

# Examining the Reproductive Rights in the Wake of COVID-19 Pandemic in Nigeria: An Evolving Issue of Human Rights Regime

Nnawulezi Uche

*Alex Ekwueme Federal University Ndufu-Alike Ikwo, Nigeria*

Bosede Remilekun Adeuti\*

*Ministry of Justice, Alagbaka, Akure, Ondo State, Nigeria*

**ABSTRACT:** The prospect of achieving sustainable reproductive rights protection in the wake of the COVID-19 pandemic in Nigeria has remained an intractable problem. To identify and recognize reproductive rights, it is necessary to comprehend that reproductive right embraces certain human rights recognized in national and international laws, including international human rights' documents. This paper examined the existing Nigeria laws on reproductive and health rights and ascertained the extent to which it had continually and predictably addressed the reproductive rights protection problem. There was a significant protection gap in the national human rights architecture. At the international level, among the poorer adolescent girls between the age of 15-19 years, it frequently resulted in early pregnancy and, of course, unsafe abortion. Thus, this gap related in particular to questions on lack of access to family planning services. This paper argued that improvement of reproductive and sexual health went far beyond the right to life and the right to health of women and girls. To guarantee Nigeria's reproductive rights, a more integral response to these critical human rights and development challenges could address Nigeria's protection gap. This paper adopted an analytical and qualitative approach by referring to existing pieces of literature achieved by the synthesis of ideas. This paper concluded that the adoption of a new approach to policies and programs on preventable maternal mortality and morbidity guaranteed the right to attain the highest standard of sexual reproductive health in Nigeria.

**KEYWORDS:** Reproductive Rights, Health Issues, COVID-19 Pandemic, Nigeria.



Copyright © 2021 by Author(s)  
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions

## HOW TO CITE:

Uche, Nnawulezi & Bosede Remilekun Adeuti. "Examining the Reproductive Rights in the Wake of COVID-19 Pandemic in Nigeria: An Evolving Issue of Human Rights Regime" (2021) 2:1 Indonesian Journal of Law and Society 29-58.

Submitted: 22/01/2021 Reviewed: 23/01/2021 Revised: 01/02/2021 Accepted: 11/02/2021

---

\* Corresponding authors' e-mail: [bosedelizabeth@gmail.com](mailto:bosedelizabeth@gmail.com)

## I. INTRODUCTION

Discussions on reproductive and sexual health rights have remained taboo in traditional African societies. Simultaneously, the right to health has been an internationally recognized human right. After several years of the Beijing Conference,<sup>1</sup> women have remained unable to control their sexual and reproductive health rights. There have been several cases of women's rights abuses, such as their lack of right to decide on their sexual health.

Indeed, Nigeria recognizes the right to health through its commitment and obligations under international treaties and domestic legislation stipulating specific actions concerning its citizens' health.<sup>2</sup> In light of the previous, inaccessibility of contraceptives has social, economic, and public health consequences, including the inability of women to protect themselves from HIV and other sexually transmitted infections as well as the inability to control their fertility reproduction.<sup>3</sup>

Against this backdrop, this paper examined the existing Nigerian Laws on reproductive and health rights. It included ascertaining the extent to which it consistently and sustainably addressed the reproductive Rights protection problem. This paper focused on sexual and reproductive health as a human rights issue essential in the wake of the Coronavirus Disease (COVID-19) pandemic in Nigeria. It enquired an effective change in protecting reproductive health rights, especially in the wake of this pandemic. It proffered answers to the following questions that must be resolved effectively in Nigeria's reproductive health rights protection system. Firstly, what is the nature and scope of reproductive health? Then, what are the factors militating against the attainment of reproductive health rights in Nigeria, especially in the wake of this virus pandemic?

---

<sup>1</sup> O. Nnamuchi, *The Right to Health in Nigeria*, Right to health in the Middle East Project, Law School, University of Aberdeen at 1.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

## II. METHODS

The research methodology of this study was a descriptive survey wherein the paper adopted an analytical and qualitative approach. It built its arguments on existing literature works, achieved by a synthesis of ideas. On the other hand, this approach was considered more appropriate because of the compelling need to have sustainable reproductive rights protection in Nigeria, especially in the wake of the COVID-19 pandemic.

## III. DEFINITIONS AND CONTEXTUAL ISSUES

### *A. Reproductive Rights*

Reproductive rights embrace certain human rights recognized in national laws, international laws, international human rights documents, and other consensus documents. However, these rights rest on recognizing the fundamental rights of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and have the information and means to do so and the right to attain the highest standard of sexual and reproductive health. It includes the right to make decisions concerning reproduction free from discrimination, coercion, and violence, as provided in human rights documents.<sup>4</sup>

No single human rights instrument is dedicated to reproductive rights. Instead, international, regional, and national human rights instruments protect the various elements of reproductive rights. According to the International Conference on Population and Development Program of Action,<sup>5</sup> reproductive rights are based on couples' and individuals' right to decide free from discrimination, coercion, and violence whether to have children, how often and when to do so, having the necessary information and means to make such decisions. Reproductive rights are not a new set of rights. It is a combination of freedoms and entitlements that are already

---

<sup>4</sup> See International Conference on Population and Development Program of Action, United Nation Document A/CONF.171/13 (1994).

<sup>5</sup> Ibid, para. 7(3) (1994).

recognized in national laws, international human rights instruments, and other consensus documents.

Admittedly, reproductive rights refer to a diversity of civil, political, economic, social, and cultural rights affecting individuals and couples' sexual and reproductive lives. It is essential to look briefly at some of the legal elements that together constitute reproductive rights. Thus, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> provides that states parties should ensure access to health care services, including those related to family planning and appropriate services related to pregnancy and the right to decide on the number and spacing of children.<sup>7</sup> Article 1 of the CEDAW defines discrimination against women. Article 2 sets out what states shall do to combat such discrimination.

To date, Nigeria has no social security system in this respect in a similar vein. The National Health Policy commits state and local governments to provide health subsidies for preventive care and additional public assistance for low-income individuals. On the one hand, the pandemic has led to the suspension and restriction of these guaranteed rights due to lockdown. This restriction has not amounted to derogations since there are not enough health facilities in the rural areas as it were in the urban areas. Has this imbalance not amounts to discrimination? The thrust of this argument is that non-discrimination is a core principle guiding the human rights system. In this context, every person has a right to enjoy human rights without discrimination.

An amplification and clarification of the above position are provided under Article 12 of the International Covenant on Economic, Social, and Cultural Rights.<sup>8</sup> Further, the Convention on the Rights of the Child also protects children's right to the highest attainable standard of health<sup>9</sup>. This progressive

---

<sup>6</sup> See the Convention on the Elimination of All Forms of Discrimination Against Women (1979).

<sup>7</sup> Article 12 and 16 of the Convention on the Eliminations of All Forms of Discrimination against Women (1979).

<sup>8</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966).

<sup>9</sup> Article 24 of the Convention on the Rights of the Child (1989).

ideology on non-discrimination and equal treatment is explicit in Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights<sup>10</sup> which establishes the prohibition on discrimination, as would find in Article 2 (1) of the Convention on the Rights of the Child.<sup>11</sup> Similarly, other regional human rights treaties such as Article 14 of the European Convention on Human Rights,<sup>12</sup> Article 1 of the American Convention on Human Rights<sup>13</sup> and Article 2 of the African Charter on Human and Peoples Rights<sup>14</sup> all contained non-discrimination clauses. Besides being widely held, it notably reflects the International Convention on the Elimination of all Forms of Racial Discrimination.<sup>15</sup> It specifically prohibits discrimination based on race, color, descent, national or ethnic origin, and the Convention on the Rights of Persons with Disabilities.<sup>16</sup> The current discrimination against women's right to control their fertility may be considered a fundamental issue that prohibits them from enjoying other human rights.<sup>17</sup> However, this pandemic has led to several discriminatory practices against women. It has adversely affected their right to adequate, accessible, and affordable health services, including information, education, and communication programs to women, especially in the rural areas. It has violated the non-discrimination clauses of the CEDAW. In practice, it is always those with the least access to reproductive rights that are adversely affected.<sup>18</sup>

---

<sup>10</sup> Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966).

<sup>11</sup> Article 2(1) of the Convention on the Rights of the Child (1989).

<sup>12</sup> Article 14 of the European Convention on Human Rights (1950).

<sup>13</sup> Article 1 of the American Convention on Human Rights (1978).

<sup>14</sup> Article 2 of the African Charter on Human and Peoples Rights (1979).

<sup>15</sup> Article 1 International Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>16</sup> Articles 3, 5, and 6 of the International Convention Rights of Persons with Disabilities (2006).

<sup>17</sup> C. Rebecca, "International Protection of Women's Reproductive Rights," *New York University Journal of International Law and Politics*, Vol. 24, p.645, (1991-1992).

<sup>18</sup> CEDAW/C/49/D/17/2008.

### *B. Sexual and Reproductive Health*

Many questions arise regarding the definition of the above two concepts. However, these two concepts are interwoven. Reproductive health is defined as follows:

a state of complete physical well-being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and its functions and process.

In this sense, reproductive health implies having a satisfying and safe sex life and the capacity or freedom to decide. It includes when and how often to reproduce, prevent and treat sexually transmitted diseases, avoid unwanted pregnancies, and promote responsible sexual behavior.<sup>19</sup> Following the above approach, sexual and reproductive health is defined as a state of physical, emotional, mental, and social well-being with all aspects of sexuality and reproduction. It is dependent on the realization of sexual and reproductive rights, based on the principles of human rights.<sup>20</sup> A systematic understanding and interpretation of the two concepts show that both concepts overlap and support physiological functions. They are such as pregnancy and childbirth, aiming to reduce adverse outcomes of sexual activity and reproduction. Before the 1990s, issues related to reproductive health focused on controlling women's fertility to diminish population growth, and not much more than that rests on a misunderstanding of the concept of reproductive health. In this context, health was the key entry point rather than reproductive well-being. According to the World Health Organization, sexual and reproductive health comprised of five key components such as: ensuring contraceptive choice and safety and infertility services, improving maternal and newborn health, reducing sexually transmitted infections, including HIV, and other reproductive morbidities, "eliminating unsafe abortion and providing post-abortion care; and promoting healthy sexuality, including adolescent health, and reducing harmful practices."<sup>21</sup>

---

<sup>19</sup> World Health Organization, Reproductive Health. Available at [http://www.who.int/topics/reproductive\\_health/](http://www.who.int/topics/reproductive_health/) accessed August 8, 2020.

<sup>20</sup> A.M. Starrs Accelerates Progress Sexual and Reproductive Health and Rights For All: Report of the Guttmecherlancet Commission. Lancet (2018).

<sup>21</sup> United Nations Population Fund, Sexual and Reproductive Health for All (2010).

There are some specific interpretations on reproductive rights deal with protecting women's reproductive rights. However, women are more directly affected than their male counterparts by decisions for biological and social reasons. In other words, reproductive rights matters are essential to women. They affect women's mental and physical integrity, health and sexual autonomy, relationships, education, job training, ability to provide for families, and negotiating work-family conflicts in institutions organized based on traditional sex-role assumptions.<sup>22</sup> On the one hand, the non-involvement of men and boys in matters related to reproductive rights contributes to men's poor preparation for adulthood, contraceptive use, and safe sex.<sup>23</sup> While it is by now mostly undisputed, men have a stake in reproductive rights through multiple roles as sexual partners. There remains some discussion as to men's sexual and reproductive health. Typically, the response focuses on the men's urogenital infections, infertility, and erectile dysfunction, and prostate and testicular cancer.<sup>24</sup>

In the light of the Nigerian interpretative statement on reproductive health and rights issues, the Nigerian government focuses on achieving socially and economically productive lives.<sup>25</sup> However, there is a strong argument that there is often not more than one nurse in rural health centers at any given time, and there are no doctors. Sometimes, the nurses are forced to act as doctors. It has potentially significant implications, in particular, to access to comprehensive, quality reproductive health care services in Nigeria.

In any event, reproductive health and rights issues comprised rape, marital rape, incest, female genital mutilation, unsafe abortion, unwanted pregnancies, and maternal mortality. Firstly, according to the provision of

---

<sup>22</sup> R. B. Siegal, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, (2007) Faculty Scholarship Series. Paper 1137.

<sup>23</sup> K. Anant, "Role of Males in Reproductive and Sexual Health Decisions" (2007) *The Bihar Times*.

<sup>24</sup> See United Nations Population Fund, "Male Involvement in Reproductive Health, Including Family Planning and Sexual Health Technical Report No. 28, (1995).

<sup>25</sup> Federal Ministry of Health, *The National Health Policy, and Strategy to Achieve Health for All Nigerians* (1988).

the Criminal Code Act,<sup>26</sup> rape is an unlawful carnal knowledge of a woman or a girl without her consent or with her consent if the consent is obtained by force or through threat or intimidation of any kind, or by fear of harm, or using false and fraudulent misrepresentation as to the nature of the Act, or in the case of married women, by personating her husband. The offense of rape is a violation of the victim's bodily integrity and the right to sexual security. At the same time, it also exposes the female to health rights such as unwanted pregnancies and sexually transmitted infections, and/or HIV/AIDS. This virus becomes a critical aspect of the sexual and reproductive health and rights challenge. Access to quality sexual and reproductive health care services is crucial for women and men living with HIV and AIDS. However, this general position is considered relevant because sexual and reproductive health programs can make an essential contribution to HIV prevention, treatment and support. In this sense, sexual and reproductive health services are essential for those living with HIV and AIDS.<sup>27</sup>

Secondly, unsafe abortion or even more significant concern is the abortion performed under hazardous conditions through wrong instruments and medication. It may lead to complications, such as perforation of the womb, inability to conceive, marriage, and premature birth. It suggests significant negative health implications for women and girls as their reproductive health concerns are not catered for on issues of abortion. In Nigeria's bifurcated criminal law system, abortions are illegal regardless of pregnancy duration. Both legal systems prohibit abortions performed at all stages of fetal or embryonic development from the time of fertilization unless the abortion is performed to save a pregnant woman's life.<sup>28</sup> Criminal Code in Southern Nigeria stipulates that a person is not criminally responsible for performing good faith and reasonable care and skill a surgical operation upon an unborn

---

<sup>26</sup> Nigeria Criminal Code Act, Laws of the Federation of Nigeria (1990).

<sup>27</sup> B. Marge, "HIV/AIDS, Sexual and Reproductive Health: Intersections and Implications for National Programs," *Health Policy and Planning* 19, suppl. 1 (Oxford University Press, 2004).

<sup>28</sup> See Section 228 of the Nigerian Criminal Code (1990) Section 232 of the Penal Code (1960).



child to preserve the mother's life.<sup>29</sup> Similarly, the Penal Code applicable in the Northern States of Nigeria permits abortion to save a woman's life.<sup>30</sup> Given a wide range of the criminal justice system applicable to abortion, the laws do not clearly distinguish between abortions performed by registered medical practitioners and unregistered medical practitioners, nor do they stipulate the kind of facility in which abortions may take place.

Thirdly, early and forced marriage is another issue that has been raised in respect of reproductive health and rights. It is also worth mentioning that the National Policy on Population discourages early marriage and states that parents should not arrange marriages for girls below eighteen.<sup>31</sup> From an operational perspective, the critical point can be expressed as in Nigeria today. There are several conflicting laws relating to early marriage. For instance, in the Eastern States of Nigeria, the legislation prohibits marriage contracts between persons under the age of sixteen years and, of course, declares illegal marriage.<sup>32</sup> Similar concerns have already been expressed that the Civil law provides parties to a valid civil law marriage of marriageable age" was not defined in this context. However, adolescents under the age of twenty-one cannot marry without parental consent under civil law.<sup>33</sup>

It is important to note that the Marriage Act does not specify any minimum age limit. Instead, it merely states that unless a party is a widow or widower. There is a need to obtain the parents' written consent or the guardian, where such a person is under twenty-one years. The Act further provides:

Because the written consent required by this ordinance has not been obtained, whoever shall marry or assist or procure any other persons to marry a minor under the age of twenty-one years, not being a widow or widower, shall be liable to imprisonment for two years.<sup>34</sup>

---

<sup>29</sup> See Section 297 of the Nigerian Criminal Code (1990).

<sup>30</sup> See Section 235 of the Penal Code (1960).

<sup>31</sup> See Nigerian National Policy on Population for Development, Unity, Progress and Self-Reliance 1 (1988) (National Policy) at 14.

<sup>32</sup> See Sections 2-4, 6 (Chapter 6) of the Laws of Eastern Region of Nigeria (1963).

<sup>33</sup> See Sections 18-20, 48 of the Marriage Act.

<sup>34</sup> See Laws of the Federation of Nigeria, (1990) cap. 220.

Some might argue that irrespective of these provisions, it is surprising that the Act did not specify a minimum age for marriage. It is problematic for two reasons. First, the inference to be drawn from these provisions is that a person above 21 years old should not comply with obtaining consent. Second, a person under 21 years old and hence "a minor," but who has become a widow or widower should not comply with the requirement for obtaining consent. However, the subsequent Matrimonial Causes Act 1970, which should have set matters right, failed to do so. It merely provides for the invalidation of a marriage where "either of the parties is not of marriageable age."<sup>35</sup>

In particular, both the Marriage Act and the Matrimonial Causes Act (MCA) 1979 seem to encourage, as the indigenous customary law, the obnoxious practice of child marriage. It refers to a statutory marriage that will be valid if parental consent was obtained in writing for a female's marriage still in her teens. Also, the absence of common minimum age, even by implication, for marriage under customary law further highlights the Marriage Act's flows with it. Besides, it is uncontroversial that when parental consent validates a female child's marriage between the age of fourteen and sixteen. The question is raised as to the effect of Section 221 of the Criminal Code, which states that the defilement of a girl under the age of sixteen years but above thirteen years is an offense.<sup>36</sup>

In this respect, the case of *Agbo v. Udo*<sup>37</sup> is an authority that failure to obtain the requisite consent before the marriage neither invalidates the marriage already celebrated nor makes for the prosecution under Section 49 of the person involved. The failure on the part of the draftsman of the Matrimonial Causes Act, 1970 to provide a minimum age for statutory marriage leaves much to be desired of the statute and the calls for a reform of the Marriage Act. Unarguably, it is essential to state that the growing number of violent conflicts worldwide today has been accompanied by an increase in sexual violence targeting women and girls and an increase in internationally displaced persons (IDPs) and refugees, which the majority of whom are

---

<sup>35</sup> S. 3(e) of the Matrimonial Causes Act (1970).

<sup>36</sup> Section 221 of the Criminal Code Laws of the Federation of Nigeria, (1990) cap. 77.

<sup>37</sup> (1947) 18 NLR, 152.

women and children. According to the United Nations High Commissioner for Refugees (UNHCR), there are nearly 60 million forcibly displaced people worldwide, and 13-9 million were nearly displaced due to conflict and persecution in 2014. This paper noted that access to obstetric and antenatal care for pregnant women, access to safe abortion and post-abortion care, especially for survivors of sexual and gender-based violence, are among the most pressing issues facing women by conflict or pandemic like coronavirus.

Similarly, it has been observed that young women and girls affected by conflict or pandemic faced an increased risk of physical and sexual violence. This includes an increase in the child, early and forced marriage due to a lack of economic resources and because families view this practice as a way to "protect" their daughters. According to the United Nations Children's Fund (UNICEF), the rate of child marriage among Syrian refugee girls in Jordan rose to 32% in 2014, compared to an average of 13% in Syrian before the war. Therefore, women and girls also faced increased risks of sexual violence, including rape, sexual assault, forced pregnancy, forced abortion, trafficking, forced marriage, and forced prostitution.

### *C. COVID-19 Pandemic*

To understand the term COVID-19 as used in this paper, it is essential to explore the above term is commonly referred to "Coronavirus disease 2019". COVID-19 is a new disease, and details of its spread are still under investigation.<sup>38</sup> It must be emphasized that the ongoing COVID-19 pandemic is caused by severe acute respiratory syndrome coronavirus 2 (SARSCOV2).<sup>39</sup> The outbreak of this pandemic was first identified in Wuhan, China, in December 2019.<sup>40</sup> In this regard, the first step taken by the World Health Organization (WHO) was to declare the outbreak a Public Health Emergency of International concern on 39<sup>th</sup> January 2020 and

---

<sup>38</sup> World Health Organization, "Coronavirus very likely of animal origin, no sign of lab manipulation" Reuters April 21, 2020, accessed May 19, 2020.

<sup>39</sup> World Health Organization, "Novel Corona Virus – China" accessed on May 2020

<sup>40</sup> See "The World Health Organization Director – General's Opening Remarks at the media Briefing on Covid-19, March 11, 2020" accessed May 19, 2020.

a pandemic on March 11.<sup>41</sup> However, available research has shown that as of May 17, 2020. More than 4.66 million cases of Covid-19 have been reported in more than 188 countries and territories, resulting in more than 312,000 deaths. More than 1-7 million people have recovered.<sup>42</sup>

The virus is primarily spread between people during close contact, often via small droplets produced by coughing, sneezing, and talking.<sup>43</sup> It is most contagious during the first three days after the onset of symptoms. However, the spread is possible before symptoms appear and from people who do not show symptoms.<sup>44</sup> Common symptoms include fever, cough, fatigue, shortness of breath, and loss of smell.<sup>45</sup> Also, complications may include pneumonia and acute respiratory distress syndrome.<sup>46</sup> It is worth noting that exposure to onset of symptoms is typically around five days but may range from two to fourteen days.<sup>47</sup> More importantly, there is no known vaccine or specific antiviral treatment. Thus, primary treatment is symptomatic and supportive therapy.<sup>48</sup>

It is clear that the pandemic has caused the severe global economic disruption.<sup>49</sup> It includes the most extensive global recession, which has led to the postponement or cancellation of sporting, religious, political, and cultural

---

<sup>41</sup> See "COVID -19 Dashboard by the Centre for systems science and Engineering at John Hopkins University", Arcegis John Hopkins University accessed May 19, 2020.

<sup>42</sup> See Centres for Disease Central Spreads", April 2, 2020. Accessed May 19, 2020.

<sup>43</sup> J. Hopkins, "Loss of sense of smell as a marker of COVID-19 Infection". Ear, Nose and Throat Surgery Body of the United Kingdom 2020. Accessed May 19, 2020.

<sup>44</sup> United States Centre for Disease Control and Prevention, "Corona Virus Disease 2019 (COVID-19) Symptoms" March 20, 2020, accessed May 19, 2020.

<sup>45</sup> See United States Centres for Disease Control and prevention, "Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease. (COVID-19)" April 4, 2020, accessed May 19, 2020.

<sup>46</sup> United States Centres for Disease Control and Prevention, "Symptoms of Novel Coronavirus (2019-NCOV)" February 10, 2020, accessed May 10, 2020.

<sup>47</sup> T.P Valavan and C.G Meyer, "The COVID-19 Epidemic" *Tropical Medicine and International Health* 25(3) (200) at 278-280.

<sup>48</sup> International Monetary Fund Report on COVID-19, "The Great Lockdown: Worst Economic Downturn Since the Great Depression" 2020.

<sup>49</sup> The Yew York Time, "A List of What Has Been Canceled Because of the Coronavirus" *The New York Times* acceded May 19, 2020.

events.<sup>50</sup> It widespread shortages exacerbated by panic buying<sup>51</sup> and decreased emissions of pollutants and greenhouse gases.<sup>52</sup> The further implications of this pandemic were the closure of schools, universities, colleges, and churches either on a nationwide or local basis in 186 countries, affecting approximately 98.5 percent of the world's student population.<sup>53</sup> It is important to emphasize that the general notion about this virus has spread online.<sup>54</sup> There has been an incidence of xenophobia and discrimination against Chinese people and against those perceived as being from high infection rates. The pandemic has resulted in many conspiracy theories and misinformation about the pandemic scale and the origin, prevention, diagnosis, and treatment of the disease.

#### IV. EFFECTIVE-CONTROL FEST OF THE NIGERIA'S HEALTH POLICY INSTRUMENT

Nigeria's Health Policy instrument is to achieve Health for All Nigerians to enable all Nigerians to achieve socially and economically productive lives.<sup>55</sup> This idea denotes the "legal mechanism" by which health care policies and subsidies for preventive care are implemented through the Primary Health Care (PHC) approach. The assumption underlying this idea is that Primary Health Care will encompass essential treatment, including maternal and child health and family planning services.<sup>56</sup> This progressive ideology was explicit in 1992 when the importance of the primary health care (PHC)

---

<sup>50</sup> S. Jade, "Why there will soon be tons of toilet papers, and what food may be scarce, according to supply chain exports." March 18, 2020.

<sup>51</sup> J. Watts and N. Kommenda, "Coronavirus Pandemic leading to the huge drop in Air Pollution" *The Guardian Newspaper* (London, March 23, 2020).

<sup>52</sup> United Nations Educational, Scientific, Cultural Organization (UNESCO), "COVID-19 Educational Disruption and Response" March 4, 2020, accessed May 19, 2020.

<sup>53</sup> R. Clamp, "Coronavirus and the Black Death: Spread of Misinformation and Xenophia shows we have not learned from our past" March 5, 2020.

<sup>54</sup> S. Tavenise and R.A Oppel, "Spit on, Yelled at, Attacked: Chinese Americans Fear for Their Safety" *The New York Times* (New York, March 23, 2020).

<sup>55</sup> *The National Health Policy and Strategy to Achieve Health for All Nigerians* (Health Policy) (1988).

<sup>56</sup> *National Health Policy and Strategy* (1988) at 9-10.

system was reinforced by the establishment of the National Primary Health Care Development Agency.<sup>57</sup> This was a fundamental feature of a stable regenerative order. It was necessary to seek to implement the national health policy by revising existing health policies. If it was necessary, it included translating policies into feasible strategies and providing technical support to the primary health care management system.<sup>58</sup> The dual nature of necessity is essential to Nigeria's primary health care system. While the Federal Ministry of Health coordinates the national health care policies, establishes a service delivery guideline, and coordinates state governments and the private sectors, the local government provides primary health care under the state Ministry of Health.<sup>59</sup>

Nigeria's extent health policy as outlined in the national health policy and its strategy does not rely on a subjective perception of the prevailing situation. However, they are on an objective determination based on promotive, preventive, restorative, and rehabilitative at ensuring a socially and economically productive and fulfilling life to every Nigerian. In this regard, the WHO's policies become a strategy for realizing primary health care as elaborated in Alma Ata's Declaration.<sup>60</sup> Besides the operational deficiencies of the National Health Policy, it is not anywhere near actualization. Each component unit represents an effective health system's essential components. If carefully developed and implemented, it would go a long way in ameliorating the current system's inadequacies in Nigeria. An effective health care system is an essential concept. It substantiates and specifies the national health policy and strategy to achieve health for all Nigerians, lying at the heart of the definition of health for all Nigerians.

However, it is very much open to question. It enquires whether other national policies that promote reproductive health constitute the critical policy frameworks that seek to achieve quality reproductive and sexual health

---

<sup>57</sup> Decree No 29, the National Primary Health Care Development Agency, PT.1 (1992).

<sup>58</sup> Ibid, Section 3 (a), (b).

<sup>59</sup> See Constitution of the Federal Republic of Nigeria (1999) Fourth Schedule Section 2c on Health Policy.

<sup>60</sup> Right to Healthcare, available online <https://www.righttohealthcare.org/Docs/Documentsc.htm> accessed August 11, 2020.

for all Nigerians. These policies are the National Reproductive Health Policy and Strategy of 2001, the National Policy on HIV/AIDs of 2003, the National Policy on Women of 2000, and 2004, National Policy on the Elimination of Female Genital Mutilation, 1998 and 2002, the National Adolescent Health Policy, 1995, National Policy on Maternal and Child Health, 1994, and the national policy on population for Development Unity, Progress and Self-reliance, 1998 and 2004. The government's policy steps and revised at different times are ineffective. However, they follow the spirit of the international and regional instruments promotive of reproductive health and contraceptive rights, for which Nigeria is a state party. A human rights-based approach to addressing sexual violence and sexual and reproductive rights violation in conflict or pandemic situations recognizes and addresses the root causes of such violations to prevent better and eradicate these practices. However, this approach would take stock of legal protection gaps and harmful policies in national contexts that need to be changed. It reaffirms the state's obligations under human law and clarifies the positive measures states should take to ensure women's access to sexual and reproductive health services.

#### *A. Reproductive Rights Violation under COVID-19 Pandemic in Nigeria*

In light of the outbreak of the COVID-19 pandemic in Nigeria, it asserts that President Muhammad Buhari relying on the Quarantine Act,<sup>61</sup> the section under consideration and section 45 of the Constitution<sup>62</sup> suspended the rights to freedom of movement, assembly, and association in all parts of Nigeria in the interest of public safety, aimed at curtailing the spread of this pandemic. At the Section 45(2) of the Constitution,<sup>63</sup> the apex law stipulates that an Act of the National Assembly shall not be invalidated because it provides for the taking, during a period of emergency, of measures that derogate from the provision of Sections 33 to 35 of the Constitution.<sup>64</sup>

---

<sup>61</sup> Nigerian Quarantine Act (2004).

<sup>62</sup> Section 45 of the Constitution of the Federal Republic of Nigeria (1999).

<sup>63</sup> Ibid, section 45(2).

<sup>64</sup> Ibid, Sections 33 to 35.

Also, the Constitution goes further to define a period of emergency. It is a period during which there is in force a proclamation of a state of emergency declared by the President in the exercise of the power conferred on him by Section 305 of the Constitution.<sup>65</sup> Therefore, it has become necessary to examine the section above 305 of the Constitution extensively to comprehensively examine how citizens' reproductive rights and other human rights can be restricted or suspended during the COVID-19 pandemic. However, various fundamental rights regimes are in operation in Nigeria, which frequently overlapped. While it is clear that Nigeria is comprehensively bound by the entire provisions of chapter four of the Constitution,<sup>66</sup> the applicability of the domestic fundamental rights under the COVID-19 emergency restrictions orders remains controversial. This notwithstanding, these rights that have been violated are the right to life.

### *B. Right to Life and Health*

It is submitted here that the right to life is deemed sacrosanct and can only be derogated from in the rarest of circumstances. However, Section 33 of the Constitution<sup>67</sup> provides that every person has the right to life save in executing a criminal offense. He has been founded guilty in Nigeria or defense of oneself, others, or property. Notably, the right to life and health is central to the enjoyment of all other human rights. Access to contraceptive information and services bears directly on the enjoyment of these rights. It is submitted that the right to life should not be narrowly interpreted.<sup>68</sup> The fulfillment of this right requires governments to take steps to reduce maternal mortality and increase life expectancy.<sup>69</sup>

In a similar vein, the notion of the right to life and health under the Committee on Economic, Social and Cultural Rights and the Convention

---

<sup>65</sup> See Section 305 of the Constitution of the Federal Republic of Nigeria (1999).

<sup>66</sup> See Chapter iv of the Constitution of the Federal Republic of Nigeria (1999).

<sup>67</sup> Ibid, Section 33 of CFRN (1999).

<sup>68</sup> Article 6, Right to life, Human Rights Committee, General Comment 6 (16<sup>th</sup> Session, 1982) in the compilation of General Comments and Recommendations Vol. 1, P. 176, para. 1 UN. Doc (2008).

<sup>69</sup> Ibid, para. 5.



on the Elimination of Discrimination against Women committee recognizes the right to health includes sexual and reproductive health<sup>70</sup> and that contraceptive information and services are vital elements to fulfill this right.<sup>71</sup> Also, it is submitted that the Constitution of the Federal Republic of Nigeria<sup>72</sup> also provides for the right to life with exceptional cases.<sup>73</sup> Thus, the functional approach to protecting reproductive health rights implies the government must make available affordable contraceptive services and commodities. These measures aim to prevent the high rate of contraction of the HIV epidemic or this novel coronavirus. They must ensure that their anti-retroviral drugs and palliatives are available to persons living with HIV/AIDS and persons who may have contracted coronavirus living in isolation centers or on self-isolation.

In light of what has been demonstrated above in this paper, one may infer that protecting the right to life and health includes sexual and reproductive health rights under the COVID-19 Pandemic in Nigeria. These rights are perhaps the least respected rights by state actors, as have recently been demonstrated by security agents' actions in enforcing the lockdown through their extra-judicial killings of citizens in the guise of enforcing the COVID-19 pandemic orders. The so-called restriction orders in the guise of enforcing the lockdown have remained an impediment for the citizens to access contraceptive information and services and/or anti-retroviral drugs for persons living with HIV/AIDs. In such situations, it is essential to ask whether such restriction orders do not amount to derogation? The extra-judicial killings of citizens in the guise of enforcing the lockdown orders by state actors amounts to a violation of Section 33(1) of the Federal Republic of Nigeria's Constitution. It stresses how one can justify killing citizens who may have flouted the lockdown order due to his search for health care facilities or palliatives.

---

<sup>70</sup> See the Convention on the Elimination of All Forms of Discrimination against Women (1979).

<sup>71</sup> See The Committee on Economic, Social, AND Cultural Rights General Comment 14, para. 34 UN Doc. E/C.12/2000/4 (2000).

<sup>72</sup> Section 37 of the Constitution of the Federal Republic of Nigeria (1999).

<sup>73</sup> Section 45 of the Constitution of the Federal Republic of Nigeria (1999).

Based on the above, it is clear that the right to life has explicitly or implicitly been recognized, albeit in differing language, under the human rights standard ratified by Nigeria. In this respect, the right to life not only protects an individual's arbitrary interference by government agents but also obliges states to take positive measures to protect from arbitrary killings, enforced disappearances, and similar violent acts committed by police or military personnel during the state of emergency. This paper maintained that states must criminalize these acts and implement appropriate measures to prevent, protect and remedy violations of the right to life.

Similarly, in keeping with the provisions of the Constitution of the Federal Republic of Nigeria 1999, bothering on the Declaration of the state of emergency, at Section 45(2) of the Constitution,<sup>74</sup> the apex law stipulates:

The National Assembly's Act shall not be invalidated because it provides for the taking during a period of emergency of measures derogated from the provision Section 33 to 35 of the Constitution.

It may also point out that all international and municipal human rights instruments are united in their proclamations of the right to life. However, Article 3 of the Declaration,<sup>75</sup> Article 6 of the Covenant,<sup>76</sup> as well as Article 4 of the American Convention<sup>77</sup> respectively provides:

Everyone has the right to life, liberty, and security of persons,<sup>78</sup> also, every human being has the inherent right to life. This right shall be protected by law, and no one shall be arbitrarily deprived of his life,<sup>79</sup> and the right to life shall be protected from conception.<sup>80</sup>

On the other hand, a similar provision on the right to life was provided under the African Charter on Human and Peoples Rights,<sup>81</sup> with an extension to Articles 6(1) and (2) of the United Nations Convention on the

---

<sup>74</sup> Section 45(2) of the CFRN (1999).

<sup>75</sup> Article 3 of the Universal Declaration of Human Rights (1948).

<sup>76</sup> Article 6 of the International Covenant on Civil and Political Rights (1966).

<sup>77</sup> Article 4 of the American Convention on Human Rights (1978).

<sup>78</sup> Article 6(1) of the ICCPR (1966).

<sup>79</sup> O. N Ogbu Human Rights Law and Practice 84, 86 (Cid Jap Press 1<sup>ST</sup> ed. 1999).

<sup>80</sup> EUROPEAN Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 (1950).

<sup>81</sup> Article 4 of the African Charter on Human and Peoples Rights (1979).

Right of the Child<sup>82</sup> which expressly provide for the right to life. In light of these, the Supreme Court in the case of *Osawe v. Registrar of Trade Union*<sup>83</sup> held that one has to bear in mind that the right guaranteed under Sections 34, 35, 37, and 38 of the Constitution of the Federal Republic of Nigeria<sup>84</sup> are “qualified rights” and not absolute rights.

With regard to the above view expressed by the Court, specific issues stand, to wit, infectious diseases as the ground upon which fundamental human rights can be restricted. The Court also held that indicates individual acts or rights of a person or group of persons may be restricted at any time and in any place whatsoever. Also, notwithstanding the comprehensive approach on the right to life and the state of legal development or public perception on the restriction of some of the fundamental rights, the Constitution of the Federal Republic of Nigeria has undergone a special process of assimilation of the law protecting public health especially to the susceptible area bothering on the spread of the coronavirus pandemic. Having set this legal framework and adopting a broad interpretation, this paper submitted that the interpretative guidance under the 1999 Constitution of the Federal Republic of Nigeria was intended to provide public safety.

### *C. Right to Dignity of Human Person*

According to Section 34 of the Constitution of the Federal Republic of Nigeria,<sup>85</sup> every citizen is entitled to have his dignity protected and respected by the state. However, in stressing the centrality of Section 34 of the Constitution of the Federal Republic of Nigeria, in a technical sense, the purpose of this section is to ensure that no person shall be subjected to torture or to inhuman or degrading treatment, slavery, servitude or required to perform forced or compulsory labor. However, the implementation of the

---

<sup>82</sup> Articles 6(1) and (2) of the United Convention on the Right of the Child (1989).

<sup>83</sup> (1985) NWLR (Pt. 4) 755.

<sup>84</sup> Sections 34, 35, 37, and 38 of the Constitution of the Federal Republic of Nigeria (1999).

<sup>85</sup> Section 34(1) of the 1999 Constitution.

coronavirus (COVID-19) pandemic restriction orders has left much to be desired as it relates to Nigerian citizens' dignity.

In maintaining public order and safety, instances abound where state actors have subjected citizens to inhuman and degrading treatment. They are either by flogging them or by making them engage in what is popularly called "frog jump" and other "forced" or "compulsory labor." There is no doubt that this approach notably aims at subjecting citizens to all manner of torture and arrest, all in the guise of implementing the present lockdown order. It is in the light of the above that the Court of Appeal in the case of *Uzoukwu v. Ezeonu*<sup>86</sup> held that "torture includes mental harassment, as well as physical brutalization, while inhuman treatment characterizes any act without feeling for the suffering of the other" while Degrading treatment is the element that lowers the societal status, character, value, or position of a person while it might be tempting to view the extra-judicial killings and torture of Nigeria citizens by state actors in the guise of enforcing the lockdown orders as a relic of a bygone era, the Court in the case of *Mogaji < Ors v. Board of Customs and Excise*<sup>87</sup> held that it is wrong to torture a Nigerian citizen in the guise of searching. Further, in respect of maintaining law and order, this apparent shift in the enforcement of executive orders is also noticeable in the case of *Goriet v. Union of Postal workers Union*,<sup>88</sup> the legendary Lord Denning states that "be you ever so high, the law is above you." Ultimately, a spectrum of attacks on citizens has led to emerging human rights challenges regarding respect to human persons' right to dignity. Also, women and girls as an individual with dignity should be protected against sexual exploitation, forced prostitution, sexual abuse and coercion to engage in any unlawful activity.<sup>89</sup>

The domestication of the African Charter on Human and Peoples right in its Article 5 further boosted citizens' rights to freedom from torture and human degradation. However, the charter has been declared *primus inter pares* of other domestic statutes in many cases.

---

<sup>86</sup> (1991) Pt. 200, 6NWLR 708 at 764-778.

<sup>87</sup> (1982) 3NCLR552.

<sup>88</sup> General Recommendation No.19 para .24-Violence Against Women (1992).

<sup>89</sup> Article 5 of the African Charter on Human and Peoples Rights (1979).

#### *D. The Right to Privacy*

In light of the provisions of section 37 of the Constitution of the Federal Republic of Nigeria<sup>90</sup> citizens' right to the privacy of their homes, correspondences, telephone conversation, and telegraphic communication is guaranteed under this section. It excepts in pursuance of a court order or just cause as provided under Section 45(1) of the Constitution of the Federal Republic of Nigeria. It relates to the public interest, public safety, public order, public health, state of emergency, and the protection of others' rights. The rights above to privacy and to determine the number and spacing of children cannot be derogated. However, the present restriction orders in Nigeria have overtly threatened the sacrosanctity of Section 37 of the Constitution in the guise of searching for infected coronavirus patients who either had escaped from the isolation center or have refused to submit themselves for a test.

On the other hand, the right to privacy and family as provided under the International Covenant on Civil and Political Rights<sup>91</sup> states that:

no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation.

While this provision might seem obvious, Article 8 of the European Charter on Human Rights, Article 11 of the American Charter on Human Rights, and Article 16 of the Convention on the Rights of the Child all guarantees the freedom of the child from "arbitrary or unlawful interference with his or her privacy, family, home, correspondence." However, it is essential to point out that a similar provision is contained in Article 10 of the African Charter on the child's rights and welfare.<sup>92</sup> Even the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>93</sup> explicitly

---

<sup>90</sup> Section 37 of the CFRN (1999).

<sup>91</sup> Article 17 of the International Convention Covenant on Civil and Political Rights (1966).

<sup>92</sup> Article 10 of the African Charter on the Rights and Welfare of the Child (1990).

<sup>93</sup> Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (1979).

recognizes a woman's right to determine the number, spacing, timing of her children, and access to the contraceptive information and services necessary to exercise that right.<sup>94</sup> It is interesting to note that the right to privacy, protected by other key international and regional treaties, protects the right of individuals and couples to make a fundamental decision about their private lives without any interference from state actors,<sup>95</sup> and decisions about whether and when to found a family falls within the protected zone of privacy.<sup>96</sup> As demonstrated in the previous sections, women's enjoyment of the rights above is incumbent on access to contraceptive information and services without undue interference in their ability to select a contraceptive. This view is predicated because the Nigerian government's COVID-19 restriction orders have affected their access to specific contraceptive methods and coercive family planning policies. Also, it impairs women's ability to make informed, autonomous decisions about their personal lives and health and violates the right to privacy and to determine the number, spacing, and otherwise.

Drawing on the provisions of the European Court of Human Rights, this paper argues that certain aspects of reproductive rights, such as the right to decide whether to have children and the space between them, fall within the sphere of the right to private and family life.<sup>97</sup> The Court recalls that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which encompasses, inter alia, the right to personal autonomy and personal developments.

#### *E. The Rights to Equality and Non-Discrimination*

Under Section 42 of the Constitution of the Federal Republic of Nigeria,<sup>98</sup> every citizen of Nigeria of a particular community, ethnic group, place of

---

<sup>94</sup> See Article 16(e) of the Convention on the Elimination of All Forms of Discrimination against Women (1979).

<sup>95</sup> See CEDAW Committee, General Recommendation 21: Equality in Marriage and Family Relations (1994).

<sup>96</sup> Ibid.

<sup>97</sup> Article 8 of the European Court of Human Rights (1950).

<sup>98</sup> Section 42 (1)(a) of the Constitution of the Federal Republic of Nigeria (1999).

origin, sex, religion, or political opinion shall not by reason only be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria or other communities, ethnic groups, places of origin, sex, religious or political opinions are not made the subject of discrimination. However, it is relevant to mention that this right can be derogated from where a person is suffering from infectious or contagious disease as the case may be. Similarly, about Section 42 of the Constitution, the question that remains pertinent is whether these rights can be restricted without necessarily subjecting the citizen to inhuman and degrading treatment? The obvious answer to the poser is in the affirmative. The restriction of the rights to equality and non-discrimination is of different variants. Some persons are ordinarily infected by the infectious disease (coronavirus). Of course, there are equally persons who, though not infected, however, have their rights restricted or violated in the guise of 'general good' of the public. In this sense, and for these persons, the right to equality and non-discrimination is a constitutional right that should not be violated, no matter any reason. From these different dynamics, persons who may have escaped from isolation centers and forcefully brought back by state actors to isolation centers were faced with several constitutional breaches arising from all sorts of discriminatory practices. It is in the strength of this that the Court in *Eze v. Inspector General of Police & Ors*<sup>99</sup> hold that "the police cannot arrest anyone for an offense not criminal in nature."

The above reasoning is that this right is protected in almost every critical international and regional human rights instruments underpinning the right to access contraceptive information and services. The rights to non-discrimination and equality prohibit discriminatory laws and policies. They require affirmative measures to combat socially and culturally ingrained discrimination to achieve substantive equality.<sup>100</sup> This paper considers that any law or policy designed to deny women or adolescents access to

---

<sup>99</sup> 11 NWLR (pt.1151) 117 (2009).

<sup>100</sup> See the Convention on the Elimination of All Forms of Discrimination against Women (1979).

contraceptive methods or by requiring spousal or parental authorization for women and not for men, of course, constitutes discrimination.<sup>101</sup>

Similarly, one might submit that following the prohibition of discrimination based on race, sex, language, and religion in the Charter of the United Nations, the adoption of the Universal Declaration of Human Rights together with the Convention on the Prevention and Punishment of the Crime of Genocide<sup>102</sup> became the next important step in the legal consolidation of the principle of equality before the law and the resultant prohibition of discrimination. Further, Article 1 of the Universal Declaration of Human Rights<sup>103</sup> proclaims that "All human beings are born free and equal in dignity and rights," which according to Article 2:

Everyone is entitled to all the rights and freedoms outlined in this Declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or another status. No distinction shall be made based on the country's political, jurisdictional, or international status or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty.<sup>104</sup>

Also, Article 7 of the Universal Declaration of Human Rights stipulates that all are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration.<sup>105</sup> In this respect, Article 2 of the Universal Declaration Prohibits distinctions of any kind designed as "an amplification and clarification" of Article 7 of the Declaration. It could be read as meaning that no differences at all can be legally tolerated. Put differently. These mandatory resolutions gave a super normative structure to the underlying rights contained in both international legislations. Besides being widely held, such as the restrictive interpretation, the international

---

<sup>101</sup> Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (1979).

<sup>102</sup> Convention on the prevention and punishment of the crime of Genocide (1948).

<sup>103</sup> Article 1 of the Universal Declaration of the Human Rights (1948).

<sup>104</sup> Article 2 of the Universal Declaration of Human Rights (1984).

<sup>105</sup> *Ibid*, Article 7.



monitoring bodies have not to be adopted, which has led to a series of violations.

Various national, regional, and international legislations have confirmed the importance of equality and non-discrimination. However, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights,<sup>106</sup> Article 2(1) of the Convention of the Right of the Child,<sup>107</sup> and of course, the three main regional treaties such as Article 14 of the European Convention on Human Rights,<sup>108</sup> Article 1 of the American Convention on Human Rights,<sup>109</sup> and Article 2 of the African Convention on Human and Peoples Rights.<sup>110</sup> In the light of the non-discrimination and equal treatment in law, the Convention on the Elimination of All Forms of Discrimination against Women<sup>111</sup> is specifically relevant for reproductive rights issues. In other words, it is essential to acknowledge that even under the COVID-19 pandemic, Women's right to control their fertility through invoking the prohibition against all forms of discrimination against them is an essential concept as it substantiates and specifies the notion of equality and non-discrimination, which are considered a fundamental key that opens up women's capacity to enjoy other human rights<sup>112</sup> contained in other legislation.

#### *F. Reproductive Right Protection: In Search of A Pathway*

In exploring what is meant by "Reproductive Rights Protection" in this paper, this paper's main thrust is to provide a basis for adequate protection of women's reproductive rights, particularly in the wake of the COVID-19

---

<sup>106</sup> Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966).

<sup>107</sup> Article 2(1) of the Convention on the Rights of the Child (1989).

<sup>108</sup> Article 14 of the European Convention on Human Rights (1950).

<sup>109</sup> Article 1 of the American Convention on Human Rights (1992).

<sup>110</sup> Article 2 of the African Convention on Human and Peoples Rights (1981).

<sup>111</sup> Articles (1) and (2) of the International Convention on the Elimination of All Forms of Discrimination against Women (1979).

<sup>112</sup> C. Rebecca, *supra* note 17.

pandemic in Nigeria. It is valuable to examine the legal framework for reproductive health in Nigeria.

In Nigeria today, the Federal Republic of Nigeria's Constitution contains provisions under Sections 17(c) though not justiciable and 33 to 45 bothering promoting and protecting reproductive health and rights. While this trend is broadly real of the protection of reproductive rights under the Constitution of the Federal Republic of Nigeria, there have been other legal instruments such as the Nigerian Labor Act<sup>113</sup> which expressly provides for the protection of pregnant women workers as well as their right to maternity leave. Also, Section 58(1) of the Nigerian Labor Act<sup>114</sup> provides that "any breach of the provisions of the maternity leave amounts to a criminal offense." Among the Labor Act's various provisions, it is clear that it specifically provides for the prohibition of engaging women workers on night duty and other similar activities compatible with their status.

The Nigerian Constitution and the Nigerian Labor Act have provided the legal frameworks adequate for guaranteeing compliance with international standards on the necessary respect for protecting reproductive health and rights in Nigeria. Other entities, such as the Factories Act, which expressly provided for workers' health, safety, and welfare, did not consider the effect of toxic substances and radioactive materials that are injurious to reproductive health. It is essential to highlight that amongst all the international and regional treaties that provided for the protection of reproductive and sexual health rights of women in Nigeria, the African Charter on Human and Peoples Rights is the only one domesticated in Nigeria<sup>115</sup> and have been severally applied in Nigerian Courts. The operational reality today is that the African Charter on Human and Peoples Rights<sup>116</sup> did not make express provision for the protection of the rights of women, including contraceptive rights.

Given the protection gap, the core concerns behind the emergence of the Protocol on the Rights of Women in Africa, otherwise known as the Maputo

---

<sup>113</sup> See Cap. LI. Laws of the Federation of Nigeria, (2004).

<sup>114</sup> Ibid, Section 58(1).

<sup>115</sup> See Cap 10 Laws of the Federation of Nigeria (1990).

<sup>116</sup> African Charter on Human and Peoples Rights (1979).

protocol<sup>117</sup> was to provide for adequate protection of women's reproductive rights expressly. Despite this milestone by the Maputo Protocol on Women's Rights in Africa, it is an essential tool on the regime of reproductive health rights and contraceptive rights. It must be borne in mind that this instrument has been ratified but not yet domesticated in Nigeria. The non-domestication of the Maputo Protocol in Nigeria is responsible for the non-actualization of women's reproductive rights. Finally, beyond obligations applicable in all situations on state parties in the Maputo Protocol's domestication, reproductive issues in the African region are cultural and political issues. They have remained a significant constraint in fulfilling this obligation. It becomes an issue precisely in addressing the reproductive and contraceptive rights of women in Nigeria.

## V. CONCLUSION

In the light of the Nigerian Constitution, the Protocol on the Rights of Women in Africa and other international and regional human rights instruments, the analysis shows that these legal instruments provided women's sexual and reproductive rights that address the various manifestations of violations. Despite these obligations under the law, reproductive rights protection in the wake of the COVID-19 pandemic regime in Nigeria remains challenging. In particular, when it defines a long-term normative framework to address shortcomings inadequate protection availability. Aside from situations of adequate protections, in other instances, the availability of contraception increases the level of sexual activity within society. Many questions remain unanswered with the proposition that both cultural and religious issues are responsible for the inadequate protection of reproductive rights in Nigeria. It must develop and strengthen domestic normative frameworks by domesticating the Maputo Protocol, policy, and operational practices and sharing acceptable practices to that effect.

While states are under obligation to ensure a full range of contraceptive methods are available, accessible, acceptable and of good quality, to what extent has the state developed and implemented a national strategy or plan

---

<sup>117</sup> Adopted July 11 and entered into force November (2005).

that includes measures to ensure access to contraceptive information and services? These stand in contrast with the requirement of the non-discrimination and equal treatment principles highlighted above. Ultimately, in examining a pathway to reproductive rights protection in Nigeria, existing deficiencies in legal regulations on the status of women's reproductive rights should be re-examined to respond to developments in the national, regional, and global security architecture.

## REFERENCES

- A.M. Starrs Accelerates Progress Sexual and Reproductive Health and Rights For All: Report of the Guttmecherlancet Commission. Lancet (2018).
- B. Marge, "HIV/AIDS, Sexual and Reproductive Health: Intersections and Implications for National Programmes," Health Policy and Planning 19, suppl. 1 (Oxford University Press, 2004).
- C. Rebecca, "International Protection of Women's Reproductive Rights," New York University Journal of International Law and Politics, Vol. 24, p.645, (1991-1992).
- Federal Ministry of Health, The National Health Policy, and Strategy to Achieve Health for All Nigerians (1988).
- International Monetary Fund Report on COVID-19, "The Great Lockdown: Worst Economic Downturn Since the Great Depression" 2020.
- J. Hopkins, "Loss of sense of smell as a marker of COVID-19 Infection". Ear, Nose and Throat Surgery Body of the United Kingdom 2020. Accessed May 19, 2020.
- J. Watts and N. Kommenda, "Coronavirus Pandemic leading to the huge drop in Air Pollution" The Guardian Newspaper (London, March 23, 2020).
- K. Anant, "Role of Males in Reproductive and Sexual Health Decisions" (2007) The Bihar Times.

- Nigerian National Policy on Population for Development, Unity, Progress and Self-Reliance 1 (1988) (National Policy).
- O. Nnamuchi, *The Right to Health in Nigeria*, Right to health in the Middle East Project, Law School, University of Aberdeen.
- O. N Ogbu *Human Rights Law and Practice* 84, 86 (Cid Jap Press. 1999).
- Right to Healthcare, online <https://www.righttohealthcare.org/Docs/Documentsc.htm>> accessed August 11, 2020.
- R. B. Siegal, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, (2007) Faculty Scholarship Series. Paper 1137.
- R. Clamp, "Coronavirus and the Black Death: Spread of Misinformation and Xenophobia shows we have not learned from our past" March 5, 2020.
- S. Jade, "Why there will soon be tons of toilet papers, and what food may be scarce, according to supply chain exports." March 18, 2020.
- S. Tavenise and R.A Oppel, "Spit on, Yelled at, Attacked: Chinese Americans Fear for Their Safety" *The New York Times* (New York, March 23, 2020).
- The New York Times, "A List of What has Been Canceled Because of the Coronavirus" accessed May 19, 2020.
- T.P Valavan and C.G Meyer, "The COVID-19 Epidemic" *Tropical Medicine and International Health* 25(3) (200) at 278-280.
- United Nations Population Fund, *Sexual and Reproductive Health for All*, (2010).
- United Nations Population Fund, "Male Involvement in Reproductive Health, Including Family Planning and Sexual Health Technical Report No. 28, (1995).
- United States Centre for Disease Control and Prevention, "Corona Virus Disease 2019 (COVID-19) Symptoms" March 20, 2020, accessed May 19, 2020.

United States Centres for Disease Control and prevention, "Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease. (COVID-19)" April 4, 2020, accessed May 19, 2020.

United States Centres for Disease Control and Prevention, "Symptoms of Novel Coronavirus (2019-NCOV)" February 10, 2020, accessed May 10, 2020.

United Nations Educational, Scientific, Cultural Organization (UNESCO), "COVID-19 Educational Disruption and Response" March 4, 2020, accessed May 19, 2020.

World Health Organization, "Coronavirus very likely of animal origin, no sign of lab manipulation" Reuters April 21, 2020, accessed May 19, 2020.

World Health Organization, "Novel Corona Virus – China" accessed on May 2020

World Health Organization, Reproductive Health. Available at [http://www.who.int/topics/reproductive\\_health/](http://www.who.int/topics/reproductive_health/) accessed August 8, 2020.

World Health Organization, "The World Health Organization Director – General's Opening Remarks at the media Briefing on Covid-19, March 11, 2020" accessed May 19, 2020.

World Health Organization, "COVID -19 Dashboard by the Centre for systems science and Engineering at John Hopkins University", Arcegis John Hopkins University accessed May 19, 2020.