



THE IMPACT OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS ON REPRODUCTIVE RIGHTS AND HEALTH IN NIGERIA

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Abstract

This paper examines selected International Human Rights instruments on reproductive health rights in Nigeria. These include, The Covenant on Economic, Social and Cultural Right 1966, the Convention for the Elimination of all forms of Discrimination against Women 1979 as well as the 1948 Universal Declaration of Human Rights. The Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Convention, profoundly and expressly discusses human rights regarding family planning services maternal health information as well as enlightenment on choice of the number and spacing of one's children. These treaties went ahead to initiate the formation of Committees whose functions are to monitor States' compliance with the obligations that they have endorsed. This paper adopts the doctrinal method of research- 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 also highlights some of the reproductive health issues embraced in these instruments, which include, harmful traditional practices, Female Genital Mutilation, indigenous Widowhood practices, Under - aged marriages, Domestic violence, Abortion, HIV/AIDS (management of the diseases, as well as dealing with the problem of stigmatization), Maternal mortality / morbidities and Family planning. This paper finds that in spite of the existence of these international instruments, there is a gap in implementation and enforcement. This paper further finds that some party States (for instance Nigeria), who are parties to these international instruments (treaties. declarations and provisions) though ratified, have not taken steps to incorporate and create a mechanism for the enforcement and implementation of these rights. Nigeria for instance has ratified a number of international instruments but has not domesticated same into its municipal laws. This is obviously due to the crippling effect of the provisions of section 12 of the 1999 Constitution as amended. This paper concludes with recommendations such as the revision of section 12 of the CFRN as one of the ways forward for the enforcement and implementation of these international instruments, which will inevitably help strengthen the legal framework on protection of reproductive health and rights in Nigeria.

Keywords: International instruments, Reproductive health, Reproductive rights, Women rights.

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1. Introduction

Reproductive health and rights attained universal recognition at the 1994 International Conference on Population and Development² in Cairo Egypt. Significantly, Chapter VII of the ICPD'S program of Action is dedicated to Reproductive Rights and Reproductive Health. Matters of reproductive health formed the core of the discourse during the Cairo conference. Consequently, in 1995, the Fourth World Conference on Women adopted the Program of Action (PoA) in Beijing, China. This program reiterated the statements made in Cairo with regard to reproductive health and reproductive rights. Contrary to beliefs in some quarters, Reproductive rights are not limited to reproductive health alone or matters concerning the reproductive organs. In fact Reproductive rights are derived from broadly established rights, such as the rights to dignity, privacy, health and freedom from discrimination. These rights encompass all the issues concerning both men and women as it affects them physically, mentally as well as psychologically.

According to the ICPD program of Action, Reproductive Health is defined as:

“A state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and it's functioning and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so, implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective affordable and acceptable methods of family planning of their choice as well as other methods of appropriate health — care services that will enable women to go safely through pregnancy and childbirth services and provide couples with the best chance of hearing a healthy infant.”

Reproductive rights further include legal rights and freedoms relating to reproduction and reproductive health. The World Health Organization defines 'Reproductive Rights' as follows:

Reproductive rights encompasses the basic rights 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. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.³In summary, Reproductive rights may include some or all of the following: The right to legal and safe abortion, the right to birth control freedom from coerced sterilization abortion, and contraception, the right to access good quality reproductive health care, and the

² The ICPD was endorsed by the UN General Assembly in its Resolution 49/28, also known as the Cairo program, held from 5-13 September, 1994.

³Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st edn(Ambik Press Nigeria) p 15.

right to education and access in order to make free and informed reproductive choices. Reproductive rights may also include the right to receive education about sexually transmitted infections and other aspects of sexuality and protection from gender based practices such as Female Genital Mutilation (FGM).⁴

The right to the highest attainable standard of living (also known as as the right to health) was first highlighted in the World Health Organization Constitution 1946 and was subsequently re-echoed in the declaration adopted by the World Health Assembly in 1978. However, health was first recognized as a human right in the Universal Declaration of Human Right 1948. Subsequently, a more comprehensive expression of these rights was expressed in Article 12 of the Covenant on Economic, Social and Cultural Right 1966⁵ and the Convention for the Elimination of all forms of Discrimination against Women⁶ 1979⁷. This paper examines several of these international instruments with far reaching consequences on reproductive rights in Nigeria. This discourse is divided into 5 parts- Part I is the introduction to the discourse, Part II examines the International instruments, Part III examines human rights obligations in reproductive health, Part IV highlights some specific areas impacted by these International instruments, and Part V concludes with recommendations on ways to harness these international instruments in order to strengthen the legal framework on reproductive health in Nigeria.

2. International Impact and legal framework on Human Rights and the Right to Health

The preamble to the 1948 Universal Declaration reaffirmed the United Nation Charter, which in 1945 observed that a purpose of the newly created organization was to reaffirm faith in fundamental human rights in the dignity and worth of the human person and in the equal right of men and women. The Universal Declaration discloses its origins and foundation in principle based natural law or deontological orientations to ethics, opening with the observations that:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind [and]

“Whereas it is essential ... that human rights should be protected by the rule of law...”.

The General Assembly [of the United Nations]..., proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of

⁴*Ibid* p.15.

⁵Hereinafter referred to as [CESCR]

⁶Hereinafter referred to as [CEDAW]

⁷Olaide Gbadarnosi, “An Imperative for the Recognition of the Right to Health as a Fundamental Human Right in National Constitution’(2007-2009) Vol. 5-7, B.J.P.L 154.

society... shall strive., by progressive measures, national and international, to Secure their universal and effective recognition and observance..⁸

Since 1948, countries have committed themselves to the Universal Declaration and international Law, particularly through various international human rights conventions to which states parties voluntarily adhere, to respect and give effect to standards of governmental conduct expressed in conventions that have their origins in universal values. Some of the Human rights treaties that articulate the Universal Declaration of Human Rights include the International⁹ Covenant on Civil and Political Right¹⁰ also known as the Political Covenant, the International Covenant on Economic, Social and Cultural Right¹¹ also known as the Economic Covenant and regional treaties such as the European Convention on human Right¹² also known as the European Convention, the American Convention on Human Rights¹³ also known as the American Convention and the African Charter on Human and Peoples Right¹⁴ also known as the African Charter. Additionally, several international treaties are directed to the relief of injustices that women suffer on account of actions and inactions that promote reproductive ill health. These treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (the Race Convention)¹⁵ and the Convention on the Rights of the Child 1989 (the Children's Convention).¹⁶

The most applicable in terms of enforcing and protecting the rights of women, is the Convention on the Elimination of All Forms of Discrimination against Women¹⁷ (1979)¹⁸ also known as the Women's Convention, which explicitly addresses human rights regarding family planning services maternal health information and education to decide the number and spacing of one's children. These treaties further established Committees whose functions are to monitor States' compliance with the obligations that they have accepted and ratified. The Women's Convention established the Committee on CEDAW to monitor whether States have brought their laws, policies and practices into compliance with the convention. Similarly, the Political Convention established the Human Right Committee¹⁹, the Economic Covenant established the Committee on CESCR, the Children's Convention established the

⁸*Ibid* at Article 1(3).

⁹Hereinafter referred to as [UDHR]

¹⁰U.N Doc. A/6316(1966) (Acceded to by Nigeria July 9, 1993).

¹¹ U.N Doc . A/6316 (1966). Hereinafter referred to as [ICESCR]

¹² U.N Treaty Series, 213 (New York: UN, 1959), 221. Hereinafter referred to as [ECHR]

¹³Organization of American States American Convention on Human Rights Organization of American States Treaty Series, 1(1969)1. Hereinafter referred to as [ACHR]

¹⁴Organization of African Unity, African Charter on Human and Peoples Rights (Addis Ababa: OAU 1981) Doc.Cab/Leg/67/3/Rev.5. Hereinafter referred to as [ACHPR]

¹⁵ UN International Covenant on the Elimination of all forms of Racial Discrimination (New York: UN, 1965).

¹⁶ Adopted and opened for signature, ratification and accession by General Assembly of the United Nations Resolution 44/25 of 20 November 1989, Entry into force: 2nd September 1990, in accordance with article 49 and was ratified by 187 countries including Nigeria s of 15th April, 1996.

¹⁷ General Assembly Resolution 34/180 of 18 December 1979.

¹⁸Hereinafter referred to as [CEDAW]

¹⁹Hereinafter referred to as [HRC]

Committee on the Right of the Child²⁰ and the international Convention on the Elimination of All Forms of Racial Discrimination established the Committee on the Elimination of Racial Discrimination (CERD).

These Committees meet from time to time to evaluate the Reports of States parties and their efforts at bringing their laws, policies, and practices into compliance with treaty obligations. Significant evolutions has emerged through specific United Nations conferences and agencies, treaty monitoring bodies and human rights tribunals to promote women's equality and rights regarding health care. The impediments encountered on the route to proffer effective remedies for women's ill health are cumbersome, due to complicated causes. Nonetheless, national and international programs on women's health have highlighted, ways in which solutions will be provided. In specific areas of women's health, states who have ratified these treaties have committed themselves to report regularly to CEDAW on steps they have taken to eliminate discrimination against women in the field of health care in order to ensure... access to health care services, including those related to family planning, pregnancy, confinement and the post- natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.²¹

Article 18 of the Women's Convention further mandates States Parties to submit a report within one year of the Convention going into effect for the state concerned and every four years thereafter, and explains that reports may indicate factors and difficulties affecting the degree of fulfillment of obligations. Once the CEDAW Treaty-Monitoring committee has considered a country report and any additional information on treaty compliance, and discussed the report with the representatives of the reporting government, it issues Concluding Observation. These concluding observations note the achievements of the reporting state to take steps to bring its laws, policies and practices in compliance with CEDAW treaty obligations on the right to health, and the concerns the committee has with lack of compliance.²²

The right to health has been affirmed by a plethora of international and regional human rights instruments. For instance, in Article 25 of the Universal Declaration of Human Rights 1948 we find the following provision:

“Everyone has the right to a standard of living adequate for the health and well- being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

²⁰Hereinafter referred to as [CRC]

²¹*Ibid.*

²²CEDAW 1979.

The provision of the Universal Declaration of Human Rights (1948) on the right to health has been aggregated by the additional provision in the International Covenant on Economic, Social and Cultural Rights. The most authoritative interpretation of the right to health is outlined in the International Covenant on Economic Social and Cultural Right 1966²³ which provides that everyone is entitled to the enjoyment of the highest attainable standard of physical and mental health²⁴.

In May 2000, the committee on Economic, Social and Cultural Right which keeps track of the Covenant, adopted a General comment (No.14) on the right to health. The General Comment recognized that the right to health is closely related and dependent upon the realization of other human rights including the right to food, housing work, education, participation the enjoyment of the benefits of scientific progress and its applications, life non-discrimination, equality the prohibition against torture, privacy access to information, and the freedoms of association, assembly and movement.²⁵ Furthermore, the Committee interpreted the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health- related education and information including sexual and reproductive health. The Committee on Economic, Social and Cultural Right enjoins States to take immediate and progressive steps to achieve specific health standards. The Universal Declaration of Human Rights (1948) and ICESCR, all form the backbone of the human right to health under international law. However, the provisions of the two treaties are general.²⁶The right to health is also recognized by African Charter of Human and Peoples' Right 1981, The Convention on the Elimination of Discrimination against Women Article 11(f)also recognizes the right to health as well as government's obligation and commitment to protection of this right.

The right to health is additionally acknowledged in regional instruments in other international treaties such as the Convention on the Rights of the Child²⁷ and the Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e) (IV)). At the regional level, the European Social Charter, as revised in 1996, similarly talks of a joint approach to achieving the right to health. It states: 'With a view to ensuring the effective exercise of the right to protection of health the Parties undertake either directly or in cooperation with public or private organizations, to take appropriate measures designed inter alia: (1) to remove as far as possible the causes of ill-health, (2) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health (3) to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.'²⁸ The right to health mandates minimum acceptable standards of care to be met or exceeded

²³Hereinafter referred to as [ICESCR].

²⁴Article 12(1).

²⁵CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)<https://www.refworld.org/pdfid/4538838d0.pdf> Accessed 11 April 2022.

²⁶*Ibid*.

²⁷Articles 23 and 24.

²⁸Council of European, 1996, Article 11.

and also sets standards in the protection of people from risks such as water and air pollution as well as workplace hazards.²⁹ Basic prerequisites of good health also include the rights to shelter food and means of adequate sanitation. As is the case with civil and political rights, the government's responsibilities to ensure that its population enjoy the right to health is equally about process and outcome. These responsibilities include access to trained medical personnel, the availability of affordable and acceptable drugs and health services and the assurance that care is of a certain quality.

3. Human Rights Obligations in Reproductive Health³⁰

Since the development of human and reproductive rights, governments are faced with diverse obligations, including specific obligations applicable to specific circumstances as well as those applicable to long-term obligations for the protection of women's reproductive health. The CEDAW General Recommendation on Women and Health and CESCR'S General Comment on Health elucidate that States have three variants of general legal obligations for the enforcement of human rights, which are, to respect rights, to protect rights and to fulfill rights.

The CEDAW General Recommendation on Women and Health elucidate the provision above, thus;

“The obligation to respect rights requires states parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care.”³¹

The General Recommendation further emphasized the need for States to alter their law or policies which mandate women to seek the authorization of their husband's parent or health authorities before they can obtain health services, because such laws or policies are gender discriminatory and clearly a breach of her right to self-determination.³² The Recommendation equally posits that any laws that criminalize medical procedures only needed by women, which also punish women who undergo those procedures constitute a contravention of the Women's Convention. It further submits that the obligation of state parties to protect women's rights includes that states must take action against agents or organizations who violate these rights of women.³³ The Recommendation further explains that the duty to protect rights requires the 'promulgation and effective enforcement' of laws that forbid girl child marriage.³⁴ This includes an obligation to advance health care protocols and programs in gender enlightenment and training for providers of health care and in propagation of efficient health care services to aid in the to identification, tackling, prevention and remedies, against the causes of Women's ill health. Research reveals that high rates of maternal deaths and anguish, in addition to lack of access to contraception are proof that there is a

²⁹Article 12 ICESCR.

³⁰Aniekwu Nkolika, *Reproductive Health Law* (Benin, Ambik Press, 2011) 31.

³¹ Art 12 CEDAW.

³² CEDAW General Recommendation on Women and Health, para 14.

³³*Ibid* at para 15.

³⁴Child Rights Act 2003 prohibits marriage for those below 18 years, however there is still prevalence of child marriages in Northern Nigeria where Islamic beliefs hold sway.

clear contravention of the right to access proper health care.³⁵ In addition to these general obligations, CESCR has issued a General Comment that explains the minimum core obligations of Articles 12 on the right to the highest attainable standard of health. This General Comment establishes that states have core obligations to provide essential primary health care in order to satisfy the right to the highest attainable standard of health. The General Comment explains that ‘core obligations are not subject to resource limitations or progressive realization that their realization is required immediately.’³⁶ Some of the obligations on the government in this regard include, to ensure the right of access to health facilities, goods and services on a nondiscriminatory basis, to ensure equitable distribution of all health facilities, goods and services. The General comment explains that immediate obligations consequent on the protection of the right to health include the responsibility to banish health related discrimination especially concerning the access to health care. State parties are also enjoined to take active and proactive measures with regard to health. The choice of rights to apply will depend on the immediate and underlying causes of reproductive health issues arising therefrom.³⁷

Some of the specific rights, applicable and contributory to women’s health generally, include: rights relating to life, survival, security and sexually of the person, rights relating to health care, rights to non-discrimination and due respect for difference; and rights relating to reproductive self-determination.³⁸ Consequently, some essential factors requisite for the actualization of the right to health care include, the availability of health care facilities to all citizens, ensuring that these facilities are accessible to every person especially the indigent. Furthermore, the provision of healthcare must meet internationally acceptable standards and the personnel involved in the provision of health care must be duly skilled and professionals.³⁹ Gender specific human right law showcases the core sectors that influence women’s reproductive health rights, as well as the facilitation of international and regional instruments on reproductive, rights in Nigeria legal system.⁴⁰

Reproductive health law and research essentially encompasses studies on the practicability of the incorporation and implementation of international and regional instruments on reproductive health issues. It highlights the prospects and opportunities in enacting a national legislation as well as absorbing the provisions of these legal instruments on women reproductive health into domiciliary law. There are clearly a plethora of laws on Reproductive health already affecting existing issues relating to reproductive health such as, Domestic violence, maternal health care, and Sexual violence. Abortion, Harmful traditional practices such as FGM, widowhood rites etc.⁴¹ some of which will be discussed below.

³⁵Supranote 30.

³⁶CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4) <https://www.refworld.org/pdfid/4538838d0.pdf> Accessed 11 April 2022.

³⁷*Ibid.*

³⁸Supranote 34.

³⁹United Nations Committee on CESCR Comment No. 14

⁴⁰Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st edn(Ambik Press Nigeria) p 15.

⁴¹*Ibid.*

4. Selected Aspects Of Reproductive Health Affected By International Instruments:

A. Female Genital Mutilation

Female Genital Mutilation, hereinafter referred to as FGM is defined as all procedures that involve partial or total removal of the female external genitalia and or injury to the female genital organs for cultural or any other therapeutic reasons. This practice is entrenched in many indigenous customs in Nigeria. It is considered one of the numerous rites of passage of young woman into adulthood. It is believed to make a woman sexually subservient to men as well as eliminating any chances of promiscuity.⁴²FGM, otherwise known as female circumcision, has severe consequences. Some of which are, excessive bleeding, severe pain, shock, infections, urine retention, genital ulcerations, keloid, scar formation, HIV/AIDS/STIs. Vesico Vaginal Fistula⁴³, Recto Vaginal Fistula⁴⁴, resulting from damage to urethra /rectum, to psychological complications where victims feel incomplete, suffer anxiety and become depressed, irritable and frigid.⁴⁵The proponents of this dastardly acts have tried to justify their beliefs with arguments such as: reduction of sexual desire in females, thereby curbing promiscuity/immorality, encouraging virginity before marriage, increasing male sexual pleasure, promoting social integration and initiation of girls into womanhood, hygienic and aesthetic reasons, as well as some myths around the survival of a baby whose head touches the clitoris during birth. All these are some arguments amongst other religious reasons proffered as justification. This research posits that these reasons are highly mythical, unverified and not proven scientifically.⁴⁶

FGM itself is a breach of several existing human rights, and particularly breaches the rights to dignity of human person as entrenched in Section 34 of The 1999 Constitution (as amended) as well as a breach of freedom from torture, inhuman and degrading treatment as provided in General Recommendation No. 19 CEDAW.

The Convention on the Rights of the Child 1989 (the Children's Convention)⁴⁷ admonishes state parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of the child. The women's convention obliges states parties to protect woman against harmful practices, but also to reform the cultures in which traditional expectations endanger women's health. Moreover, CEDAW's General recommendation on FGM, requires states parties to take effective and appropriate measures with a view to eradicating the practice of female circumcision.⁴⁸

⁴²Jane 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.

⁴³Hereinafter referred to as [VVF].

⁴⁴Hereinafter referred to as [RVF].

⁴⁵See also TC Okeke, USB Anyaehie et al "An Overview of Female Genital Mutilation in Nigeria"
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3507121/> Accessed 11 April 2022.

⁴⁶*Ibid.*

⁴⁷ Adopted and opened for signature, ratification and accession by General Assembly of the United Nations Resolution 44/25 of 20 November 1989, Entry into force: 2nd September 1990, in accordance with article 49 and was ratified by 187 countries including Nigeria s of 15th April, 1996.

⁴⁸General Recommendation No. 19 CEDAW.

Article 7 of the International Covenant on Civil and Political Right⁴⁹ also known as the Political Covenant further states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation’. The traditional application of the right to be free from torture and from cruel, inhuman and degrading treatment was initially only to ensure that prisoners are treated in human ways. Courts and human rights tribunals are now moving beyond this, however, to ensure that the inherent dignity of a person is respected, protected, and fulfilled. To ensure that no one shall be subjected without his free consent to medical or scientific experimentation.⁵⁰ Female cutting or genital mutilation has been prohibited by legal or administrative measures in at least twenty-one African countries.⁵¹ Guinea banned the practice in a Penal Code provision that defines the offence of ‘castration’ to include mutilation of the organs of either man or woman’ in 1966 in the Central African Republic, the then President Bokassa issued an ordinance prohibiting female genital mutilation, explicitly noting an intent to conform to the provisions of the Universal Declaration of Human Rights and protect women’s dignity. Non-African countries with immigration communities in which female cutting or genital mutilation may be prevalent have also taken legal steps to prevent the practice within their borders. In 1985, the United Kingdom adopted the Prohibition of Female Circumcision Act which makes it a crime to excise infibulate or otherwise mutilation the whole or any part of the *labia majora or minora* or clitoris of another person’.⁵² The 1990s saw further national legislative and administrative activities aimed at eradicating female genital mutilation and cutting. In some African countries, this activity coincided with a period of constitutional reform. In 1994, Ethiopia followed suit by prohibiting ‘harmful customs’ in her constitution. The 1994 amendment to Ghana’s Criminal Code making FGM an offence was the first of the recent national developments in criminal legislation.⁵³ The law provides that ‘whoever excises, infibulates or otherwise mutilates the whole or any part of the *labia minora*, *labia majora* and the clitoris of another person, is subject to imprisonment of not less than three years. In 1995, Uganda adopted a new Constitution which provides that laws, cultures, customs or traditions which are against the dignity, welfare or interest of women are prohibited by this constitution.

Sadly, there is no federal legislation in Nigeria banning FGM however, some States in Nigeria have taken proactive steps in the right direction, and states like: Edo, Ogun, Cross River, Osun, Rivers, Bayelsa, Abia and Delta have laws prohibiting the practice. There is the Edo State Female Circumcision and Genital Mutilation (Prohibition) Law No.4, 1999, the Cross River State Girl-Child Marriage and Female Circumcision (Prohibition) Law 2000,

⁴⁹Hereinafter referred to as [ICCPR].

⁵⁰Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁵¹Akin-Tunde Odukogbe, Bosede Afolab et al “Female genital mutilation/cutting in Africa” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5422681/> Accessed 11 April 2022.

⁵²*Ibid.*

⁵³TC Okeke, USB Anyaehie et al “An Overview of Female Genital Mutilation in Nigeria” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3507121/> Accessed 11 April 2022.

Bayelsa State Female Genital Mutilation (Prohibition) Law 2002, Osun State Female Circumcision and Genital Mutilation (Prohibition) Law 2004 etc.⁵⁴

B. Widowhood Practices:

Discriminatory and oppressive widowhood practices in Nigeria varies in severity and persistence among ethnic groups. This is largely due to deeply entrenched cultural beliefs as well as illiteracy and outright disregard for the existing laws. Despite the processes of change which have obliterated many other outdated practices, deeply rooted ties to religious and cultural practices have still kept many people bound, which inevitably accounts for the continued existence of these degrading widowhood rites in Nigerian customs.⁵⁵ The provisions in Section 4 of the Enugu State Prohibition of Infringement of a Widow's or Widower's Fundamental Rights Law, 2001, enumerates some of the foul practices widows are subjected to in various parts of Nigeria and particularly in Enugu State, such as; shaving of the hair on the head or other body parts of the widow, sleeping alone in the same bed with the corpse, To remain in confinement after the death of the husband for a given period, To vacate the matrimonial home, amongst others.

Widowhood rites are a part of existing discriminatory practices against women in Nigeria today. In view of the prevalent discrimination against women which in turn is a violation of the principles of equality of rights and respect for human dignity, the UN embraced the CEDAW. This Convention explicitly condemns and calls for the elimination of all manner of discrimination against women in all matters relating to marriage and family relations and mandates states to ensure equality and same rights for men and women in all incidents of marriage. The Convention is the leading human rights treaty, which upholds the reproductive rights of women and throws light on culture and tradition as major determinants for gender roles and family relations. By accepting the Convention, states commit themselves to undertake a series of measures to end discrimination against women in all forms, including, incorporating principles of equality between men and women in their legal system, establishing tribunals to ensure effective protection of women from discrimination.⁵⁶

Through ratification of the Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa, Nigeria alongside other states has a mandate to contend with all forms of discrimination against women. It is laudable to note that, some States in Nigeria have taken steps to see that this harmful traditional practice is prohibited.⁵⁷

Sadly, Nigeria has not domesticated this convention.

⁵⁴Though some states in Nigeria have now legislated against this acts (e.g Law on Female Genital Mutilation (Prohibition) 1999 Edo State) it is still predominant in some areas.

⁵⁵Joseph Olukayode Akinbi "Widowhood Practices in Some Nigerian Societies: A Retrospective Examination" *International Journal of Humanities and Social Science* Vol. 5, No. 4; April 2015.

⁵⁶Article 16 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁵⁷Some of these domestic laws include, the Enugu State Prohibition of Infringement of Widow's or Widower's Fundamental Rights Law 2001, the Edo State Inhuman Treatment of Widows (Prohibition) Law 2004 etc.

C. Under Age Girl Marriage:

Nigeria is one of those African countries whose culture encourages and enables child betrothal and early marriage. Female children are betrothed to young boys or to older men, even at infancy. Such a betrothed girl is expected to become the wife of the man to whom she was betrothed as soon as she reaches puberty. On some occasions the girls are outrightly married off to men completely against their wish this invariably is a breach of the rights of such a child-wife'.

Due to early marriage, the girl child becomes exposed to early sexual activities and child bearing, which in turn engender several gynecological problems, such as, complications in labour and child births, inevitably leading to maternal death. Other consequences are, Vesico Vaginal Fistulae (VVF) and collapsed uterus. Sadly, these young girls who are victims of VVF are abandoned after a while by the so called husband and ostracized by the family and society.⁵⁸ 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.⁵⁹ The issues of marriageable age, consent and early child or under aged marriages are human rights issues which affect family and private lives, especially for women. 'Marriageable age' as provided in Article 23(3) of the Political Covenant should be construed according to the Children's Convention. Article 1 of the Children's Convention explains that 'a child means every human being below the age of 18, under the law applicable to the child, majority is attained earlier. In Nigeria for example, 18 years is the minimum marriageable age prescribed for both genders by the National Policy on Population. However, customary practices regarding marriages of very young girls persist as cultural laws vary from locality to locality.⁶⁰

The states therefore have the mandate to ensure that marriage relationships should be formed in conformance to human rights standards concerning voluntary choice to marry. The Committee on Economic, Social and Cultural Rights (CESCR), in its concluding Observations on the report from Suriname, recommended that 'the laws that permit persons to marry without the acknowledgement or consent of the partner be abolished'. In its concluding Observations on the report of the Cameroon, CESCR also deplored 'the lack of progress made by the Government combating... the forced early marriage of girls'. A significant example is the National Court of Justice of Papua New Guinea decided in favour of a girl over her family's opposition and preference that she be married. In so doing, the court declared unconstitutional the 'head pay' custom of giving out young women without their consent.

⁵⁸Jane 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.

⁵⁹Nkolika 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.

⁶⁰Odiaka Ngozi Oluchukwu, "Women's Rights in Nigeria: What's Holding Nigeria's Women Back?"

<https://www.worldpoliticsreview.com/insights/20822/womens-rights-in-nigeria-what-s-holding-nigeria-s-women-back> accessed 27 July 2021.

The court's judgment is consistent with CEDAW's General Recommendation on Equality in Marriage and Family Relations.⁶¹

This Recommendation is reiterated in the Human Rights Commission's General Comment 28, on Equality or Rights between men and women, which states that: States are obligated to treat men and women equally regarding marriage in accordance with Article 23. Thus, men and women have the right to enter into marriage only with their free and full consent, and states have an obligation to protect the enjoyment of this right on an equal basis. In Nigeria, for instance, the Cross River State Girl Child Marry Prohibition Law 2000, and the Child's Right Act 2003, protect the child (girl child) Section 10 of the Child Right Act prohibits discrimination against girl child while Section 11, provides be right to dignity of the child against child abuse like sexual abuse, neglect and degrading treatment. This enactment of this act is a laudable effort by government in protection of women and girls. However, implementation is often inhibited by unwillingness of the victims of child marriage to act as prosecution witnesses against their own relatives and parents – who are responsible for giving them out in marriage early.

D. HIV/AIDS/STI'S:

The Political Covenant recognizes that every human being is born with a right to life which must be protected by law no one shall be arbitrarily deprived of his life'.⁶² In the UN, concluding observations of the Human Right Committee, it was held that this right requires government to provide services to cater for the people living with HIV/AIDS.

Consequently, courts have expounded the meaning to the right to life to include, the human rights of persons living with HIV/AIDS, for example the Venezuelan Supreme Court recognized the inter- relationship between the right to life and health as provided in the Venezuelan constitution, and thus ruled in favor of a claim for HIV treatment⁶³. In a bid to emphasize importance of the right to life, the Venezuelan court required the Ministry of Health to provide the drugs prescribed by government doctors. The court also mandated them to cover the cost of HIV blood tests in other for patients to obtain the anti-retroviral treatments and treatment for opportunistic infections, develop the policies and programs necessary for affected patients treatments and assistance, and make the relocation of the budget necessary to carry out the decision of the court while the successful claim was brought on behalf of 172 individuals living with HIV, the Court applied the decision to all people who were HIV positive in Venezuela.⁶⁴

Since 1994, a number of African governments have formulated comprehensive national policies to address HIV/AIDS.⁶⁵ These policies specifically address issues of aid and gender in a section calling for women to be provided with basic education about their bodies, sexuality, HIV/AIDS and other STIs. However many African countries, national laws are still silent on a number of issues relating to the right of people living with or affected by

⁶¹Article 16(1) (a) and (b) of the Women's Convention.

⁶²Article 6(1)

⁶³As in the case of *Paschim Samity v. State of West Bengal* (1996) 4 SCC 37.

⁶⁴Supranote 51.

⁶⁵For example, the Ministry of Health in Tanzania issued a policy in 1995 enumerating strategic prevention and treatment of HIV/AIDS and setting forth the right or individuals with HIV / AIDS.

AIDS (for example Nigeria) Vulnerable groups, especially women are stigmatized and discriminated against in their families, communities and employers, despite the fact that their husbands and regular sexual partners are often the primary source of infection for many women.⁶⁶

Notably, some states in Nigeria such as Lagos State, Enugu State, Cross River State, Nasarawa State, Ebonyi State, have taken steps in the right direction to enact HIV/AIDS anti-discrimination laws. Some of these enactments are; The Ebonyi State HIV/AIDS Anti-discrimination and Protection Bill 2011 which came into force on the 31st august 2012 and the Nasarawa State Bill Prohibiting Discrimination against People Living with HIV/AIDS of 2013.

E. Abortion:

Human rights with regards to women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the bodily integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.⁶⁷ With the exception of The Additional Protocol on Women's Right to The African Charter 2003 also known as Maputo Protocol, the core international and regional human rights treaties do not explicitly address the issue of abortion.⁶⁸

The Maputo Protocol requires State parties to: "...protect the reproductive rights of women by authorising 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."⁶⁹ The requirement that a country conform to human rights standards, if necessary by amending national laws, shows that governments can be expected to comply with the duties that their countries have undertaken to protect rights relating to reproductive and sexual health. A State is therefore responsible to require its health care providers and facilities to ensure women's reasonable access to safe abortion and related health services, in accordance to international human rights law. Where a national law that strictly prohibits abortions is shown to result in maternal mortalities, the State can be obliged to consider legal reform so that its law complies with human rights standards for women's health and dignity.⁷⁰ National policies can therefore be expressed in laws that adequately balance limitations on abortion with women's rights to safe abortion and access to health services necessary to protect their lives and dignity, and to be free from inhuman and degrading treatment.⁷¹

⁶⁶Anyaleye 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 2021>.

⁶⁷Beijing Declaration and Platform for Action (5) 1995.

⁶⁸International Justice Resource Center <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> Accessed 11 April 2022.

⁶⁹*Ibid.*

⁷⁰Nkolika Ijeoma Aniekwu. *Reproductive Health Law; A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* 1st ed. (Nigeria: Ambik Press 2011) 101.

⁷¹*Ibid* p.101.

Several International courts, such as France, Italy and the Netherlands, have posited that women's rights are better protected by laws that are more liberal. The obvious reason is that restriction and fear of punishment will deter women from seeking safe terminations in health facilities with qualified medical practitioners.⁷² Abortion laws are seen to be liberal in some is permitted in some African countries. In South Africa and Zambia, women have an unfettered access to legal abortions as long as procedural requirements prescribed by law are observed. In 1996, South Africa enacted the Choice on Termination of Pregnancy Act, which is regarded as one of the most liberal abortion laws in the world. The Act provides that abortion can be carried out during the first 12 weeks of pregnancy, if it is within 20 weeks, it is permitted under certain conditions such as where there is risk to the women's life or of severe fetal impairment. The Act repealed a 1975 law that had prohibited abortion unless the pregnancy was a result of rape or incest, the mother's life was in danger, or there was a fetal impairment.⁷³ In Zambia, the law permits abortions on 'social and economic grounds' but this generally receives broad interpretations as medical personnel are typically allowed to consider a woman's economic resources, her age, marital status and the number of her living children. In other countries, abortion is strictly prohibited or permitted only to save the woman's life'. In Zimbabwe the threatened injury to the woman's health must be either 'serious or permanent'. In Senegal, the criminal law prohibits abortions and makes no explicit exception to protect life, even though it has been interpreted to permit abortion on the ground of necessity'.⁷⁴

However, abortion is still criminalized in Nigeria except when the life of a woman is at risk. In some northern regions of the country, where sharia law is widespread and Boko Haram is active, abortion services are not accessible at all. Administrative barriers, coupled with widespread patriarchal beliefs and practices, make access to abortion extremely limited for women, and even more out of reach for girls. To procure a legal abortion, a woman must obtain permission from a physician and a gynaecologist, and many times providers demand consent from her husband too. Unmarried women or those who fail to gain their husband's consent are often left with no safe options. Nigeria has one of the highest maternal mortality rates in the world, due in large part to unsafe abortion.⁷⁵ It is key to note that the general function of the law is to provide legality in the context of reproductive health and to offer remedies for violations of reproductive rights, in order to advance reproductive health goals.⁷⁶ Unsafe abortion is a large cause of maternal mortality in many developing countries, including Nigeria. In these countries, applying the right to liberty and security requires governments to improve services for treatment of unsafe abortion, to change restrictive laws regarding access to abortion and to ensure the provision of

⁷²Centre for Reproductive Rights: The World's Abortions Laws <https://reproductiverights.org/maps/worlds-abortion-laws/> Accessed 11 April 2022.

⁷³*Ibid.*

⁷⁴*Ibid.*

⁷⁵International Women's Health Coalition "Expanding Access to Safe Abortion in Nigeria, One Woman at a Time" <https://iwhc.org/2017/08/access-safe-abortion-nigeria-giwyn/> Accessed 23rd June 2021.

⁷⁶George Izevbuwa, Rita Ngwoke et al "The Role of Law In Advancing the Reproductive Health and Rights of Women in Nigeria." *International Journal of Law, Justice and Jurisprudence* 2021; 1(2): 116

contraceptives and family services. The right to health, security and liberty have been applied by some national courts, especially in the west, to protect women's freedom to decide if, when and how often to bear children.

From the foregoing, it is imperative that our laws align with this growing concept of reproductive health. Citing the example of Ireland, the prohibition of abortion was what led to an amendment of the national constitution, to curtail instances of women travelling outside Ireland to procure abortions.⁷⁷

F. Domestic Violence:

Since the World Conference on Human Rights, held in Vienna in 1993, which gave rise to the Declaration on the Elimination of Violence against Women 1993, civil societies and governments have acknowledged that violence against women is a public policy and human rights concern⁷⁸. While work in this area has resulted in the establishment of international standards, the task of documenting the magnitude of violence against women and producing reliable, comparative data to guide policy and monitor implementation has been exceedingly difficult. Violence against women encompasses but is not limited to the following physical, sexual and psychological violence occurring in the family, battering, sexual abuses of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. It also includes physical, sexual and psychological violence such as rape, sexual abuse, sexual harassment and intimidation at work or in educational institutions, any physical sexual and psychological violence perpetrated or condoned by the state where it occurs⁷⁹. Violence against women is an obstacle to the achievement of the state's objectives of equality⁸⁰.

The Declaration of the Elimination of Violence against Women provides also that Government should condemn violence against women and listed out what should be done including refraining from violence against women⁸¹. These violence instill fear in women's life and impair their ability to make decisions⁸². Violence against women is a global cause for concern, domestic violence, in particular, has become unduly widespread and has unfortunately been accepted to be the norm in society today. From a public health perspective affords a more comprehensive understanding of this menace which in turn will trigger the appropriate responses to the problem. Often the health system is the first port of call for women who have been victims of violence. This research advocates that continuous highlighting of this issue will increase awareness among health policy-makers and care providers on the impact of domestic violence on women health which will in turn propel government, including the health, justice and social service sectors, to take steps towards fulfilling the state's obligation in eradicating violence against women as provided under international human rights laws. The impact of violence against women has a

⁷⁷*Ibid.*

⁷⁸ World Health Organisation Multi Country study on women's health and domestic violence against women.

⁷⁹ Article 1 of The Declaration of the Elimination of Violence against Women 1993.

⁸⁰ Article 112 of Beijing declaration and platform of action.

⁸¹ Article 4.

⁸² Article 117 and 224 of Beijing declaration of action.

reverberating effect. The devastating consequences for the victims cannot be over-emphasized. The ripple effects and trauma spill over from the victims onto their children and others around them, both physically, mentally and psychologically. Violence against women is a violation of basic human rights and must be eliminated through political will, and by legal and civil action in all sectors of society. Violence against women by an intimate partner is a major contributor to the ill-health and death of women globally. The world conference on human rights stress the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women.⁸³This paper submits that it will be beneficial for Nigeria to emulate the South African Government in their enactment of Domestic Violence Act No 116 of 1998, this act is regarded as one of the most advanced and encompassing in the world. It recognizes the unacceptable levels of domestic violence and provides for legal protection for victims.⁸⁴

5. The Way Forward For Promotion of Reproductive Rights in Nigeria:

From the foregoing, it is clear that a variety of factors impede the enjoyment and protection of reproductive rights. The inadequacy of legal protection as well as religious and customary hindrances all conspire to devalue the status of women in Nigerian society.⁸⁵

The enjoyment of human rights and freedom is universal and as such no one should be deprived of that freedom. International human rights treaties require State parties to take proactive steps to ensure that women's human rights are respected by law and to eliminate discrimination, inequalities, and practices that negatively affect women's rights. Under international human rights law, women may also be entitled to specific additional rights such as those concerning reproductive healthcare.⁸⁶As a particularly vulnerable group, women have special status and protection within the United Nations and regional human rights systems. International human rights treaties prohibit discrimination on the basis of gender and also require States to ensure the protection and realization of women's rights in all areas – from property ownership and freedom from violence, to equal access to education and participation in government. This paper, proffers some solutions to the impediments to the realization of women's rights in Nigeria, these are;

5.1. Recommendations:

- (1) International laws such as Convention on Elimination of all forms of Discrimination Against Women (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.

⁸³Article 38 Vienna declaration and programs of action.

⁸⁴Klugman B.,Stevens M., et al. "Sexual and Reproductive Rights, Health Policies and Programming in South Africa 1994–1998." 1998; Women's Health Project: Johannesburg.

⁸⁵George Izevbuwa, Rita Ngwoke et al "The Role of Law In Advancing the Reproductive Health and Rights of Women in Nigeria." International Journal of Law, Justice and Jurisprudence 2021; 1(2): 116

⁸⁶International Justice Resource Center <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> Accessed 11 April 2022.

- (2) The Gender and Equal Opportunities Bill should be passed expediently. It had hitherto been introduced on June 15th 2016, to reflect amendments on the concerns of the senators when it was previously presented. The passing of this Bill will give effect to certain parts of the constitution like Part II (which eliminates the issue of non-justiciability). The bill 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).
- (3) The place of education and awareness cannot be overemphasized, rallies, talk shows, conferences must be carried out especially in rural areas. Knowledge of women's rights as well as information on enforcement of these rights should be readily available to women, and other stake holders such as medical personnel, law enforcement agencies, in order to further aid the protection of women's rights.
- (4) There is dire need for Women empowerment programs, to eliminate poverty which is a key element that fosters abuse of women's rights. Civil society groups and NGOs must also be proactive in their support for women.
- (5) There is need for legislative reform and the need for the enactment of specific Reproductive Health Laws. The area of family law needs an overhaul to reflect the advocacy and reforms aimed at safeguarding women's rights.

5.2. Conclusion;

Reproductive health and rights are all encompassing and cuts across all nations of the world. Much of what holds sway in developing countries like Nigeria are borne out of the evolution of the reproductive rights concepts as seen in the developed countries. These developed countries have over time promulgated laws to protect the rights of women. There is however still the constant debate and debacle arising from moralists and cultural views of what rights women should be allowed to have in the society. The recent overturning of the judgment in the case of *Roe v Wade*⁸⁷ by the Supreme Court of the United States, is an indication that the fight for autonomy over a woman's body

⁸⁷1973 410 U.S. 113. This was a landmark decision in which the U.S Supreme court had earlier ruled that the constitution of the United States of America conferred the right to have an abortion- this decision consequently invalidated many state and federal anti-abortion laws. Unfortunately it has now been overturned.

is still a long way from being won. Notwithstanding this recent development, the impact of the international community in the fight for protection of women's rights cannot be undermined.

This paper has given an overview of International instruments that address some specific issues on reproductive health and rights. This paper also finds that there is unwillingness on the part of victims to assert their rights as provided by law and there is a huge problem of lack of knowledge in terms of what these rights are. This paper has also highlighted the fact that some party States (for instance Nigeria), who are parties to these international instruments (treaties, declarations and provisions) though ratified, have not taken steps to incorporate and create a mechanism for the enforcement and implementation of these rights. Nigeria for instance has ratified a number of international instruments but has not domesticated same into its municipal laws. It is therefore imperative that these international instruments be domesticated to facilitate the enforcement and protection of reproductive rights in Nigeria. Evidently, legislations and policies are in place to protect Reproductive health in Nigeria. However it is undeniable that there is a gap between existent laws and implementation. Reproductive health and rights are indispensable to societal development and progress.

This paper concludes by advocating that the Constitution of the Federal Republic of Nigeria 1999 as amended should be further amended. Specifically section 12 has been seen to be a stumbling block in the direct application of international instruments. This section should be obliterated, this will enable the Nigerian legal system inculcate the robust international instruments in furtherance of her goals at protection and enforcement of reproductive rights.

