

CULTURAL PRACTICES AND THE REPRODUCTIVE HEALTH RIGHTS OF WOMEN IN NIGERIA

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Abstract

The influence of African culture on the realisation of women's reproductive health rights cannot be over-emphasized. This paper aims to consider the various cultural practices related to women's reproductive health rights and the legal framework for protecting these rights in Nigeria, with the aim to knowing the level of influence of the various cultural practices on the domestication of the various international instruments relating to the reproductive health rights of women. In order to achieve the foregoing objective, it adopts the doctrinal research method to delve into the history of the reproductive health rights of women in Nigeria, by considering extensively the political history of Nigeria and the position of women in relation to the various rights exercised by them in the different political phases. In addition, the paper also considers the various cultural practices that infringe the reproductive health rights of women in Nigeria, and the legal framework that was put in place for the protection of the reproductive health rights of women. Also, it examines the impact of the cultural practices on the reproductive health rights of women in Nigeria. The paper concludes by highlighting what could be done to ensure that women realise their reproductive health rights in the face of the prevailing cultural practices.

Keywords: Cultural practices, women, reproductive health rights, Nigeria

INTRODUCTION

Nigeria is one of the largest countries in Africa with diverse cultures and more than 250 ethnic groups (Durojaye, 2015) Each ethnic group has its own cultural practices and values; while the cultural practices of the various ethnic groups differ, in most cases they limit women in realising their reproductive health rights – reflecting the patriarchal nature of most of the traditional

African societies. Patriarchal culture ascribes different roles to men and women (Makama,2013) Women are regarded as being subservient to men and play a less significant role in society. Indeed, some cultural beliefs are anchored on the fact that a woman cannot assume leadership positions; such rights are subsumed in their husbands.

Nigeria acceded to the various reproductive health rights of women that are recognised by the international community, even though the issue of reproductive health rights is alien to most of the prevailing cultural practices. Despite her accession to all the international and regional instruments promoting the reproductive autonomy of women, women in Nigeria are yet to realise their reproductive health rights – because most of the international instruments on reproductive health rights of women acceded to by Nigeria, have not been domesticated (CEDAW, ICESCR, CRC, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa). This is coupled with the fact that these rights were not expressly recognised by the Nigerian Constitution. Most of the recognised rights in the Constitution that are closely connected to the reproductive health rights of women were categorised under non-justiciable rights in Chapter two of the Nigerian 1999 Constitution.

It is within this context that this paper focuses on the some of the cultural practices in Nigeria and their impact on the realisation of women's reproductive health right.

HISTORY OF REPRODUCTIVE HEALTH RIGHTS OF WOMEN IN NIGERIA

Reproductive health rights of women form part of fundamental human rights. Initially, this set of rights was not recognised by the international community. This situation changed when the international community acknowledged that women cannot fully enjoy fundamental human rights without specific reference to their reproductive health rights. In line with this, the various international instruments that accentuate the protection of these rights were enacted (ICESCR, CEDAW,). This set of rights was also recognised at regional level (The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2005).

The impact of the legal and political history of Nigeria and the subsequent plural legal system on the reproductive health rights of women cannot be over-emphasised. The political history of Nigeria can be divided into three phases: the pre-colonial, colonial, and post-colonial eras. During the pre-colonial period, the political structure was purely monarchical. Nigeria was made up of diverse societies and kingdoms in the north, south, east and west. During this period, women participated actively in both the private and public spheres, and were involved in commercial activities which gave them independent access to resources.

At this period, women exercised some of their human rights such as marriage right, political right and economic rights– though in a very limited manner due to the prevailing cultural practices.

The colonial administration ushered in “European patriarchy”. Europeans considered women subordinate to men (Rojas,1990) and held a stereotyped perception of the roles of women in the domestic and public domains.(Igbelina- Igbokwe, 2013) The new legal structure formed under colonial rule institutionalised the structure of inequality that existed in the pre-colonial period. Most of the legislation passed during this era aimed at controlling women’s sexuality and fertility. Women were not afforded the opportunity to participate in the administration of their societies. This is apparent by the legal system, which restricted women’s role in dispensing justice (Igbelina- Igbokwe, 2013) .

According to Okome,(2002) “These elements of institutionalized male dominance were in no small measure due to Victorians’ ideology, in which women were generally restricted from full participation in the public sphere”. This was achieved by placing women differently in social, political and economic relations. Men were expected to hold positions of power – while women were restricted to the home front (Okome, 2002) . Colonial rule severely impacted women’s reproductive health rights. They could not make a positive contribution to the various policies that affected them and this entrenched female subordination and thus denied them reproductive autonomy.

At independence, recognition and adherence to the tenets of fundamental human rights improved the condition of Nigerian women. The Constitutional Order in Council which heralded Nigeria’s independence included fundamental human rights (Chapter 3 of the 1960 Constitution). Subsequent constitutions also recognised these rights (1963,1979 and 1999 Constitutions of the Federal Republic of Nigeria) . Chapter two of the 1979 and 1999 Nigerian Constitutions, respectively, contain Fundamental Objectives and Directive Principles of State Policy. This chapter greatly enhanced the protection of fundamental human rights and thus infers the protection of some reproductive health rights of women (Chapter 2, Nigerian 1999 Constitution). However, the recognition of the rights that are closely connected with the reproductive health rights of women under Chapter two of the Nigerian 1999 Constitution is not in justiciable manner.

Apart from the constitutional recognition of the reproductive health rights of women, Nigeria has also assented to a number of international and regional instruments that promote the rights of women. In addition to this, the National Assembly – the legislative arm of the Federal Government of Nigeria – has enacted some legislation that accentuates the rights of women. The federal nature of the Nigerian government gave room for state governments to

legislate on matters that are on the concurrent legislative list in the Constitution. Consequently, some of the State Houses of Assembly have also enacted legislation on the rights of women. (Edo State Female circumcision and Genital Mutilation Prohibition Law, 1999, Cross-River State Girl –Child Marriages and Female Circumcision (Prohibition Law) 2000, Rivers State Abolition of Female Circumcision Law (2001), Ogun State Female Circumcision and Genital Mutilation Prohibition Law 2000, Ekiti State Gender-Based Violence (Prohibition) Law 2001, Enugu State Prohibition of Widows and Widowers Fundamental Rights Laws (2001), Oyo State Widows' Empowerment Law 2002, Anambra State Malpractices against Widows and Widowers Prohibition Law 2004, the Prohibition of Early Marriage Law Kebbi State, Retention in School and against withdrawal of Girls from School Law, Kano State, and Violence against Women Law Lagos State, among others.)

The cumulative effect of the foregoing recognition of the reproductive health rights of women in the post-colonial era in Nigeria cannot be over emphasised. The various Laws changed the position of women by increasing their participation in the public sphere. Most of the laws are closely connected to reproductive autonomy; hence some women, who are aware of their rights in this respect, can easily exercise their reproductive autonomy. The post-colonial era therefore heralded the promotion of the reproductive autonomy of women in Nigeria.

CULTURAL PRACTICES THAT INFRINGE REPRODUCTIVE HEALTH RIGHTS OF WOMEN IN NIGERIA

Despite improved recognition of women's rights in the post-colonial era, this has not translated into reproductive autonomy for women in Nigeria. One of the reasons for this is the various cultural practices that are already entrenched in the various communities. Some of these cultural practices inhibit the exercise of the reproductive health rights of women and they are discussed below:

a. Widowhood Practices

Widowhood is the loss of a spouse through death. Due to the communal nature of African society, extended families have a say in family matters – especially when a family member dies. Legally, the death of a marital partner brings the marriage relationship to an end. In the case of *Okonkwo v Okagbe & Another* (1994, 9 NWLR pt 368) Supreme Court of Nigeria held that “marriage ends whenever one of the spouses passes away”. However, in some traditional African societies, the death of a marital partner does not terminate the relationship between the families. (Emiola 2005)

When a man dies, his wife or wives begin a mourning period – which varies from one ethnic group to another. Among the Yoruba ethnic group in the south-west, and the Binis in the south-south, of Nigeria, the mourning period lasts a minimum of three months; other ethnic groups require the widow to mourn her late husband for 12 months (Gbadamosi, 2007) . In most African societies, it is believed that the death of a man erodes his wife’s rights and dignity. A popular saying among the Yoruba tribe express this axiom thus: “*oko ni ade ori aya*” – meaning that the aura, glory, dignity and covering of the wife is the husband, which symbolises a crown. The moment the husband dies, the crown is removed, and the wife loses her dignity. This is demonstrated by the dehumanising treatment meted out to widows.

In many parts of Nigeria, women that lose their husbands at an early age are subjected to dehumanising practices to prove that they were not responsible for their untimely death. In cases where the widow was never favoured by her husband’s family, this is seen as an opportunity to vindictively settle scores. The woman is usually the prime suspect and is treated with contempt and disdain (Gbadamosi 2007). Women submit to these dehumanising practices in order to prove their innocence. These include shaving their hair, ostracism, and being forced to drink the water that was used to bathe the corpse of the deceased. Resistance to such practices is tantamount to accepting culpability for their husbands’ death. Other practices include forcing the woman to stay indoors for a certain period of time, sleeping on the bare floor, being forbidden to eat certain food, being forced to sleep with the corpse of the deceased, being forced out of the matrimonial home, and being deprived of basic personal hygiene – among others. These kinds of practices clearly infringe women’s human rights generally – and have severe physiological effects.

Many widowhood rites have lasting negative effects on a woman’s physical and mental health and also social well-being. More importantly, in most cases, such practices violate women’s constitutional rights – such as the right to dignity, non-discrimination, and reproductive health rights. Widowhood rites represent an injustice done to women, solely on the basis of their gender and the belief that women are inferior to men (Durojaiye 2015.) This is tantamount to gender-based violence and discrimination because men who lose their wives are not subjected to any rites at all. Indeed, when a woman dies, it is believed that her spirit might return at night to share her husband’s bed. In view of this, the relatives of the widower will bring another woman to keep him company in order to fend off the spirit of the dead wife (Adefi 2009) Widowhood rites violate international and constitutional provisions that prohibit inhumane and degrading treatment as well as the right against discrimination based on gender. When a woman is made to drink water used to wash a corpse, for example, her right to life is infringed upon as this is clearly a health hazard (Nwogu 2015).

b. Levirate/Sororate Marriage

Levirate marriage was part of ancient Hebrew Law. The term is coined from the Latin word *levir* which means brother-in-law. This cultural practice maintains a genealogical lineage through a male child (Emiola 2005). Levirate marriage is common when a man dies without a male child. His widow is expected to make an effort to bear a male child that will continue the deceased's name through one of her brother-in-laws (The Holy Bible, Deuteronomy Chapter 25 verse 5, Holman KJV Study Bible, 2012).

Most women submit to levirate marriages for economic reasons. Where the deceased was the family bread-winner, women prefer to remarry within the family in order to protect their share of their late husbands' inheritance. One of the consequences of a forced levirate marriage is that the widow might be coerced into unsafe sexual activities by her new husband. Furthermore, the woman will be expected to bear children in the new marriage irrespective of the number of children she might already have (Gbadamosi, 2007). Levirate marriage is also common among the Esan-speaking people of Edo state of Nigeria (Onekpe 1993). However, in contemporary Nigeria, levirate marriage requires a women's consent (Ezejiofor 2011).

The opposite of levirate marriage is *sororate* marriage where a man marries his late wife's sister or in a situation where the wife is sterile. A *sororate* marriage can be contracted when the wife is still alive – if she is unable to bear children. This system aims at preserving family unity (Emiola 2005.) In African culture, one of the reasons for marriage is procreation – because children are regarded as the greatest assets and benefits of a family. If a woman is sterile, she may prefer her husband to marry her blood sister rather than bringing a strange woman into the home. On the part of the husband, this makes good economic sense as he is not expected to pay more bride price. While research has shown that this form of marriage occurs in some Ibo communities, it is rare in Nigeria. (Emiola 2005) Legally, both levirate and *sororate* marriages fall within the prohibited degree of consanguinity; apart from this, in both kinds of marriages, the dowry – a major requirement for a valid customary marriage – is paid only once. (Emiola 2005) Thus, the second union is regarded as an extension of the first, with the transfer of all its requirements. Equally, this practice violates a woman's reproductive autonomy.

c. Dowry/Bride Price

In some African societies, one of the requirements of a valid customary marriage is the payment of the dowry/bride price.

Among the Yorubas, a man and his relatives treat in-laws with the utmost respect and honour. Thus, the payment of a dowry/bride price does not depict purchasing a woman (Emiola

2005). In some instances, the parents of the bride return the bride price/dowry to the family of the groom – with the proviso that the woman was voluntarily given in recognition of the relationship, rather than sold as a commodity.

In contemporary Yoruba society, gifts such as food items, drinks, palm oil, and a token as the bride price, have replaced traditional labour services. This is fundamental to the validity of a customary marriage in Nigeria. A woman whose family has not received such gifts is not accorded due respect. In some communities, a woman's value is measured by the amount of cash and other items (Adefi 2009). The gifts elevate the value attached to her as both a person and a wife (Emiola 2005).

While the Yoruba culture attached less importance to the monetary aspect of the bride price/dowry, in some parts of Yoruba land, the modern- practice is the refund of the bride price during the customary marriage. The motivation for this recent development is the notion that the payment of the bride price connotes buying the bride. This paper admits that "This is a misunderstanding of the legal purpose of 'bride price' in African culture," (Emiola 2005) because in some communities, once the bride price has been paid, the woman becomes a mere chattel. In *Omo Ogunkoya v Omo Ogunkoya*, (Unpublished Case of the Court of Appeal , Nigeria No, CA/ L/46/88,6) it was found that wives are regarded as chattels.

The situation is different in south-eastern Nigeria where greater value is placed on the girl child and the marriage ceremony because of the high bride price. Any man that marries a girl from this part of the country will be considered a real man – because such marriage would have depleted his financial resources (Adefi 2009). When the list of items for the engagement is handed out, a specific bride price is stated as one of the items the prospective groom is expected to bring to the customary marriage. This is done to ensure that he is willing and capable of taking their daughter as his wife. At the customary marriage, the father of the bride, or her guardian, collects the envelope containing the bride price, and ensures that it complies with the demand. Payment of a bride price affects a woman's dignity. A woman whose husband has spent a fortune to marry her – is under an obligation to reciprocate by bearing as many children as possible. If she fails to do so, she is tagged a failed woman and this is good grounds to end the marriage.

d. Polygamy

Polygamy is the traditional custom of marrying more than one wife at the same time. Due to the plural nature of Nigerian society, two systems of marriages are recognised: statutory and customary. Statutory marriages are based on English law. However, there is no single uniform customary law in Nigeria. Rather, it varies from one ethnic group to another. Customary

marriage is based on the native law and custom applicable to the particular ethnic group where the marriage is celebrated. This includes Islamic marriage as Islamic law forms part of the customary law. Although, Muslims are found in almost every part of Nigeria, Islamic law only operates in the northern part of the country. Islamic marriages are conducted in accordance with the precepts of Islam.

Statutory marriage under Nigerian law was inspired by English law, and recognises monogamy. Customary and Islamic forms of marriage are potentially polygamous (Adefi 2009). Customary law in Nigeria does not frown at a man having two wives at the same time. Likewise, Islamic marriage laws also allow a man who has the financial means to marry more than one wife to satisfy his sexual urges – where one woman cannot cope – in order to avoid adulterous acts.

In some African societies, polygamy could be influenced by two factors: affluence or family intervention. When some men are wealthy, one of the ways of displaying their wealth is the number of wives and children they have. Consequently, in a bid for social prestige, the wealthy marry more than one wife (Nwoye 2007). On the other hand, family influence and pressure may also encourage polygamy. If the first wife does not bear children – family members might pressure on the husband to marry a second wife. The value attached to biological children as a measure of the continuity of a dynasty, is responsible for this pressure (Nwoye 2007). In traditional African society, marriage is fully recognised when there is procreation. If a woman is unable to bear children, she is not regarded as a wife and will not be accorded due respect. However, in this kind of situation, before the man can take another wife – it must be proved beyond reasonable doubt that the woman is infertile. Hence, this kind of arrangement is seen as a last resort (Nwoye 2007).

Polygamy degrades women and violates their right to equality. It is, however, an accepted norm in many Nigerian communities for a man to marry more than one wife regardless of the first wife's feelings. However, the same community frowns upon a woman marrying more than one husband (Adefi 2009). A system that allows a man to marry as many wives as possible puts women's right to life in jeopardy. Husbands that have multiple sexual partners can easily become infected with HIV/AIDS and other sexually transmitted diseases. Similarly, a wife who feels lonely or is denied her sexual rights might turn to other men. If not given urgent and proper medical attention, sexually transmitted diseases can affect the reproductive functioning of those affected (Mwambene 2010).

Polygamy infringes a woman's right to dignity, as she is faced with all kinds of situations which might affect her feelings – particularly sharing her husband. Such women are not at liberty to determine if and when to have sexual relations with their husband. It is difficult for a

woman in a polygamous marriage to assert her rights, as she will be afraid of stereotyping and becoming an outcast in the family (Mwambene 2010). Polygamy is practiced in almost every part of Nigeria.

e. Female Genital Mutilation (FGM)

Female genital mutilation, also known as female circumcision, is an age-old cultural practice that involves the excision of part or all of the female external genitalia (Cook 2002). The name female genital mutilation is adopted and is used widely for all the practices that constitute willful damage to healthy female organs. The practice is called female circumcision in societies that subscribe to this practice (World Health Organistaion 2001). This practice is prevalent in East and West Africa and some countries in the Middle East, Europe, North America and Australia.(Gbadamosi 2007)

In view of the value attached to premarital virginity, chastity and fidelity during marriage, some ancient African societies adopted FGM as a mechanism to control promiscuity. Depending on the type of FGM procedure used, this might involve the removal of the clitoris which is the organ of female sexual stimulation and pleasure – or the mutilation of some part of the genitalia. These procedures reduce or eliminate the tissue of the outer genitalia (Gbadamosi 2007). In some cultures, an uncircumcised girl is considered unclean and it is believed that she can put her prospective husband in danger. In some communities, FGM is regarded as a girl's initiation into womanhood. It is also believed that the circumcision will protect the young girl from spells and curses (Gbadamosi 2007).

Female genital mutilation is defined by the World Health Organisation (WHO) 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 non-therapeutic reasons”(World Health Organisation 1995). According to the (WHO), female genital mutilation may be classified into four types. The first type involves the excision of the prepuce (also known as a *clitoridectomy*). This resembles male circumcision as it may include the excision of the clitoris or part of the clitoris. This type of FGM, which is permitted by Islamic law, is the least damaging (Gbadamosi 2007) The second type is the removal of the prepuce and clitoris – together with partial or total excision of the labia minora.

The third form is the removal of part or all of the external genitalia and stitching/narrowing down the vaginal opening (Cook 2002). This is also known as *infibulations/pharaonic* circumcision and is regarded as the most extreme form of FGM – as it has devastating consequences. Finally, a fourth category involves every other injury done to female genitalia, apart from those identified above. It includes pricking, piercing, or incision of

the clitoris and/or labia; stretching the clitoris and/or labia; cauterisation by burning the clitoris and surrounding tissues; scraping the vaginal orifice; cutting the vagina; and the introduction of corrosive substances into the vagina to cause bleeding or inserting herbs into the vagina to tighten or narrow it – among others.(Cook 2002) The (WHO) reports that 25% of women in Nigeria have undergone FGM (World Health Organisation 2001). The type of procedure varies among various communities in the different geo-political zones. The first type of FGM (*clitoridectomy*) is common among the Yoruba people of the south west, while the second type, (Gbadamosi 2007) the removal of the prepuce and clitoris is common in the south-south. The fourth category of FGM, which consists of different forms of injury to the female genitalia, is used extensively by the Hausa/ Fulani ethnic group residing in the Northern Nigeria (Gbadamosi 2007).

All the types of FGM highlighted in the foregoing paragraph, have health consequences. In most cases, the procedure is conducted in unhygienic premises by birth attendants – who are non-medical professionals – and using unsterilised instruments. The complications might be immediate: the cutting may lead to excessive bleeding which will require urgent medical attention; it might also lead to sepsis, arising from the use of unsterilised instruments. There is a possibility of infection if the genital area becomes contaminated with faeces and urine. Adverse effects on the reproductive life of the girl child later in life are also possible, as well as death if proper attention is not given to the health complications after the procedure (Cook 2002).

The complications arising from FGM include repeated urinary tract and chronic pelvic infections. These may cause irreparable damage to the reproductive organs and consequent infertility (Cook 2002). Victims of FGM experience difficulties during pregnancy, labour, delivery, and after delivery – due to the anterior incision of the vulva that is needed to facilitate delivery. This could lead to prolonged and obstructed labour, and fetal distress or death. Incisions and tears in the perineum could cause postpartum hemorrhage (Cook 2002).

Since FGM entails the removal of healthy sexual organs, it has harmful physical and psychological consequences. It violates a number of human rights – including the right to freedom from discrimination, torture, inhuman or degrading treatment, and the right to life – among other rights. The procedure causes bodily harm to the girl child which could be considered a crime. It could also be considered child abuse which violates the provisions of Article 19(1) of the Convention on the Rights of the Child (United Nations Convention on the Rights of the Child, 1992) – to which Nigeria is a signatory. It denies women human dignity, which includes their sexuality. Indeed, FGM renders sex in marriage not mutually pleasurable.

f. Early Forced Marriages

Marriage is the voluntary union of a man and a woman. It is a system that allows two mature individuals to live together in an orderly manner in society. The system of marriage brings about social re-arrangements, as two individuals from different backgrounds come together to start a new life – thereby departing, although not totally, from their parental unions. In most cases in Nigeria, marriage affects the new bride more than the groom, as she is expected to leave her parents to start a new life with her husband.

Child marriage, which is also known as early forced marriage, is the practice of coercing, forcing or deceiving a girl child into marriage, at an age when she is considered to be incapable of understanding the nature of marriage (Ukwuoma 2014). A marriage is considered to be early when a child marries before the age of 18 (Walker 2012). Such a child is deemed to be too young and immature to make the necessary assessment of the choice of marriage, and subsequently the challenges of marriage. This type of marriage is usually initiated between the parents or guardian of the girl child and the husband. The young bride is either coerced or unduly influenced to contract such a marriage (Ukwuoma 2014). In some parts of Nigeria, particularly in the north, young girls that are not yet mature are given out in marriage. This practice thrives for many reasons. The first is the need to prevent the girl-child from having multiple sexual partners – because promiscuity is believed to be disgraceful (Olatunbosun 2001). Thus, to protect the honour of the family, a girl must be a virgin when she marries.

In the past, in some parts of Nigeria, if a woman was a virgin when she married, a special gift was given to her father for raising such a decent bride. It is believed that virginity can only be guaranteed when a girl is young. Consequently, girls aged eight to ten are given in marriage. It is also believed that marriage will prevent promiscuity, as the young wife will be occupied with her wifely duties – leaving no time for mischief (Olatunbosun 2001). Parents that marry off their daughters at a young age also see this as a way of preventing them from contracting HIV/AIDS.

Furthermore, religious beliefs reinforce such views. While Islam does not set a minimum age for marriage, (Olatunbosun 2001). the general belief and teaching is that no age is too early. Although, Islamic teachings permit early marriage, they prohibit sexual relations until both parties reach puberty (Anderson 1959). However, the age of puberty is relative and depends on an individual girl children's level of physiological development. Thus, Islam allows sexual relations and subsequently reproduction before the age of 18. Of course, it is possible for a girl child to reach puberty without being emotionally mature and psychologically ready for motherhood. A senator of the Federal Republic of Nigeria who should know better, vehemently supported child marriage which has been outlawed by the National Assembly– stating that

“maturity has little to do with age and to him, child marriage is the marriage of a girl who has not reached the age of puberty” (The lawyers chronicle 2013). The same senator married a 13 year old. Supporters of child marriage in this part of Nigeria argue that it concurs with Islamic Customary law. Hence, Child marriage is still thriving in some northern states despite the fact that the Child Rights Act prohibits it.

Some parents marry their young daughters off in order to maintain friendship ties. Parents facing economic challenges see marriage as a means of relinquishing their financial responsibilities to the husband. For such parents, a girl-child is seen as a means of enhancing the family's financial status. The payment of bride price/dowry by the prospective groom is, in fact, more important than her education. Such girls are not enrolled in school because of parents' erroneous belief that their education is of no use to them. In cases where they do attend school, as soon as the parents identify a suitor, the girl-child is withdrawn from school and married off (Durojaiye 2015). Statutory marriage in Nigeria is governed by the Marriage Act (CAP M6 LFN2004) or the Matrimonial Causes Act (CAP M7 LFN 2004). These Laws do not define marriageable age, though it has been argued that sections 11(1) (b) and 18 of the Marriage Act, infers that the age of marriage is 21. Others rely on common law and other laws to argue that 21 years is not the age of marriage (Ukwuoma 2014). The Nigerian Constitution does not specify a minimum age for marriage – thereby making it difficult to classify a marriage as being too early. However, constitutional standards suggest that adulthood begins at 18 years of age. It is evident from some constitutional provisions that any person who is under the age of 18 is a minor. The Constitution states that anybody who has not attained the age of 18 years is a minor or a child – hence his or her personal liberty can be deprived for the purposes of his/her education or welfare. Sections 26-29 are explicit on the position of the law concerning persons less than 18 years of age. They cannot participate in election processes and cannot acquire citizenship other than by birth, before the attainment of 18 years (Section 35(1) (d).

The Convention on the Rights of the Child, 1989 defines a child as every human being below 18 years. The National Assembly of Nigeria domesticated this Convention as the Child Rights Act, and fixed the minimum age of marriage at 18 years.(Section 21 of the Child Rights Act, 2003. States that “ No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever” However, only 23 of the 36 states in Nigeria have adopted the Child Rights Act. The majority of those that have not adopted the Act are northern states, where early forced marriages are prevalent. In states in north-west Nigeria, the age of marriage could be as low as 14, while in some parts of north-central Nigeria, a girl must marry before her fourth menstruation (CLEEN Foundation, 2004) . Some northern states like Jigawa– in an attempt to domesticate

this Act – made some modifications which are not in the best interest of children (one of the modifications is in relation to the age of majority. According to Jigawa Child Rights Law, majority is determined in relation to puberty)

Early/child marriage has negative effects on the girl child. Physiologically and psychologically, her body is not yet ready for motherhood, which is the ultimate expectation of most marriages in Africa. Furthermore, a marriage is not valid unless both the man and the woman give their free, full, informed consent, to enter it. As such, parents should not marry off a girl child without her consent – and such consent must be free and not obtained by force(Section 3(1)(d) Marriage Act CAP M7 LFN2004). Several cases have been decided in Nigeria on the issue of child marriage. In *Ekpenyong Edet v Nyon Essien*, (This is an unpublished case that was decided in the Division Court, Calabar, Nigeria in 1932) in 1932 in southern Nigeria, the issue was the traditional practice of child betrothal, whereby a girl child is betrothed to an adult by her parents. From the moment of betrothal, the intended husband begins to bring gifts to the parents of the girl child – in consideration of future marriage. In the case at hand, on reaching maturity, the girl was not interested in the marriage arrangements made on her behalf. She decided to marry the person of her choice, with whom she had two children. The disappointed aspirant husband then brought an action in a Customary Court – seeking to retrieve his gifts from the family of the betrothed girl, failing which he asserted an alleged customary “lien” on the two children. The court held that the betrothed girl had the right to withhold her consent and not to marry the husband chosen by her parents, and that the gifts given to the parents did not amount to a dowry to constitute consideration for a valid customary marriage. The Supreme Court upheld the decision of the trial court, by affirming that the consent of the bride-to-be is a precondition for marriage under Benin Native Law and Custom.

In a similar matter on child marriage that came before the Supreme Court of Nigeria in 1972, (*Osamwonyi V Osamwonyi*, 1972, All NLR 792) the petitioner, a surgeon, married the respondent at a Marriage registry in Lagos. The husband filed a petition for divorce after discovering that his wife had earlier married one Patrick Omosiogho Guobadia, under Native Law and Custom. He submitted that his marriage to his wife was conducted when her earlier marriage was still subsisting. In her response to the petition, the wife denied being married under customary law. She argued that Patrick Omosiogho Guobidia went to her father and paid a dowry without her consent. She stated that she rejected the proposal and that her father immediately filed an action in the Benin Customary Court seeking the dissolution of the marriage.

However, the trial judge in the Benin Customary Court dismissed the petition on the grounds that the purported marriage was invalid. The Customary Court relied on Benin Native

Law, and Custom that a daughter could not be married off by her parents without her consent. The court held that payment of a dowry alone does not constitute marriage.

These cases show that a valid marriage requires the consent of both parties. The Convention on the Elimination of All Forms of Discrimination against Women, states that “The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.(Article 16 CEDAW) Similarly, the Convention on the Rights of the Child, 1989 regards child marriage as a violation of a girl’s right to freely express her views – the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices. Early forced marriage or child marriage is an infringement of the reproductive health rights of the girl child (United Nations Convention on the Rights of the Child).

Child marriage also has negative reproductive consequences, which include teenage pregnancies, teenage motherhood and psychological trauma. This is because the body of the child bride is not physiologically ready for motherhood; the young girl might experience recurrent urinary tract infections, sexual dysfunction, chronic pelvic infections, prolonged obstructed labour, and *vesico-vaginal* and *recto-vaginal fistulae* (VVF and RVF). This occurs when labour is obstructed because the cervix is not fully developed; the pelvic bones do not allow the easy passage of the child, and consequently, the young girl begins to lose urine uncontrollably from the vagina (Gbadamosi 2007). This disease is very common in northern Nigeria that has the highest prevalence of girl-child marriage. In Jigawa state, 64.1% of girl children are married off at early age, while the figures for Kaduna, Benue, Yobe and Kebbi, are 58.9%, 54.5%, 47.6% and 54.1%, respectively (Gbadamosi 2007).

The other rights that may be violated by early marriage include the right to be protected from all forms of physical and mental violence, injury or abuse, including sexual abuse (Article 19 CRC) – and from all forms of sexual exploitation (Article 34 CRC). In child marriage, the young girl might experience physical and mental violence as she is given in marriage against her will, her movement is restricted by her husband, and she is forced to gratify his sexual desires. If she refuses to have sexual relations with her husband, she is likely to be maltreated. The right not to be separated from one’s parents against one’s will is undermined by child marriage.(Article 9 CRC) Since the marriage arrangement is between the parents and the husband, the young girl is taken away from her parents and cannot abandon the marriage. If she decides to leave her husband’s house, her parents will deny her access to their home.

Legal Framework for the Protection of the Reproductive Health Rights of Women in Nigeria

Nigeria, a former British colony, is a pluralist state because a particular issue within the same jurisdiction may be regulated by more than one law. English common law was introduced into Nigeria through different ordinances that legitimised English Laws. One of such laws is Section 20 of the Supreme Court Ordinance of 1914, which provides that the common law, doctrines of equity, and the statutes of general application that were in force in England, as at 1 January 1900, shall be in force within the jurisdiction of the courts (Asiedu- Akrofi 1989).

Long before colonisation, the native laws and customs of the Nigerian people were applied to regulate their conduct in their respective communities. Despite the introduction of English law, however, native laws and customs were not abolished. These laws were applied on two conditions: First, the native law and custom must not be repugnant to natural justice, equity and good conscience. The repugnancy test is a way of invalidating any custom that is barbaric. This was considered in *Laoye v Oyetunde* (1944 A.C 170) and the much-cited *Eshugbayi Eleko v Officer Administering Government of Southern Nigeria*. (1931 A.C 662) Neither of these cases expressly named particular customs that are barbaric in nature. It can thus be inferred that any custom that fails to conform to the values of advanced societies is archaic, and, as such, cannot pass the repugnancy test (Asiedu- Akrofi 1989).

Upon independence on 1 October 1960, the Nigerian Constitution became the supreme law of the land. It provides that any law that is inconsistent with its provisions shall be void. (Section 1 Constitution of the Federation of Nigeria, 1960, and recurring in subsequent Constitutions of Nigeria, including the present 1999 Constitution Section 1(3)). The constitution guarantees various fundamental human rights (Chapter Four of 1999 Constitution) and spells out several governance issues. The Nigerian Constitution accommodates the promotion of cultures that enhance human dignity. According to the Constitution, “the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity...” (Section 21 (a)). By implication, any barbaric culture will not be recognised. However, English common law is still applicable in Nigeria (Section 31(1) and (2) of the Nigeria’s Interpretation Act, CAP 123 LFN, 2004).

Nigeria has different frameworks for the protection of the reproductive health rights of women. These are contained in both domestic and international instruments ratified by Government of Nigeria. The domestic instruments include certain provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Matrimonial Causes Act, the Marriage Act, the Criminal Code – as well as state legislation on the prohibition of all forms of discrimination against women and the girl child.

Constitutional Framework

The Nigerian Constitution, which is the fundamental norm in Nigeria, regulates human conduct and issues of governance. Although, reproductive autonomy is not explicitly stated in the Constitution, several sections of the Nigerian Constitution accentuate the protection of the reproductive health rights of women. These are contained in Chapters 11 and 1V of the 1999 Constitution. Section 1(1) affirms the supremacy of the Constitution. Subsection 3 of this section states that any law that is inconsistent with the provisions of the Constitution shall be void to the extent of the inconsistency. These provisions are germane to the issue of cultural practices and the reproductive health rights of women. Implicitly, any provision of the Constitution that guarantees women's reproductive health rights supersedes any other laws.

Chapter II of the Constitution entitled "Fundamental Objectives and Directive Principles of State Policy" contains some provisions that are connected to the reproductive health rights of women. According to Section 17 (1), the state's social order is founded on the ideals of freedom, equality and justice. Subsection (2) notes that, in furtherance of the social order: (a) every citizen shall have equality of rights, obligations and opportunities before the law; and (b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.

Subsection (3) states that the state shall direct its policy towards ensuring that: (d) there are adequate medical and health facilities for all persons; (f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect; and (h) the evolution and promotion of family life is encouraged.

In Section 21 (a), the Constitution provides that "the state shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this chapter."

The various provisions highlighted above are connected with the relationship between various cultural practices and the reproductive health rights of women in Nigeria. According to Section 17(1), there should be no disparity of any kind; all citizens should be treated equally, whether male or female. This suggests that male citizens should not dominate female citizens. This provision was amplified in paragraph 2 (b), by providing that the sanctity of the human person shall be recognised and that human dignity shall be maintained and enhanced. Subsection 3(d) accommodates the issue of reproductive health rights, by making provision for medical and health facilities for all women.

Reproductive health rights cannot be enjoyed in the absence of good medical and health facilities. Section (3)(f) is also of significance on the issue of the reproductive health rights of women, as it aims to protect children and young persons from all forms of exploitation. This

would include sexual exploitation which has direct consequences for a woman's reproductive autonomy.

Furthermore, section 17(3)(h) enjoins states to encourage the evolution and promotion of family life. Finally, section 21 provides that the state shall promote Nigerian cultures that enhance human dignity. It follows that any culture that fails to enhance human dignity, is inconsistent with the provisions of the Constitution.

Chapter II of the Nigerian Constitution merely provides for the fundamental objectives of state policy that should guide the state at all levels in policy-making – to ensure social order. Nevertheless, the various rights protected by this chapter are not justiciable. To this end, an action cannot be taken to the court to enforce compliance with these provisions (Section 6(6) 1999 Constitution of Nigeria) If policy-makers choose not to pay attention to these socio-economic issues, citizens cannot compel them to do so. Accordingly, the provisions of this section do not grant legal rights to Nigeria's citizens, and their breach cannot be redressed in court. (Aniekwu 2012)

The jurisdiction of the court on this matter is rendered null and void by the constitutional provision, which provides that the court "shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution".(Section 6 6 (c) 1999 Constitution

Notwithstanding the foregoing obstacle, women in Nigeria could enforce their reproductive health rights by linking it with some recognised fundamental human rights in the constitution. The Nigerian 1999 Constitution in Chapter IV guarantees among other rights, the right to life, to dignity of human persons, personal liberty, private and family life, to freedom from discrimination, to freedom of thought, conscience and religion

Legislative Framework

Apart from the constitution which is the *grundnorm* in Nigeria, there are other national legislation that are in place to deal with different subject matters to ensure law and order in the society. In some of these legislation, there exist provisions that are relevant to the reproductive autonomy of women in the Nigerian society in the face of the various cultural practices. These include the Criminal Code and Penal Code, the Marriage Act, the Child Rights Act, and the Violence against Persons (Prohibition Act).

Equally, the Constitution of Nigeria empowers states to legislate on issues that are not on the exclusive legislative list. Issues relating to women's reproductive autonomy fall under the concurrent legislative list. States carry out this function through their various Houses of Assembly. Some states have legislated on various issues relating to cultural practices and their effects on the reproductive health rights of women in a bid to ensure that women enjoy the reproductive health rights recognised by various international and regional treaties to which Nigeria is a signatory. Some state governments have recognised the extent of the damage done by some cultural practices to the realisation of women's basic rights and have enacted laws and policies to surmount the gender discrimination entrenched in Nigerian society by such practices.

However, when one state legislates on an issue and another state does not see any reason to do so, there will be disparity in the enjoyment of such rights. In terms of women's reproductive health rights, most states in southern Nigeria are disposed to legislate on such issues – while those in the north are much less willing to do so.

The Influence of Cultural Practices on the Reproductive Health Rights of Women in Nigeria

As noted earlier, Nigeria is a nation with diverse cultural practices – and the influence of these cultural practices on the reproductive health rights of women cannot be over-emphasised. Cultural practices are so entrenched in the various communities that it is difficult to adopt laws to protect the reproductive health rights of women. Women's rights have been subjugated by these cultural practices. This is the legacy of patriarchy which is evident in the way the society views women. Whether married or not, women are precluded from participating in decision-making processes. Since their levels of representation are very low, issues that relate to women are not taken seriously in the legislative process. This has affected the domestication of various treaties that prohibit cultural practices that impede the reproductive health rights of women in Nigeria. The Gender and Equal Opportunity Bill, (The Bill was presented for second reading by Senator Abiodun Olujimi on 15th March, 2016) which could have accentuated gender parity, was turned down recently at the Nigerian senate.

Nigeria lacks the political capacity to domesticate international instruments on the reproductive health rights of women. The country's pluralist legal system creates geographical disparities in the enjoyment of these rights. Issues on reproductive autonomy fall under the concurrent legislative list. The implication of this is that both the Federal Government and States Government have the right to legislate on such issues. An international instrument on reproductive health rights when domesticated at the federal level must be re-enacted in State Assemblies for it to be applicable in such a state. Women in states that have re-enacted a law

enacted by the National Assembly at the federal level will enjoy such rights – whereas women in a neighboring state might not do so. This is because the cultural practices of some of the ethnic groups in Nigeria are not disposed to these rights. An example is the Child Rights Act which was domesticated to stem the tide of child marriage in Nigeria. Although, the Child Rights Act has been domesticated at the national level for it to be enforced in individual states, since it falls under the concurrent legislative list, it must be promulgated into law by the State House of Assembly and assented to by the Governor of the state.

However, only 24 of the 36 states have passed the Child Rights Act into law. (They are Abia, Awa- Ibom, Anambra, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo , Osun, Oyo, Plateau, Rivers, Niger, Bayelsa, Kogi and Taraba) The 12 that are yet to do so are mostly northern states: Adamawa, Bauchi, Borno, Enugu, Gombe, Yobe, Kaduna, Kano, Kastina, Kebbi, Sokoto, and Zamfara states. (UNICEF Nigeria – Fact Sheet- Child Rights Legislation in Nigeria, April 2011) Most of the Northern states did not re-enact the Act in their respective states because the provisions of the Act is not in consonance with their cultural belief.

CONCLUSION

The Nigerian Constitution does not explicitly recognise the reproductive health rights of women because most of the rights that are closely connected with such rights were categorised under non-justiciable rights in Chapter II of the 1999 Constitution. This is coupled with the fact that the provisions of the Constitution is not gender sensitive as it does not accommodate the physiological differences between men and women. However, there are various legal frameworks for the protection of the reproductive health rights of women which have been discussed in this article. Women do not enjoy the same rights as men; due to the negative impact of various cultural practices. It is not an easy task to prevail on people to change their culture, which, for them, is a way of life (Adefi 2009).

As noted earlier, when Nigeria adopted her legal system through the introduction of English law, native laws and customs were not abolished on condition that such laws should not be repugnant to natural justice, equity and good conscience. It follows that as much as the Nigerian Constitution recognises various cultural practices such practices must not infringe individuals' fundamental human rights. In considering the constitutionality of customs that discriminate against women in *Alajemba Uke & Another v Albertiro*, (2001 17 WRN 172) the Court of Appeal ruled that “Any laws or customs that seek to relegate women to the status of a second-class citizen thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garbage and consigned to history (sic)”. Thus, while some

cultural practices might not have been officially abolished by the Nigerian government, the court recognised that most of these practices impede women's rights. If women are to fully realise their reproductive health rights in Nigeria, they must be allowed to participate in decision-making processes; the practice of women being seen and not heard must be eradicated. Furthermore, socio-economic rights should be made justiciable in Nigeria.

Finally, the various cultural practices that impede the reproductive health rights of women should be abolished or modified – as with payment of bride price which has been modified in some parts of the south west (among the Yoruba), such that it does not impede the reproductive health rights of women.

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