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Examining the Impediments to Enforcement of Women's Reproductive Rights in Nigeria

¹Izevbuwa O George, ²Lilian Akhirome-Omonfuegbe

¹ Dean, Faculty of Law, Igbinedion University Okada, Edo State, Nigeria

² Ph. D Student, Igbinedion University Okada, Edo State, Nigeria

Corresponding Author: **Izevbuwa O George**

Abstract

Prior to this time, issues of reproductive rights and health were seen to be the exclusive preserve of feminist groups and pro-abortion activists. Typically, these discussions were viewed as taboos in the traditional African setting. Talks about a woman's sexual health, reproductive rights and even about her body, were talks that could only be held in private and for a woman to insist on any form of sexual rights or freedom, meant that she was "loose". Women were to be prude and not seen voicing out their displeasure at the violations of their reproductive or sexual rights which they suffered in the hands of the men who society viewed as "owners" of the women. This paper has adopted the doctrinal method- which is qualitative in nature and mostly library based. The methodology of this paper involves collated information necessary to verify or support legal hypothesis, decision-making and actions.

This paper finds that over the decades however there have been significant changes in the stance taken towards recognition of these rights known as reproductive rights. The attitude towards these topics has significantly moved from silence to an appreciation of some sorts of the

existence of these rights and a need for the protection of same.

In Nigeria though the Constitution makes no express provision for Reproductive rights, the standard interpretation of fundamental human rights have been adopted and made applicable to reproductive health matters. There also exists several other body of laws which indirectly protect these rights as well as International instruments which guarantee reproductive rights and health, such as Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). So far in Nigeria, recognition and protection of gender specific rights is fraught with several impediments. This paper examines the impediments to the enforcement and protection of these reproductive rights. It also highlights the existing gaps in the legal framework in Nigeria on Reproductive Health rights and posits that the enactment of a Reproductive Health Law in Nigeria as well as amending the provisions of the Federal and State laws as well as creating policies will engender the enforcement and protection of these rights in Nigeria.

Keywords: Reproductive Health, Reproductive Rights, Impediments, Gender Inequality, Gender Specific Laws

1. Introduction

Reproductive health and rights is an emerging field of International human rights law. It is trite that Reproductive health law basically provides for the protection of reproductive rights.¹

Reproductive rights of women have long been a significant subject of debate around the world; which has seen several countries actively enacting laws that consolidate the rights of women as regards what obtains for them in reproduction. Efforts at recognizing reproductive rights as bona fide rights can be traced back to The International Conference on Population and Development² held in Cairo, Egypt in 1994. At this conference, reproductive rights was addressed in light of sexual policies in relation to law and its effect on population, human rights, sexual and reproductive health of women in general. Before this time, the enforcement and protection of women's reproductive rights has given rise to non- stop legislative and societal debacles in many countries around the world.³

¹ Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st edn (Ambik Press Nigeria) synopsis.

² Hereinafter referred to as [ICPD].

³ Ibid p 18.

Reproductive rights encompass all the rights obtainable and enforceable by a woman. It is a sum up of all rights enjoyable by a woman and also as a human. This includes inter alia, the rights to have access to legal and safe abortion, right to have access to quality healthcare, right to procure and use birth control, it also includes freedom from coerced sterilization and forced contraception, freedom from female genital mutilation, right to receive education about sexually transmitted disease and right to protection from sexual offences. It 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. It basically denotes that reproductive choices are made in an enabling environment and that people are protected from sexual or domestic violence, HIV/AIDS, unsafe abortion, harmful traditional practises such as female genital mutilation⁴ and maternal ill health.⁵

This paper is divided into five parts. Part 1 is the introduction, Part 2 will discuss the concepts relative to reproductive rights, such as reproductive health, reproductive rights, sexual health and sexual rights. The paper in Part 3 will further discuss the existing impediments to protection of these rights; Part 4 will highlight the existing gaps in the legal framework in Nigeria, the need for specific legislations and amendment of existing laws as the way forward for gender specific rights in Nigeria will be discussed in Parts 4 and 5.

2. Concepts Embedded in Reproductive Rights

2.1 Reproductive Health

Reproductive health has been defined in relation to the positive definition of health in the Constitution of the World Health Organisation.⁶ Reproductive health care covers a wide range of services. These services are defined in the ICPD Programme of Action (PoA) as including family planning counselling, information, education, communication and services, education and services for antenatal care, safe delivery and post-natal care, and infant and women's health care; prevention and treatment of infertility; prevention and treatment of infections, sexually transmitted diseases, including HIV/AIDS; breast cancer and cancers of the reproductive system, and other reproductive health conditions; and active discouragement of harmful traditional practices, such as female genital mutilation.⁷ Generally, reproductive health comprises of access to contraceptives and family planning, safe abortions, maternal healthcare and services. In legal parlance, the right to reproductive health denotes the right and freedom to make decisions concerning human reproduction, the right to

information and the means to do so, freedom from sexual and domestic abuse as well as harmful cultural practises, the right to freedom from sexually transmitted diseases including HIV/AIDS and the right to attain the highest standard of sexual and reproductive health.⁸ In the past, reproductive health has been approached as a purely medical concern rather than the broad perspective which it actually encompasses.⁹ Global attention was drawn to it at the United Nations International Conference on Population and Development at Cairo, Egypt in 1994.¹⁰ There is no universal definition of Reproductive health; however the concept can be grasped from several enunciations that have been proffered over time. According to the ICPD, Reproductive health is;

"A state of complete physical, mental and social wellbeing, not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. The right to reproductive health implies that people have a satisfying and safe sex life and that they have the capacity to reproduce and the freedom to decide if, when and how to reproduce and how often to do so. Implicit in this last condition is the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of their choice, as well as other methods for regulation of fertility which are not against the law, and right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chances of having a healthy infant."¹¹

The concept of Reproductive Health encompasses the entirety of the human existence and needs, it centers on the development from the "womb to the tomb". Amidst several existing human rights, there exists just one reproductive right, which all invariably impact the protection enforcement of reproductive rights.¹² Reproductive rights encompasses the rights of men and women to have access to information in addition to access safe, effective, affordable and acceptable methods of family planning of their choice as well as other legal methods or regulating fertility. It also includes the right to appropriate health care services and facilities to help women safely go through pregnancy and childbirth. It is a constellation of methods, techniques and services that contribute to reproductive health and wellbeing by preventing and solving reproductive health problems.¹³ Thus Reproductive Health entails a significant deviation from the traditional scope of maternal and child health and family planning to a wider and more comprehensive scope, which covers a range of services like family planning, counseling, information, education, communication, antenatal services, safe delivery, post natal care, infant and women's healthcare, prevention and treatment of infertility, prevention and treatment of infections, sexually transmitted diseases (including management of HIV/AIDS conditions), breast cancer, cancer of the reproductive system (e.g ovarian

⁴ Hereinafter referred to as [FGM].

⁵ Lilian Akhirome- Omonfuegbe "A Critical Appraisal of Women's Reproductive Rights in Nigeria" Journal of Sustainable Development, Law and Policy Afe Bbalola University Ado-Ekiti. DOI: <https://dx.doi.org/10.4314/jsdlp.v10i2>. [Accessed 26 March 2021].

⁶ WHO/RHR/01.5, World Health Organisation, 2001

⁷ Ikeatu, Egundu Grace "Violations of Womens' Reproductive Rights in Nigeria" Violations of womens' reproductive rights in Nigeria | NnamdiAzikiwe University Journal of International Law and Jurisprudence (ajol.info) [Accessed 26 March 2021].

⁸ Nkolika Ijeoma Aniekwu. Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region 1st edn (Ambik Press Nigeria) p13

⁹ Ibid.

¹⁰ Ibid.

¹¹ Par 7.2 of ICPD Programme of Action

¹² Oluwakemi, Anyaleye *et al* Ontario Development Agency SSN 1923-6654.128

¹³ Ibid.

cancer) and other reproductive conditions, as well as active discouragement of harmful cultural practices like female genital mutilation.¹⁴

The definition of reproductive health now embraces a more exhaustive and unified approach to health needs related to reproduction. It features gender at the core of reproductive health care and recognizes, respects and acknowledge the needs of women particularly.¹⁵ The impact of Reproductive Health is not limited to the individual, family or society; it extends beyond national boundaries to a global community. Reproductive Health has become of increasing concern as a lack of understanding or non- recognition of it especially in developing countries affects the health and well-being of the people directly concerned- in this case, women.

2.2 Reproductive Rights

Over the past decades, feminist scholars have begun to advocate on the importance of incorporating gender specific human rights protection into national law and legal systems.¹⁶ These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.¹⁷

The control over the various dimensions of women's reproductive and sexual rights dates back in time. Over the years, these have been controlled by culture and customs. Subsequently; we see governments applying criminal laws as an instrument to control morality, for instance through the prohibition of birth control and abortion or by penalizing unacceptable forms of sexual behavior. Global awareness has increased in relation to the protection and promotion of Reproductive rights all thanks to the impact of the ICPD and the Beijing platform. Both conferences projected the recognition and protection of Reproductive Rights to the global stage, increasing awareness that such matters are now matters of social justice which can be addressed through improved application of human rights provisions already contained in existing national laws, regional and international human rights treaties.¹⁸

The ICPD points out that reproductive right represent some human rights already recognized in national law, International Human Rights and other United Nations documents. These rights are hinged on the recognition of the rights of individuals of couples to freely decide the number, spacing and timing of their children and to access information on safe means to do so. In exercising these rights they should take into consideration, their needs and responsibilities as well as the needs of their future children.¹⁹

Reproductive rights are closely linked but not limited to health rights.²⁰ Reproductive rights encompass the right to

reproductive healthcare which includes the right to regular access to safe, high-quality reproductive healthcare services and the right to reproductive self-determination. 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. In addition to health, reproductive rights promote the concept of autonomy, choice and freedom in matters of reproduction.

In summary, reproductive health rights therefore insinuates that couples should be able to freely and responsibly decide and agree on the number, timing and spacing of their children. They should have access to necessary and requisite information, education and have the means to do so; they should also be able to attain the highest standards of reproductive health and make decisions about reproduction free from any form of prejudice, coercion and violence.²¹ Reproductive rights guarantee reproductive health. Women's reproductive health in turn is recognized largely by rights already in existence which in turn are determined by the legal enforcement and protection of same. The concept of Reproductive Rights recognizes that a woman should enjoy bodily autonomy and should be able to enforce her right over her body and personal choices concerning her body- of which reproductive options are an integral part of.

It may thus be concluded that from the definition of Reproductive Rights as construed from the Beijing Platform Action, that Reproductive Rights are in fact rights derived from broadly existing rights. Therefore, Reproductive rights are rights concerning reproduction which are reflected in National Laws, International Human Rights Institutions and other documents, and must therefore be respected and enforced by States parties. These rights include amongst others;

1. The rights of all couples and individuals to decide freely and responsibly the number and spacing of their children with accessible and available means of contraception.
2. The right to have information, education and the means to do so.
3. The right to safe abortion under specific circumstances and conditions.
4. The right to be free from violence.
5. The right to be protected from HIV/AIDS and other sexually transmitted diseases affecting the sexual reproductive health of individuals.
6. The right to safe motherhood.²²

The protection of Reproductive rights has evolved so much that some countries now have laws and state policies addressing the abuse of such rights and even provide remedies where necessary.²³

¹⁴ Ibid.

¹⁵ Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st edn (Ambik Press Nigeria) p 15

¹⁶ Supra note 16.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Para 7.3 ICPD Programme of Action.

²⁰ Erhun Mercy "A Legal Framework for the Enhancement of Women's Reproductive Health as a Means of Attaining

Sustainable Development in Nigeria", *Journal of Law, Policy and Globalization*, Vol.40, 2015, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

²¹ Ogugua Ikpezie. "Customary Perspective on Reproductive Health Rights" *Journal of Health Law and Reproductive Rights (JHLRR)* Issue 4-5, 2013- 2014 p 57.

²² Cited in Aniekwu Nkolika. *I. Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st edn(Ambik Press Nigeria) p 19.

²³ See Argentina, Mexico, Colombia.

2.3 Sexual Health

This is defined as:

The experience of the ongoing process of physical psychological and socio-cultural well-being related to sexuality. Sexual health is evidenced in the free and responsible expressions of sexual capabilities that foster harmonious personal and social wellness enriching individual and social life. For sexual health to be maintained, it is necessary that the sexual rights of all people be recognised and upheld.²⁴

Much like reproductive health, sexual health is a state of physical, emotional, mental and social well-being, related to sexuality and not necessarily the absence of disease, dysfunction or infirmity.²⁵

2.4 Sexual Rights

According to the World Health Organisation, Sexual rights encompass various human rights which are already recognised by existing laws and other internationally recognised and accepted documents.²⁶ In these laws are embedded the ideal of people's enjoyment of their sexual autonomies. These rights include the right of people to the highest standard of health in relation to sexuality, which includes access to sexual and reproductive health care services.²⁷ For instance in the United Kingdom, condoms and contraceptive pills are made available at no cost, to sexually active individuals in health care centres and drug stores. This is a government initiative to encourage safe sexual relations and prevent pregnancies for unprepared persons.

3. Impediments to the Enforcement of Reproductive Rights in Nigeria

No doubt, Nigeria has made significant improvement in the presence of legislations and policies which acknowledge and protect reproductive health in Nigeria. Notwithstanding, there is still a significant lacunae between extant laws and their implementation. Recognition of rights is ineffective without structures in place for effective enforcement. Against this backdrop, an understanding and comprehension of one's rights is fundamental to enforcing same. However, complications arise due to a lack of the much-needed comprehension of how to demand for these rights. In the past decades, scholars have clamoured for the incorporation of gender-specific policies in our laws. Several hindrances to the enforcement of reproductive rights in Nigeria are largely due to lack of societal comprehension on the scope and comprehensive nature of reproductive rights which indeed need to be protected.²⁸ In Nigeria, the journey on the

recognition, enforcement and protection of reproductive rights has been fraught with incessant impediments. Some of these are discussed below;

3.1 Cultural and Religious Practises

Tradition and cultural practices no doubt contribute to existing impediments in enforcement of reproductive rights.²⁹ Cultural, religious and societal norms have arguably entrenched a historical imbalance in power relationships between men and women and have tilted the overall perceptions and roles of women in Nigeria. Religious teachings deeply influence personal conduct, especially in the areas of sexuality, marriage, gender, childbearing, and parental-children relationships. Moreover, secular notions of justice and rights draw upon interpretations of religious morality. Not only does religion shape the values of individuals and the cultures of societies, it has the power to influence government policy.³⁰ In Nigeria, it could be said that the abuse of the natural rights of a woman begins from the time of her birth and only comes to an end at the time of her death.³¹ Many customs do not recognize the existence of sexual and reproductive rights of women. This position is fanned by the belief perpetrated by patriarchy which is entrenched in African societies, where men are seen as over-lords. Patriarchy is the bedrock of all cultural and customary practices which intensify violence and discrimination against women.³² In many parts of Nigeria, particularly the North, women who are prematurely and compulsorily betrothed to a man at birth are not allowed access to basic education and are generally burdened with domestic household chores. These becomes the foundation for a lifetime of circular and absolute dependence on a man she does not know: and upon the demise of the man her right to inherit his property is denied and her life becomes miserable because of obnoxious practices which she could be made to undergo as a sign of respect for the deceased husband. These cultural, religious and societal norms are arguably at the root of the historical neglect of women in Nigeria.³³ This is majorly contributory to mistreatment of

<https://dx.doi.org/10.4314/jsdlp.v10i2>. p.19 [Accessed 26 March 2021].

²⁹ Lilian Akhrome- Omonfuegbe "A Critical Appraisal Of Women's Reproductive Rights In Nigeria" Journal of Sustainable Development, Law and Policy Afe Bbalola University Ado-Ekiti. DOI: <https://dx.doi.org/10.4314/jsdlp.v10i2>. P.19 [Accessed 26 March 2021].

³⁰ Ikeatu, Egongu Grace "Violations Of Womens' Reproductive Rights In Nigeria" Violations of womens' reproductive rights in Nigeria | NnamdiAzikiwe University Journal of International Law and Jurisprudence (ajol.info) [Accessed 26 March 2021].

³¹ Odiaka Ngozi Oluchukwu "The Concept Of Gender Justice And Women's Rights In Nigeria: Addressing The Missing Link" 122608-Article Text-336344-1-10-20150923.pdf [Accessed 18 March 2021].

³² Ogugua Ikpezie. "Customary Perspective on Reproductive Health Rights" Journal of Health Law and Reproductive Rights (JHLRR) Issue 4-5, 2013- 2014 p 59.

³³ Odiaka Ngozi Oluchukwu "The Concept Of Gender Justice And Women's Rights In Nigeria: Addressing The Missing Link" 122608-Article Text-336344-1-10-20150923.pdf [Accessed 18 March 2021].

²⁴ Pan African Health Organisation & WHO, Promotion of Sexual Health: Recommendations for Action cited in Nkolika Ijeoma Aniekwu Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region 1st edn(Ambik Press Nigeria) p 19.

²⁵ Ibid p.11.

²⁶ WHO/RHR/01.5, World Health Organisation, 2001.

²⁷ Ibid.

²⁸ Lilian Akhrome- Omonfuegbe "A Critical Appraisal of Women's Reproductive Rights in Nigeria" Journal of Sustainable Development, Law and Policy Afe Bbalola University Ado-Ekiti. DOI:

widows in many villages, the Nigerian widow, in the course of fulfilling funeral rites, is subjected to a greater agony than the grief of the loss of her husband. The harmful nature of these widowhood practices on the woman as an individual with rights cannot be overemphasised. With over 250 ethnic groups in Nigeria, the implication is that, there could be as many types and forms of widowhood practices in the country. These practices exist across the nation, but with differences in the forms and extent to which they can be harmful and detrimental to the widows;³⁴

The discussions on the implications of reproductive and sexual health rights, which had hitherto been viewed as “taboo” in traditional African societies, now has a reverberating effect and is now on the increase among African scholars. While the right to health has been an internationally recognized human right, reproductive health rights gained formal acceptance only in 1993.³⁵

Discriminatory customary practices in Nigeria, not only infringe on women’s rights but also on other constitutionally provided rights.³⁶ For instance, despite the existence of section 42(1) of the Constitution, which provides for freedom from discrimination, this is unarguably one of the major setbacks to the protection and enforcement of reproductive rights in Nigeria. The discrimination against women on the basis of their gender is still prevalent in many parts of Nigeria. Women are denied access to some platforms, which men have unfettered access to, there are also cases of unequal pay, and unequal working standards between men and women in organizations.³⁷ This, in turn, leads to unequal access to resources, consequently poverty, suffering, health risks, and even death.

We also see other prevalent customary practices in some parts of Nigeria which are all detrimental to the woman’s reproductive health and rights, such as female genital mutilation,³⁸ early marriages, preference of male children etc. All of these are impeding forces against the protection of women reproductive rights in Nigeria today.

Sadly, in spite of existing legislations, approximately 125 million women and girls worldwide are victims of FGM.³⁹

³⁴ Joseph Olukayode Akinbi “Widowhood Practices in Some Nigerian Societies: A Retrospective Examination” *International Journal of Humanities and Social Science* Vol. 5, No. 4; April 2015.

³⁵ Anyaleye Amuda Oluwakemi “Women and Reproductive Health Rights in Nigeria” Ontario Development Agency SSN 1923-6654.128 <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html> <accessed 31 October 2019>.

³⁶ Ogugua Ikpeze “Customary Perspective on Reproductive Health Rights” (2014)4-5 *Journal of Health Law and Reproductive Rights (JHLRR)* 60.

³⁷ Damilola Olawuyi and Idowu Ajibade, “Climate Change Impacts on Housing and Property Rights in Nigeria and Panama: Toward a Rights-Based Approach to Adaptation and Mitigation”, in: Dominic Stucker and Elena Lopez-Gunn(eds.) *Adaptation to Climate Change through Water Resources Management: Capacity, Equity and Sustainability* (New York: Routledge 2014) 264-284.

³⁸ Though some states in Nigeria have now legislated against this act (e.g., Law on Female Genital Mutilation (Prohibition) 1999 Edo State) it is still predominant in some areas.

³⁹ Female genital mutilation.

Statistics show that an estimated 27 per cent of girls and women aged between 15 years to 49 years fall into the count of victims of FGM in Nigeria. With several more girls still at risk. It is worthy of note that though legislations now exist to prohibit FGM and which also has been a key tool in its prevention, there is little or no evidence that these legislations have succeeded in eliminating FGM.⁴⁰ Any law lacking effective monitoring and sufficient mechanisms and institutions to enforce it within a community-based support system is most likely to be ineffective. In addition, enforcement of laws goes hand in hand with increased awareness. Oblivion of the existing protective law may be problematic.⁴¹

3.2 Poverty

Approximately 70 per cent of the population lives below the poverty line and the majority of them are women. Poor reproductive health and low standard of enforcement are associated with these developmental challenges.⁴²

Suffice it to say that the problem of poor or even non-existent healthcare services in the country contributes largely to the increased maternal mortality rate, which has remained one of the highest in the world. Reproductive health care is fundamental to women’s wellbeing, thus attention must be given to women’s health in Nigeria to prevent incessant deaths, disability and diseases related to pregnancy, improperly done abortions and childbirths. However, the need for women to have access to quality reproductive health services such as medical care, planned family, safe pregnancy, delivery care and treatment and prevention of sexually transmitted infections, such as HIV & AIDS is slowly gaining recognition in Africa at large and Nigeria in particular.

In many societies, especially in the rural areas, you find many of the women are illiterate and have no means of livelihood; they tend to be dependent on their spouses who use this as an opportunity to subject them to inhumane treatment. Many of these impoverished women are victims of domestic violence but remain in those conditions for fear of inability to cater for themselves and their children. Many of these women and even men have no information on their reproductive rights and health. There is also limited access to information, where there is any information at all. The high level of illiteracy among females and generally low social and economic status of women in the Nigerian society also play a part in the increase of other reproductive problems- Thus extreme poverty and lack of education have been identified as some of the major reasons for the unprecedented scourge of women trafficking in Nigeria, which unarguably has adverse and severe impacts on the reproductive health of these women concerned. Lack of local prospects, unemployment and having large number of children makes parents susceptible to the bogus promises of money, education or a better life for their children given by the traffickers. The young boys and girls leave their villages

⁴⁰ Jane Muthumbi, Joar Svanemyr, Elisa Scolaro, *et al* (2015) *Female Genital Mutilation: A Literature Review of the Current Status of Legislation and Policies in 27 African Countries and Yemen*. *African Journal of Reproductive Health*, September 2015: 19(3): 34.

⁴¹ *Ibid*.

⁴² *Ibid*.

to escape the miserable living conditions.⁴³ Economic factors and greed have also been identified as major influences for human trafficking. Nigeria for example is the 11th largest oil producer in the world.⁴⁴

3.3 Patriarchy as the Bane of Discrimination in Nigeria

Over the years, Nigeria has gained the unpopular recognition globally as a patriarchal society in which the inalienable rights of women are often subjected to ridicule, extensive abuse, neglect and violations. This explains why concepts like marital rape as described in the VAPP Act received a backlash from the male folk. The rejection of the Gender and Equal Opportunities Bill 2016 by the National Assembly is also a sad reflection of the dominant role of patriarchy and similar sentiments in Nigerian governance.

The Nigerian legislature has failed to enact The Gender and Equal Opportunities Bill 2016, a piece of legislation that would have domesticated The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Nigeria. Strong religious and cultural convictions, misunderstanding of the notion of gender equality, and poor strategic approaches from civil society organizations, have contributed to this result.⁴⁵ In order to ensure that Nigeria is meeting its international obligations, it is important for advocates of the bill from the legislature and civil society to adapt their strategies so that they are better suited at targeting the factors that are directly hindering the success of the bill.⁴⁶

Though the Nigerian constitution prohibits discrimination on grounds of gender it does not entirely protect the interest of women. An ideal constitution should be drafted with input from all stakeholders- women inclusive. Clearly the 1999 charter was created without women's input. This is reflected clearly in the language of the law. The overall use of the male pronoun with no female pronoun cannot be ignored. For instance Section 131 list out the qualifications for the office of the president of Nigeria and uses the pronoun 'he' suggesting that this office is for a man- no wonder we have not had any female president or even a female presidential aspirant. Nigeria needs to move with the times and seasons and reflect her new ideals which includes equal participation of women in governance.

Nigeria has a national gender policy that focuses on the empowerment of women and advocates against any form of discrimination against women, and the Nigerian Constitution prohibits discrimination on the basis of sex. There has also been improvement in terms of gender equality in education: Girls' school enrolment has steadily increased, particularly in the north of the country, which in the past witnessed a high rate of neglect and discrimination

⁴³ See the plight of young men and women stuck in Libya while trying to gain entrance into Europe via the desert- <https://www.vanguardngr.com> > News [Accessed 16th June 2020].

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<http://www.cia.gov/cia/publications/rankorder/2173rank.htm> l. [Accessed 26/08/2018].

⁴⁵ Mohammed Amal "The Gender and Equal Opportunities Bill: Nigeria's Track Record of its Commitment to Women's Rights" <https://academiccommons.columbia.edu/doi/10.7916/d8-tr76-6a77> [Accessed 18 March 2021].

⁴⁶ Ibid.

toward women. However, there is still significant gender disparity when it comes to labour force participation and representation in government.⁴⁷

Though there has also been increased participation of women in politics, there is room for improvement. The representation of women in the legislature is insignificant- only seven women out of 109 seats in the senate and eleven women out of 360 seats in the House of Representatives. Nigeria currently has the lowest rate of female representation in parliament across Africa as she ranks as 181st out of 193.⁴⁸ We should not pay lip service to the issue of gender equality but put structures in place for there to be equality in reality.

Another example is the provision of Section 26 of the Constitution which says a foreign woman married to a Nigerian man is eligible for Nigerian citizenship however there is no such provision for a foreign man married to Nigerian woman- is the Nigerian woman not a bona-fide citizen?

3.4 Access to Quality Health Care

The unavailability or limited access to good healthcare services in Nigeria is an impediment to enforcement of reproductive health. Statistics indicate a poor and deteriorating state of women's reproductive health status in the country.⁴⁹ In Nigeria, about one Nigerian woman dies every 10 minutes from pregnancy related conditions, deaths that could be prevented if women and girls have access to education and reproductive health services, including family planning. The risk of death is even heightened in humanitarian crisis (which is rampant in Northern Nigeria) that displace populations and undermine community social support mechanisms, limiting access to health facilities and workers to take care of the special needs of women and girls.⁵⁰

Another aspect of this which has generated universal debate is a woman's right to safe abortion. In almost every part of the world, abortions have been the subject of religious, social, political and legal discourses. Under Nigerian law, interfering with pregnancy no matter how early in the course of the pregnancy is criminal unless such interference is undertaken to preserve the mother's life as prescribed by the Criminal and Penal Codes. The foetus is regarded as a human life from the moment the ovum is fertilized and one in which the society has an interest that must be protected by law. It is only when the mother's life is at risk that it is

⁴⁷ Odiaka Ngozi Oluchukwu, "Women's Rights in Nigeria: What's Holding Nigeria's Women Back?" <https://www.worldpoliticsreview.com/insights/20822/women-rights-in-nigeria-what-s-holding-nigeria-s-women-back> [Accessed 27 July 2020].

⁴⁸ Anonymous 'Nigerian Women in National Assembly and the GEO Bill: Matters Arising' <https://www.eienigeria.com> [Accessed 1st August 2020].

⁴⁹ Nkolika Ijeoma Aniekwu Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region 1st edn (Ambik Press Nigeria, 2011), p. 84.

⁵⁰ <https://nigeria.unfpa.org/en/news/crisis-access-reproductive-health-care-often-determines-if-women-and-girls-live-or-die-says> [Accessed 12 February 2020].

conceded that there is an overriding interest that allows abortion to be tolerated.⁵¹

The ACHPR Protocol on Women's rights in Africa (African Charter on Human and Peoples' Rights) provides that State parties shall 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 fetus.⁵² It goes without saying that the Nigerian Legal framework should be restructured to reflect the provisions of the protocol.

3.5 Gender Discriminatory Laws in Nigeria

The dearth of specific laws on reproductive rights is another major impediment to promotion and protection of these rights. The provision in section 17 of the Nigerian Constitution⁵³ is non-justiciable and, thus, unenforceable. Although the National Health Policy and Strategy, 1988,⁵⁴ may be relevant, it is not supported by the existing laws, which have contrary provisions. It is reasonably clear that the existing legal framework is not only sparse, but is also fraught with delimiting provisions and is ill-equipped to serve as the foundation for the guarantee and enforcement of women's reproductive rights.⁵⁵

Under the constitution of Nigeria⁵⁶, no person should be discriminated against solely on grounds of the circumstances surrounding his birth. In spite of this we have internal legislations that still foster discrimination, for instance, the Police Act provides that an unmarried woman who becomes pregnant shall be discharged from the force and shall not be re-listed save with the approval of the Inspector General of Police.⁵⁷ Not only is this clearly discriminatory, it is a clear violation of a woman's right to freedom of thought and conscience as well as a violation of her right to private family life. The Police Authorities should be pointed to the case of *Women Empowerment and Legal Aid v. Attorney-General of the Federation*⁵⁸ where the Federal High Court Per Adah J. (as he then was) held as follows: "The most fundamental issue is if this is the policy laid down for the police, does it apply to the men folk? It is not. So, it is only issued to women police officers because of their gender as women and this is very much unconstitutional."⁵⁹

See also the provisions of the Penal Code applicable in the Northern states of Nigeria. Section 55 (1) (d) provides that:

⁵¹ Ikeatu, Egundu Grace "Violations of Womens' Reproductive Rights in Nigeria" Violations of womens' reproductive rights in Nigeria | NnamdiAzikiwe University Journal of International Law and Jurisprudence (ajol.info) [Accessed 26 March 2021].

⁵² Art 14 (2).

⁵³ Which provides for adequate medical and health facilities for citizens

⁵⁴ The Federal Ministry of Health, National Policy and Strategy to achieve health for all Nigerians (1988).

⁵⁵ Ogugua Ikpeze "Customary Perspective on Reproductive Health Rights" (2014)

4-5 Journal of Health Law and Reproductive Rights (JHLRR) 60.

⁵⁶ S42 (2).

⁵⁷ Regulation 127 Police Act Cap 1990 LFN.

⁵⁸ *Women Empowerment and Legal Aid v. Attorney-General of the Federation* (2015) 1 NHRLR 39 at 57.

⁵⁹ Ibid.

"An assault by a man on a woman is not an offense if they are married, if native law or custom recognizes such "correction" as lawful, and if there is no grievous hurt."

4. Conclusion

A number of factors inhibit the provision and availability of maternal health and reproductive health care in Nigeria, which are key factors in the protection of reproductive rights. Chief among this is the non-justiciability of the economic and social rights. Thus, the provisions of the facilities and infrastructure necessary for the enjoyment of reproductive health rights are left to the whims and caprices of the government. Under international law, States that are party to a variety of different treaties assume tripartite obligations:

1. Respect for the right to health by refraining from direct violations, such as systemic discrimination within the health system;
2. Protection of these rights from interference by third parties
3. Fulfilling this right s by adopting deliberate measures aimed at achieving universal access to care, as well as to preconditions for health.

Evidently the Nigerian government has succeeded mostly in the fulfilling the first part of the obligation which is refraining from direct violations. The third aspect of the right which is fulfilment of the right by adoption of measures to achieve universal access to care has not enjoyed the necessary attention by the government. It is without a doubt that, legislations and policies are in place to protect Reproductive health in Nigeria. It is however it is undeniable the obvious lacuna between existent laws and implementation. Recognizing ones rights is one thing and enforcing it is another, knowing that you have a right to enforce, is yet another and understanding how to go about it is also another thing. In the past decades, feminist scholars have clamored for the incorporation of gender specific policies in our laws. The setbacks they have encountered on this journey is due largely to the inability for society to understand that Reproductive rights are indeed rights that need to be protected. Another impediment is the patriarchal nature of the Nigerian society where women are believed to exist solely for the benefit of men. This explains why concepts like marital rape as described in the VAPP Act has received backlash from the male folk. The rejection of the Gender and Equal Opportunities Bill by the National Assembly is also a sad reflection of the dominant role of patriarchy and sentiments in Nigerian governance.

The place of education and awareness cannot be overemphasized, rallies, talk shows, conferences must be carried out especially in rural areas. Information on reproductive health and rights should be disseminated non-stop. Women empowerment programs, to eliminate poverty which is a key element that fosters abuse of women's rights. Civil society groups and NGOs must be proactive in their support for women.

This research emphasizes the need for specific legislations which guarantee various aspects of reproductive rights. Enacting a National reproductive health law by the national assembly, as well as amending the constitutional provisions and other federal and state legislations on reproductive health and proper implementation of National reproductive health policies is a fundamental requirement in promoting

the course of advancing reproductive health rights in Nigeria.

Finally, the need for a structured institutional framework for the promotion and implementation of these rights cannot be overemphasized.

Pursuant to the above, the following recommendations are made.

5. Recommendations

1. The enforcement of women's reproductive rights should not be left solely for the courts. There is need for legislative reform and the need for the enactment of specific Reproductive Health Laws.
2. Legal reforms should be actively directed at family laws to safeguard women's rights, prohibit and penalize sexual harassment, sexual assault and gender based violence – The VAPP Act is a step in the right direction and more states should domesticate this law.
3. The need for a structured institutional framework for the promotion and implementation of these rights cannot be overemphasized
4. There is also the need to provide access to free reproductive healthcare for people who need them, which should be subsidized by government to make access to it possible by the citizens who need it- especially the rural impoverished women.
5. International laws such as CEDAW, The Additional Protocol on Women's Right to The African Charter 2003 should be domesticated and implemented at national level. This will invariably strengthen Nigeria's legal framework,
6. There is an urgent need for the enactment of comprehensive legislation that will safeguard Reproductive health and safety, thus the Assisted Reproductive Technology Bill should be speedily passed. This law is expected to provide a framework to regulate ART procedures such as IVF, Donor insemination and others, as well as protect the rights of children born via such means- which will prevent discrimination against such children.
7. Education and awareness should be increased. Trainings, Workshops and Seminars, especially in the rural areas should be on-going. Parents should also be enlightened on the need to let go of dangerous religious and cultural practices against their female children.
8. Government funding should be made available for NGOs working tirelessly to promote and protect rights of women in Nigeria.
9. The Gender and Equal Opportunities Bill 2016 should be speedily passed. The new bill was introduced on June 15th 2016, to reflect amendments on the concerns of the senators when it was previously presented. If passed, this Bill will give effect to certain parts of the constitution like PART II (solving the problem of non-justiciability). It will also give effect to The Convention on The Elimination of all forms of Discrimination Against Women (CEDAW) and The Additional Protocol on Women's Right to The African Charter 2003 (Maputo protocol).