that in the event of the cause of infertility being a male factor Medical workers often fail to disclose such results, to the female spouses. This concept puts the females under great stress. which will in turn affect their ability to conceive subsequently. Again such females are subjected to high risk treatment (surgeries, visiting herbalists, taking hormonal drugs. So as to bear children and remain in marriage. They are forms of violence If the infertility continues the woman may be forced to procure a wife in here name for her husband called women to woman marriage while was anadems by the Nigerian Supreme Court in Okonkwio v. Okagbue (1994) 9 NWLR (Pt. 368) page 301. . It was held as repugnant to the natural justice, equity and conscience. One may ask who impregnates the woman wife of a woman? Is it not against public policy/ Nonetheless in this age of lesbianism-it may well qualify as one and be acceptable.

5.3 Some Conditions that affect Reproductive Health Rights

1. Poverty- the palpable poverty in the country which is common among women makes it conducive for women to suffer greatly with reference to access to health service before, during or after reproduction and/or in reproductive ages.

2. Lack of facilities – there are limited institutions – where reproductive health facilities are non-available or inadequately stocked.
3. Poor health Budgeting. It is no longer information that health and education are inadequately budgeted for in Nigeria. The two areas affect mostly women.
4. Illiteracy – High level of illiteracy has hindered the achievement of sound reproductive health. There is lack of information, non assessment of available information. Motherless effort ought to be made to educate women as key to breaking the poverty circle as tool to enhancement of living standard (Ikpeze 2010)
5. Rejection Brave – This is often seen at the Labour wards where the grandmother’s tale of not complaining during labour makes women not to express their pains for surgery (Cessation Section) so as to fear a deliver safely in the event of difficult or obstructed labour. The fear and shame of being taunted as less than a woman push, some women to elect death (either of herself and/or the baby) rather than surgery.
6. Rejection of Medical Assistance as and when necessary leading to obstructed labour Delayed delivery , which if ignored can be grave resulting to ruptured uterus, VVF and RVF.

6. Discussion

6.1 Reproductive Health

While reproductive infers the processes of reproduction which in human beings is the act or process of producing babies (Garner 1999). The process basically affects men and women but reproduction rests squarely in the domain of women who physically carry pregnancy to term which is nine months for full term babies and seven months for pre-mature babies. Reproductive health eludes many of the world’s people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor equality information on reproductive health and services; the prevalence of high- risk sexual behaviour discriminatory social practices, negative attitudes towards women and girls and the limited power many 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 in most countries – Older women and men have distinct reproductive and sexual health issues which are often inadequately addressed (Ezeilo 2008).

Rights have been variously defined albeit in the ordinary meaning or in the fundamental context. Many schools of thought of law came up with various definitions of human rights.

Reproductive Health Rights extend to freedom from violence as a most basic right that must be accorded to women and which must be addressed at the private as well as public levels. Thus human rights as a component part are founded on principles of dignity, equality and freedom from want or fear.

The Sociological School of Jurisprudence viewed rights issues as historically conditioned in accordance with political, social and economic conditions and postulates that:

Rights and freedoms of individuals in any state are materially stipulated and depend on the socio-economic, political and other conditions in the development of society, its achievements and progress (Constitution of Nigeria 1999).

The Interrelatedness of Human Rights Provisions and Women’s Reproductive Health Rights are unquestionable. The rationale being that human rights are inalienable, interdependent, interrelated, interconnected, indivisible and fundamental.

Prof. J. I. Adinma at the Conference of the Society Obstetricians and Gynecologist of Nigeria (SOGON) held in Enugu, 2008 espoused the interconnectedness of right to health in his paper and posited that it clearly showed a criss-crossing of the of the underlisted rights:

- Right to life.
- Right to liberty and security of person.
- Right to equality and freedom from all forms of discrimination.
- Right to privacy.

He maintained that right to health affect life. While right to liberty afford one the freedom to choose the place and type of treatment and right from discrimination guarantees equality and access to available health care.

Implicit in this last condition are the rights of men and women to be informed about and to have access to safe, effective, affordable and acceptable methods of family planning (contraceptive) of their choice, as well as other methods of their choice for regulation of fertility which are not against the Law. The right of access to

appropriate health-care services that will enable women go safely through pregnancy and childbirth post childbirth and provide couples with the best chance of having a healthy infant. At Cairo 1994 which evolved the Cairo Programme of Action, it was agreed that controlling world population is a sine-qua-non to economic development globally. Yet that it can only be achieved if women are advanced and informed.

Notwithstanding the elaborate explanation of reproductive health based on the Cairo programme for Action, the Beijing Platform for Action (BPA) expanded the meaning of reproductive health further with special emphasis on women. Thus,

...rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

The fact is as Rebecca Cook posited that:

Experience has shown that those who control the power of states through their legal and medical institutions, cannot be presumed to act as conscientious guardians of that power. They can neither be trusted nor permitted to employ such powers to the advantage of women's Reproductive Health or rights and accordingly need review and accountability under international human rights Law.

The example of decisions and judicial pronouncements in India which had gone ahead to fundamentalize economic rights in accordance with the Bangalore principles as and buttressed in *Minerva Mills v. Union of India* AIR (1980) SCO, 1989

Therefore the Economic, Social and Cultural Rights (ECOSOC) rights extensively found in Chapter II of the 1999 Constitution of Nigeria which incidental country's policies on health as well as on the human dignity of equality before the law should be made justiciable per se. It is noteworthy that State Parties to the Covenant are required to create condition which would ensure medical services and medical attention to all in the event of sickness. Particular reference is had to the negative effects on reproductive health rights including provision on reproductive health of women. For reproductive health care is fundamental to the women's well-being and the wellbeing of the unborn child as well as the being of any nation. Still for the good reason that it is closely related to right to life

7.1 **Conclusion**

The influence of customary practices on reproductive health and rights is nothing but negative to both men and women.

It erodes the sexual health and reproductive rights which are fundamental particularly to women's lives and is sustained by patriarchy.

Suffice it to state that the Customary perspective on reproductive health rights in Nigeria, requires total repackaging and replacement in consonance with contemporary human rights regime. There is urgent need to review the Nigerian Constitution, so as to abolish all harmful customary practices and ensure equality and dignity of all persons. This will guarantee reproductive health rights. There is need to make modern health care facilities available to women even those in the rural areas in accordance with provisions of Article 14 of CESAW 1979 through primary health care system it should be community involving for sustainable development, control population, make health care services accessible and affordable, as well as aid reduction of poverty in the country in accordance with the United Nations Millennium Development Goals (MDGs) 2000 as an affirmative Action Policy which ends in the year 2015. Yet Nigeria still has a very long way to go considering the level of development in reproductive health development and impact. Thus need for aggressive solutions by government and the governed.

7.2 **Recommendations**

The recommendations will be stratified to buttress the expected role to be played by all and sundry in order to aggressively entrench reproductive health rights of men and women in Nigeria for better lives and living. Therefore it is recommended as follows:

7.2.1 **At Community Level**

1. It is expected that much sensitization and advocacy will be employed to stimulate the people on customary practices that negative positive changes and advancement with reference to rights issues and particularly reproductive health rights.
2. Community Leaders and Custodians of customs to:

- a. Be encouraged to abolish obnoxious customs targeted at indignity and subjugation of women customarily. This will enhance the dignity, equality and life of women and men.
 - b. Institute indigenous made of appreciating girl –children and women so as to reduce the tension, stress and emotional drain of seeking male –children.
 - c. Advise men to imbibe monogamous marriage under the marriage Act which will guarantee safe sex. Such tradition will reduce the spread of HIV/AIDs and improve reproductive health and life.
 - d. Enshrine mechanism of monitoring customary prevailing practices so as to ensure that women’s dignity are guaranteed. It will be a form of community policing on obnoxious customary practices.

7.2.2 The NGOs

- a. To engage in more aggressive advocacy and sensitization health and sexual education.
- b. Document and disseminate information on obnoxious customs that impact dangerously on health, reproductive health and rights.
- c. Embark on women empowerment programmes. By encouraging formal education, skill acquisition, through seminars workshops even at grassroots levels.
- d. Assist with the prosecution of those who assault, rape or dehumanize women and publicize such cases.
- e. Frequent dissemination of information through seminars, and workshops at all levels including grassroots levels.

7.2.3 Obligations of the Citizens

Men and women must make efforts to entrench healthy sexual and reproductive health rights custom aimed at gender equality in matters of reproduction. Women in particular must learn to assert themselves when confronted with obnoxious customs. Nobody actualizes his/her rights on a platter of gold. It is expected that women should be bold enough to go to Court more frequently for pronouncements on the impeding customs. It serves to expose such malpractices and get other women informed as well as be prepared when faced with such issues.

7.2.4 Government Level

The three arms of government must be involved especially at the Legislative and Executive levels. To ensure positive customary practices on issues of reproductive health rights especially of women in Nigeria.

7.2.4.1 The Executive

This arm of government must endeavour:

1. To budget adequately for health and education as they affect women
2. Put forward policies on sex. Education from primary school level.
3. Make possible policies in accordance with Article 14 Protocol to the African Charter on Human and Peoples’ Rights (ACHPR) on health and reproductive health rights which came into force on 25th November, 2005. For clarity its provisions are hereby reproduced thus:

State Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. The measures includes:

- a. The right to control their fertility by participatory approach by all. (Onyeagu 2006)
 - b. The right to decide whether to have children, the number of children and the spacing of children.
 - c. The right to choose any method of contraception.
 - d. The right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS.
 - e. The right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS in accordance with internationally recognized standards and best practices.
 - f. The right to have family planning education.
 - g. To eliminate harmful Traditional Practices that affect the health of girls and women especially reproductive health.
4. To design health-care programmes to serve the needs of women including adolescents and must involve women in the Leadership, planning, decision-making, management, implementation, organization and evolution

of services. Government and other organizations should take positive steps to include women at all levels of the health care system in accordance with ICPD Cairo, 1994, action 7.7 (Ezeilo 2008)

5. The Executive should as a matter of urgency:
 - a. provide adequate, affordable and acceptable health services, including information , education and communication programme to women especially those in rural areas.
 - b. Establish and strengthen existing pre-natal, delivery and post natal health and nutritional services for women during pregnancy and while they are breast feeding.
 - c. Protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the unborn child.

7.2.4.2 Duties of the Legislature

The Nigerian Laws are never repealed thus static. This will still have archaic Laws. However, it is suggested that the National Assembly must as a matter of urgency enact new Laws viz:

- a. Legalizing abortion to minimize or eliminate loss of women's lives due to unsafe and secret abortions.
- b. Domesticated CEDAW. This will improve women's lives throughout Nigeria.
- c. Review the 1999 Constitution of the Federal Republic of Nigeria so as to
 - i. Gender sensitive by being gender neutral that will reduce the maleness Nigerian women suffer.
 - ii. Create women's Commissions to Carter especially for women.

7.2.4.3 Role of The Judiciary

- a. More colloquia for member of the judiciary on rights issues . The judges must imbibe and practice proactive approach to customary rights issues. It is suggested that they use more often than not interpret the Laws more liberally using the golden and mischief rules of construction so as to serve the purpose of human rights regime with reference to reproductive health rights which is a fundamental right.

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