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Review

An appraisal of polygyny and reproductive rights of women in Nigeria

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This article was guided by the identification of the challenges caused by polygyny as it relates to the reproductive health rights of women in Nigeria. Reproductive rights are not matters of choice but they are matters of life and death. Many women have died as a result of maternal morbidity and maternal mortality because they could not make informed right choices about when and how to have children. According to The National Programme Director of the Partnership for the Transforming Health System (PATHS) Nigeria is second in world maternal mortality, after India, which has the highest maternal mortality rate; and in totality contributes 10% to the world's total maternal death. He reiterated further that statistics had also shown that Nigeria contributed only two per cent to the world population, but had one of the highest child and maternal mortality in the world. The study is conducted by examining on a comparative basis looking at the challenges of a multi-cultural country like Nigeria and what we can do to curb the upsurge of polygyny. Focus will also be on the way to protect women that are already in polygyny and to gradually discourage the practice the legislation and registration of all marriages. Legislations, case law and writings of legal scholars are compared and culture will act as a gauge. There is no doubt that Nigerian culture is far from being perfect. Culture is dynamic and the barometer for gauging any society's progress is the extent to which it can decide on what to borrow and what to retain or throw away thus every culture needs to be liberated. This article lays a foundation for further research into reproductive right and also contributes to a better understanding of women's rights as peculiar rights.

Key words: Patriarchy, polygyny, reproductive rights, sexual rights, sexual health, sexuality.

INTRODUCTION

"[t]he polygamist's wife is one of several, sometimes many, women among whom her husband must divide his time. She is sexually deprived, lonely, jealous, given to intrigue, and (particularly if she is the first wife) degraded" (Posner, 1992).

Sexuality is a central aspect of being human throughout life and it encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Customs and tradition play a very crucial role in the sexuality of human beings thus the need for sexual rights. Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. Sexual rights include the human right of women to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

Polygyny is a marital practice in which a man has more than one wife simultaneously. This practice is common but not limited to the Africans. Where there is polygyny, the world around is that which is dominated by man.

Because man is also engaged in breadwinning activities and in hazardous tasks and defense, women in time past tend to outnumber men such that a vacuum is

Table 1. Reasons for Justifying polygyny (% of total) (males).

Reasons	Rural	Urban	Total
'Wife cannot have kids'	12	9.5	21.5
Wife has chronic illness	8.5	5	13.5
Husband's high capabilities	5	2	7
'Religion allows it'	8	4.5	12.5
Wife is irritable and troublesome	2.5	1.5	5

Source: Welchman (1988).

somewhat created that is quickly filled by the practice of polygyny. The practice of polygyny has a lot to do with peoples' culture and values. Often this type of marriage comes as a result of war, plague or disaster.

It is the position of this paper that polygyny attempts to regulate the sexual life of women in such unions thus depriving them of their sexual rights and ultimately their reproductive rights. Polygyny is mostly not in favor of the woman as she always plays the subservient role in such relationships. Polygyny also exposes both men and women to sexually transmitted diseases because of multiple sex partnerships.

Government must ensure that all marriages are registered irrespective of the type conducted. Secondly in line with what is available in Africa countries like Tunisia and Algeria, an intending polygynist must be prepared to show proof of increased income before being allowed to take another wife. Polygyny as it is a way of life and a lot need to be done through public awareness programme to discourage the practice. In addition to all the aforementioned, the government may enact a law which would criminalize polygyny and multiple marital relationships in line with International laws and Conventions.

Background

The issues discussed in this article would generate some consequential questions, which answers will help in the total development of the reproductive rights of women in Nigeria.

Polygyny is derived from the two Greek words – Poly (Many) and Gynaika (Woman) WordiQ.com (McNeil, 2009). There are many wrong articulations of the meaning of the word "Polygyny" in particular. This is because it is assumed generally that once a man is married to more than two women he is a polygamist and this seems to be the prevalent idea. However it is needful to do a proper clarification of what polygyny and polygamy means.

Perhaps it may be ideal at this juncture to clearly define polygamy which is a wider concept; it encompasses both polygyny and polyandry. Polygamy consists of plural marriages whilst Polygyny is a marital practice in which a man has more than one wife simultaneously.

Polyandry is a woman married to many husbands or multiple men. Polygamy is the practice of having more than one wife or husband at one time.

Polygamy includes polygyny, polyandry or group marriage or may just simply mean polygyny (Nyanseor, 2009). Often this type of marriage comes as a result of war, plague or disaster. Women left with children and no husband to provide for them were taken as second wives to other adequate care provider. This is more restricted than polygyny in its geographical distribution (Otite et al., 2003). It is found mostly in India and parts of Tibet, Ladakh in India (where men outnumbered women).Otite et al. (2003) In Nigeria, the practice is polygyny because some men take more than a wife.

In a study in Egypt, which surveyed two hundred (200) Egyptians in four governorates in order to access their attitudes on family and social laws; when asked for the reasons they used to justify polygyny, men responded with "religion allows it" least often (Table 1). The most common reason was that the first wife could not have children, and thus, could not produce heirs. The study also questioned the women in the survey about relationships between co-wives: "[in] the relationship between the first and subsequent wives, a large proportion of the female respondents said that in most cases it was hostile" (Welchman, 1988). These results seem to imply that polygyny is beginning to be looked upon in terms of its social utility, rather than its religious function.

Polyamory

This is a blanket term to cover many forms of non-monogamy, sometimes it is used to include what is referred to as swinging (a practice where individuals move from one partner the other. Sometimes not, but always it has the properties of honesty (all partners know what is going on, so adultery is excluded) and there is also consent between the partners so coercion is excluded.

Polyamory was invented because "polygamy" could be too easily construed as Biblical patriarchal polygyny (Landman, 2009). Furthermore, once a person steps outside the bounds of monogamy, there is a bewildering buffet of choices, and there is need for a generic term. 'Non-monogamy" was not linked because it had the

sense of being against something, and negative, instead of for something, and being positive. Polyamory has also been described as a multiple – partnered marriage whereby the partners get together out of love (Landman, 2009). This form of marriage was sometimes practiced in the Polynesian Islands prior to missionaries and their stodgy ideas of Christian marriage (Thompson, 2009). In these areas, the expression of sex and desire was a gift given by the gods to ensure a strong race. Partnering with one person was entirely foreign to this area, as with many areas of the world (Thompson, 2009).

Monogamy

Monogamy is a relationship of a man and a woman or the more extended definition of same sex in a relationship. Critically looking at this type of marriage, it is essentially only man and one woman strictly as same sex is not envisaged in Nigeria. Thus the definition in the case of Hyde V Hyde (1866) still represents the situation and the law in Nigeria. Marriage under the Marriage Act. Cap M6 (2004) is monogamous is nature, being a union of one man and woman to the exclusion of all others. Consequently, a party to a subsisting statutory or customary law marriage has no capacity to enter into another statutory marriage with another person. Failure to adhere to this law is punishable by imprisonment for seven years. Section 370 Cap C38 (2004). It should be noted that the practice of polygyny has a lot to do with peoples' culture and values.

It should be noted that the practice of polygyny transcends colour or race but it is an offshoot of patriarchy common in African societies (Thomson, 2009) Thus, it is not a peculiarity of the African man as polygyny can be seen in all religions of the world and it is a way of life borne out of necessity for some people.

An example is the case of Blackmore of the Mormons Religious Sect. April (2009) in Bountiful British Columbia in Canada (2009). The decision of the President of the Mormons to stop polygamous marriages caused a division which eventually produced the fundamentalist Mormon sect now known as the Church of the Latter Day Saints (LDS Church), which continued to practice polygamy in secret.

Under Islamic religion, the only condition or the practice of polygyny is when the husband is able to love and adequately provide for the wives equally. (Holy Quran) However it is remarkable that some Islamic nations of the world would not practice polygyny because of this injunction.

It is worthy of note that the relationship of polygyny and patriarchy is viewed as a detriment to women's equality and children's rights especially in democratic countries where related legislation play important roles in the debate on polygyny (1887). The practices of polygamy and bigamy were criminalized in 1892, despite these criminal provisions; there are very few convictions of polygynous offences in Canada in the last century (Campbell, 2005).

Sexuality

This is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors (WHO, 1995).

Sexual health

Sexual health is a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled (Platform of Action).

Sexual rights

Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. Sexual rights include "the human right of women 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" (Platform of Action).

They include the right of all persons, free of coercion, discrimination and violence, to the highest attainable standard of sexual health. This includes access to sexual and reproductive health care services, right to seek, receive and impart information related to sexuality, sexuality education, respect for bodily integrity, right to choose their partner and to decide to be sexually active or not, consensual sexual relations, consensual marriage, right to decide whether or not, and when, to have children and pursue a satisfying, safe and pleasurable sexual life.

RIGHT BASED APPROACH AND ITS LIMITATIONS

The word "right" is essential because it is only where there is a cause then there is a right-ubi jus ibi remedium

(where there is a cause, there is a remedy).

According to Youth Incentives International Programme on Sexuality, much has been written about rights-based approaches, and different people and/or organizations will have different understandings of a rights-based approach and how it should be put into practice. Nevertheless, it is believed that accountability, empowerment, non-discrimination and participation are some key principles of rights-based approaches that come forward in all definitions and applications.

Most actors working in the field of sexual and reproductive health and rights nowadays have adopted a rights-based approach. The goal of a Rights Based Approach (RBA) is to give people the power, capacities, and access needed to improve their own lives, strengthen their own communities and influence their own destinies. Some countries like Canada and United States of America have laws that guarantee sexual and reproductive health and rights (Canada). International human rights provide tools to hold governments accountable to implement these rights at the national level.

However, in practice it is not always easy and straight-forward to implement a Rights Based Approach in the field of sexual and reproductive health and rights. Limits and challenges to the implementation of a RBA exist due to political, social, cultural, economical and religious barriers. For example, how can one address the accountability of governments without jeopardizing constructive cooperation? Or how does a country deal with sexual diversity in a country where only heterosexuality is allowed. These are just examples of a whole range of dilemmas that may occur. In that circumstance this article brings to limelight how a right based approach could be used to protect women in polygamy.

A rights-based approach to sexual and reproductive health is a conceptual framework promoting the protection, empowerment, and equality of all people, including young people, in all aspects of their lives, including their sexual lives. At the core level, it is a way of thinking about and approaching sexual and reproductive health that is informed by and grounded in internationally agreed human rights. A rights-based approach towards the sexual and reproductive health of young people gained momentum during the 1990s when for the first time young people were internationally recognized as sexual beings with a right to education, information, youth friendly services, protection and participation. A number of key human rights instruments and United Nations conferences were driving forces in the emergence of a human rights framework for addressing sexual and reproductive health, FWCW (1995) including the International Convention on the Rights of the Child (Standing and Kisekka, 1989), the International Convention on the Elimination of All Forms of Discrimination Against Women (Ortner and Whitehead, 1981) and the International Conference on Population and Development (ICPD) (1994).

A human rights-based approach is based on the ethical ethos that all human beings have certain rights to which they are entitled. A rights-based approach distinguishes between needs and rights. An unmet need implies the absence of something which is useful or desirable, while an unfulfilled right is a violation of an individual's entitlements. A human rights approach not only meets immediate health needs but empowers women. It also publicly promotes equality between women and men, for example in relation to sexual and reproductive decision-making.

A focus on rights carries with it a greater sense of urgency, responsibility and obligation for action to ensure that individual's rights are respected, protected and fulfilled. A right is described as something to which one has a just claim. The power or privilege to which one is justly entitled, something that one may properly claim as due (Merriam-Webster, 2009). It is also defined as an interest which will be recognized and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong (Curzon et al., 2007).

Accordingly Human rights are those rights which are essential to life as human beings – basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal.

Different language has been used to articulate sexual and reproductive rights. While the precise phrasing varies, there is general agreement that sexual and reproductive rights include the right to health care services; the right to information and education; the right to make decisions, including decisions about marrying and planning a family; the right to sexual enjoyment; the right to be free from violence and discrimination; and the right to participation (Robertson, 1902). Rights in Jurisprudence is a phrase used to describe a school of legal philosophy developed since the 1960s, associated generally with political philosophers like Robert Nozick and John Rawls and, specifically in legal philosophy, and the work of Ronald Dworkin.

Reproductive rights

Reproductive rights are not new rights but have helped to push for additional accountability under the traditional human rights framework for issues that are relevant to reproductive and sexual health. The inequity in reproductive health is also a compelling reason for international concern about social injustice. There is no area of health in which inequity is as striking as in reproductive. Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of

sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence (ICPD Programme of Action). Reproductive rights relate to an individual woman's or man's ability to control and make decisions about her or his life which will impact on her or his reproductive and sexual health.

According to international consensus no new rights have been created (Health Systems, 2001). Rather, the constellations of rights that together make up what we call reproductive rights have been identified from within the existing human rights documents. Reproductive rights are understood to be entitled to protection for their own sake, but also because they are essential as a precondition for the ability to exercise other rights without discrimination.

Reproductive rights mean considering governmental obligations under the human rights documents in a whole new light. For example, consider the rights to education, health and social services in relation all of the well-known causes of maternal mortality. A government which fails to provide education, health and social services to young women of reproductive age could well be found to be in violation of these rights now recognized as part of reproductive rights (WHO/RHR/01.29). This is likely not to have been the case before the Cairo conference.

Having clarified the concepts used in this article, it is necessary at this point to bring out the ills of polygyny as it affects the women folk.

CHALLENGES OF POLYGYNY

Gender stereotyping

In juxtaposing the issues in this write up, the main aim is the protection of women's rights particularly their reproductive rights, thus it is needful to highlight International concern for these rights. The idea of reproductive rights and freedoms cannot be considered apart from the exercise of other basic human rights. Reproductive freedom lies at the core of individual self-determination. The principle of "voluntary motherhood" was central to the movement for female emancipation among nineteenth-century liberal feminists, whereas birth control for socialist and radical feminists was more often a means to sexual and social liberation (Dixon-Mueller, 1993).

One of the earliest international documents on family planning (the 1966 Declaration on Population by World Leaders) reflected the liberal tradition by defining family planning as a means of "assuring greater opportunity to each person" and of "free[ing] man to attain his individual dignity and reach his full potential" (United Nations 2004-2005). Many features of family life pertinent to polygyny vividly reflect the underlying major determinant of the family unit – the demand for labor. For example the high preference for male children results from the need to expand the family and enhance its labor force. In the patriarchal societies, girls are regarded as liabilities because as soon as they marry (and this is usually very early) they move into the husband's home, while sons by marriage will enhance the family by bringing in wives. Thus, marriage or acquisition of wives is synonymous with acquiring labour. In such situations a woman is not entitled to her individuality, rather she is forever made to be dependent all her life. In the early stages of her life, she is supposed to be domesticated and docile and accept whoever she is given in marriage to and in the later stages of her life as a married woman under the 'lock and key' of a man who is her husband, thus, completely losing her individuality to the relationship.

It is quite difficult for a Nigerian woman to assert her right in a polygynous relationship because she would be afraid of stereotyping and making her an outcast in the society. Among recent explanations for the subordination of women in society is the women's empowerment model. It is argued that women are disempowered economically, politically, socially and so on. Women are deprived of decision making positions both in the private realm of the family and the public sector. Others make decisions that directly or indirectly affect their lives on daily basis (Longwe, 2002). Increasingly, it is being realized that focusing on women in isolation has not yielded much result hence, the need to focus on gender relations and the empowerment of women. The goal of gender analysis is the emancipation of women from their subordination and their achievement of equality, equity and empowerment (Moser, 1998).

The issue of polygyny is not helping matters in the Nigerian society; it is a cultural issue and it is pretty difficult to do away with traditions generally. Furthermore, customary law has been described as a mirror of accepted usage Per Bairamian, FJ in Owonyin v. Omotosho (1961).

Instead of the complete rejection of polygyny, a better option would be the protection of women already in polygyny and dissuading others from getting into it. Whilst the majority of the literature on the subject clearly uphold that the structure of polygamous unions are inherently patriarchal as it undermines women's reproductive autonomy and is linked to; lower autonomy, mental abuse and economic hardship; some women, however, continue to advocate for the cultural and religious importance of this practice, as well as the cultural affinity these unions afford them.

Polygyny on its own is not bad; it is what it breeds, its attendant consequences and the danger in it for women.

Polygyny becomes a clog when a man is unable to satisfy all the wives.

The historical justification for it can no longer hold with civilization and mechanized farming.

Population increase

The incidence of polygyny in the second half of the 20th

century among populations in Africa, a continent with high rates of population growth, is relatively extensive. It varies from about 37% in Guinea, against an average of about 20% in West Africa as a whole, and to about 3% in North African countries like Egypt, Libya, and Algeria (1975). The demographic consequences of polygyny although usually practiced by a fraction of a population, are more pervasive, since they affect the proportion of married females and their age at first marriage in the whole community. Accordingly, a transition from polygynous to monogamous type of unions may have significant effects upon the nuptial pattern of a country and in turn upon the rate of its population increase (Chojnacka, 1978).

Polygyny among African societies has been practiced for centuries. Although the institution is undergoing profound changes under the influence of economic development, it is still perceived as a natural form of union. Even educated Nigerians, who themselves live in a monogamous type of marriage, perceive polygyny as natural, despite the fact that probably never in the past could polygyny be a universal form of union for all male members of a community (Chojnacka, 1978).

Polygyny among African societies has been deeply entrenched for three basic reasons most often indicated by anthropologists (Radcliffe-Brown et al., 1960) as follows:

(i) as a means of obtaining and demonstrating social status;
(ii) as the main source of securing an appropriate labor force;
(iii) as a sexual necessity since intercourse during pregnancy and post partum is frequently forbidden by customs and taboos.

It is also important to note that scattered explanations indicate male infanticide, higher male infant and child mortality, higher male mortality due to warfare, the importation of females as a conquest trophy, as factors accounting for practicing polygyny. All these factors are however related to heavy distortions in the sex ratio and should be considered as abnormal divergences on a historical trend with more or less a balanced sex ratio (Radcliffe-Brown et al., 1960). In agrarian traditional societies like Nigeria, the labor factor is a critical factor for polygyny. African societies predominantly based on a subsistence type of economy have been self sufficient and reliant upon the family unit as the major institution in the social structure. Naturally, polygyny is a major means to evolve a large family, since the latter expand only through marriage and reproduction.

Polygyny is the ambition of the tribesmen, an ambition most frequently achieved by aristocrats and wealthy elderly commoners. The king is expected to take more wives than any of his subjects (Radcliffe-Brown et al., 1960). The more the wives and thus the more children a man is able to attain, the stronger is his economic and social position. The number of wives and children is regarded as a man's greatest asset, and the main indicator of his wealth and status, hence it is a matter of pride and honor. This is probably also the major factor of economic and social stratification since it is impossible – in a more or less sex balanced society – for a man to practice polygyny (Chojnacka, 1978). Historically as the polygamous family pattern evolved, men who have been able to acquire more wives found themselves in a more advantageous position, and once in such a position, they were expected to take more wives than men of lower status.

Overpopulation is the resultant consequence of having more children than what one can cater for. This is followed by the resultant social problem. Private and public facilities and resources are overstretched and are not able to deal with the explosive increase in the number of births in Nigeria.

Health risks

The medical conception of health is based mainly on the 'germ theory' of disease. That is health is the absence of any disease in the body and legally speaking it should include right to health, and reproductive rights that is, the ability of an individual to be able to control his/her body.

In Nigerian society, a married man does not need the permission of his wife to bring in a second wife if he wishes so (Okojie, 1960). Thus, in this era of HIV/AIDS, such nonchalant attitude towards family life/marriage constitutes great health risks to women. Furthermore a recent survey in Africa, including Nigeria shows that greater social and economic inequality between men and women directly correlated to the HIV risk faced by African/Nigerian women (Obinor, 2007).

Also, Engels (1979) has noted that the family as an institution is often the location for the oppression and exploitation of women. This is similar to the situation of women in Nigeria. But it is essential to know that the family is only one aspect of the entire social formation that presents an enabling environment for the oppression and exploitation of women (Adetoun, 1997). Adolescent pregnancies are on the increase because of lack of access to abortion. Criminal Code (2004) also the rise in the level of death recorded among the youth on the basis of unsafe abortion is just unpardonable.

The disturbing rise in maternal mortality and morbidity rate (UNFPA, 2005) Vesico Vaginal Fistula (VVF) incidences as a result of child pregnancies and early marriages are indirect consequences of polygyny. The point here is that physiologically women are receptors and though it is possible for a man not to show signs or symptoms of any infection for a long time; women quickly suffer the aftermath of a 'careless' affair.

The maxim of maintaining only one partner in order to

prevent HIV/AIDS is compatible and contiguous with the principles and practice of polygyny as a wife is at risk of contracting infection from 'all' the sexual partners of the husband and vice versa.

In reproductive health, in particular, "the differences… between the rich and the poor – both between and within countries – are larger than in any other area of health care" and, worldwide, reproductive health problems are the leading cause of mortality and morbidity among women (United Nations, 2005). Every year, more than half a million women die in pregnancy or childbirth, and 99% of those cases are in developing countries (United Nations, 2005). Although data on domestic violence are notoriously tricky to interpret, given the universal problem of underreporting, in surveys conducted in various countries, and between 10 and 69% of women reported having experienced domestic violence (United Nations, 2005). The same project concluded that violence against women is a more common cause of ill health among women than traffic accidents and malaria combined.

Having highlighted the challenges of polygyny it would be urgent to examine the available legislations protecting the reproductive rights of women.

INTERNATIONAL CONCERN FOR REPRODUCTIVE RIGHTS OF WOMEN

Since reproductive health and rights issue has now been accepted as a global problem, thus there are a number of international instruments directly and indirectly protecting the reproductive rights of women. The legal instruments are aimed at influencing the thinking of people for change and general re-orientation. International laws and treaties are the powerful tools that can direct government agencies, individuals and institutions towards influencing changes in their laws and practices. The objective of International law is to empower the protection of legitimate interests of persons. Government agencies would use the instrument to propagate social justice for its people.

International human rights forms part of Nigerian laws that is, a veritable source. Every treaty or International Convention that Nigerian government is a party to or has ratified or acceded to, contractually becomes part of our laws, some of these laws are yet to be domesticated (CFRN, 1999).

Additionally, in 1994 the United Nations Committee on the Elimination of Discrimination against Women expressed their intolerance for practices founded on sex-based prejudices or stereotypes through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). Though the Committee accepted varying forms of marriage and family, they advocated for the prohibition of polygamy as it "contravenes a woman's right to equality with men" and can have severe emotional and financial consequences (Campbell, 2005). Reproductive rights are central to individuals' control over their lives. Reproductive rights are founded on a number of international agreements, including human rights instruments such as Bill of Rights, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Elimination of Racial Discrimination (CERD), African Charter on Human and Peoples Right (African Charter) 2004, Convention Against Torture (CAT), ICPD Declarations etc.

All these International instruments make provision for the protection of women's right, thus it is the duty of the government to protect their women from exploitation.

LEGAL PROVISION FOR THE PROTECTION OF REPRODUCTIVE RIGHTS OF WOMEN IN NIGERIA

The Protocol on the Rights of women in Africa is one of the major key instruments for advancing reproductive and sexual health rights in Nigeria having being ratified by Nigeria, though yet to be domesticated or incorporated into national laws. It is by implication, legally binding on Nigeria to respect, observe, promote and protect the rights guaranteed therein. Federal Ministry of Women Affairs (2006) In addition to the above Protocol on women's reproductive and sexual health rights, which include the rights to equality, life, liberty, security of the person, health, family planning, consent to marriage, privacy, protection from all forms of discrimination, sexual violence, harmful practices, and from cruel, inhuman, and degrading treatment or punishment, are embedded in other Regional and United Nations International Human Rights Treaties ratified by Nigeria.

These treaties require all ratifying countries like Nigeria to take specific and appropriate actions to effect their provisions at the national level. Some other relevant domestic legislation which in one way or the other affect the rights of women and which subsist till date and are consistent with the relevant provisions of the UN and African treaties are as follows:

(a) The Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law (2001).
(b) The Prohibition of Trafficking and Sexual Exploitation of Women and Girls (2000).
(c) The Zamfara State Sharia Penal Code Law of 2000, equally seeks to protect women and young girls from all forms of cruelty, sexual, labour and economic exploitation as well as trafficking.
(d) Bauchi State Hawking by Children (Prohibition) Act 1985 (Cap 58).
(e) The Abolition of Harmful Traditional Practices against Women and Children (2000).
(f) Edo State Female Genital Mutilation (FGM) Prohibition Law 2000.
(g) Cross-River State Girl-Child Marriage and Female

Circumcision (Prohibition) Law of (2000).

Section 54 of the Labour Act. Cap L1 (2004) provides protection for pregnant women workers and their right to Maternity Leave. Section 58 (1) of the same Act (2004), considers the breach of any provision on maternity leave, in addition to any civil liability, a criminal offence. However, sections 54 and 55 of the same Labour Act prohibits employment of women at night and in underground work, thereby arming an employer with legitimate reasons for discriminating against women individually or as an interest group.

It is noteworthy that these prohibitions do not apply to women falling within the middle level and high level cadres of employment (Labour Act, 2004).

Similarly, the Factories Act, Cap F1 (2004) which makes detailed provisions for the health, safety and welfare of workers, does not take into account the sensitivity and susceptibility of females in the performance of their reproductive functions, their health rights or the need to protect the unborn baby. The law also fails to acknowledge the effect of toxic substances or radio-active materials on women. Little or no research has been undertaken to determine the degree and implication of the hazards and ways of eliminating them.

There are a number of policy measures for enhancing reproductive and sexual health of women. Apart from the on-going health systems reforms, there exist several policies which provide frameworks for the delivery of quality reproductive and sexual health for all Nigerians, especially women and girls (Transforming Health Systems, 2000). These include:

1. National Policy on Maternal and Child Health, 1994.
2. National Adolescent Health Policy, 1995.
3. National Policy on Population for Development, Unity, Progress and Self-reliance, 1998 and 2004.
4. National Policy on Women, 2000.
5. National Reproductive Health Policy and Strategy, 2001.
6. National Policy on the Elimination of Female Genital Mutilation, 1998 and 2002.
7. National Policy on HIV-AIDS, 2003.
8. National Health Policy and Strategy, 1998 and 2004.

THE WAY OUT

Reproductive rights are issues of life and death for women, not mere matters of choice. Sexual and reproductive health and rights, along with women's empowerment have been acknowledged world wide as essential elements in promoting poverty alleviation and moving towards sustainable development.

Critical areas of concern include HIV/AIDS prevention; reaching out to adolescents and youths; promoting gender equality, empowering women and making motherhood safer by reducing maternal mortality rates, amongst others.

The involvement of men, especially young men as active participants in understanding and thus accepting and promoting women's and men's reproductive rights is thought to be crucial to the successful outcome of population policies and program. Nigeria gave slightly above 6% of its annual budget in health sector, this figure depicts lack of political will on the side of the government thus women groups and non-government organizations have a role to play to sensitize the whole populace. In 2012, the National Assembly passed the Appropriation Act of N4,877,209,156,933 with a startling revelation that President Goodluck Jonathan allocated more money to the ex-Niger Delta Militants than the nation's critical health sector. A breakdown of the budget shows that the Presidential Amnesty Programme for ex-militants has a recurrent expenditure of N66,176,411,902 while the entire health sector was allocated N60,920,219,702. This position of the federal government of Nigeria showed indifference and lack of political will to pursue and tackle the challenges of the health sector. The exclusion of the health sector from the tax reliefs recently announced by President Goodluck Jonathan in his 2013 budget presentation before the National Assembly in Abuja has aroused several criticisms especially from the Nigerian Medical Association (NMA) (Enabulele, 2012). In the 2013 budget the Federal government allocated a paltry 6.04% of the national budget to health which is not a significant improvement to the 2012 budget.

The problem of women and health in Nigeria cannot be resolved unless attempts are made to reduce and eventually eradicate oppression and exploitation in African society. The problems women face are the problems of human beings and thus, everyone including men and women should work together towards the liberation of women in Nigeria.

Sexual pleasure is not a taboo, it is perhaps the highest physical pleasure couples/partners could attain; such pleasure cannot be derived from eating or from playing or watching football.

HIV/AIDS is ravaging so as other deadly infection like hepatitis, it is imperative for Nigeria as a country to re-appraise her value system and negotiate a way out. Particularly, HIV/AIDS is challenging common beliefs and it is actually turning around our mentality with regards reproductive health rights. We have to put a stop to its spread and live good lives, with polygyny, the issue becomes more complicated.

Fighting gender inequality with respect to polygyny is about challenging an ideology. The issue of gender inequality is far more complex than men being against women or women having to fight men. It is about challenging the ideology which rates men as superior to women (an ideology which women as well as men may help perpetuate) and vests in them greater power. And it is about challenging the institutions which uphold these values. Polygyny as a form of marriage helps in perpetuating inequality by making women subservient to a relationship which they have no control over.

The social construction of sexuality is in fact a major reason for the continuity of polygyny. The cultural dictates and acceptability make it desirable as a class dictating action. There must be a way out to protect women from the consequences of polygyny.

RECOMMENDATIONS AND CONCLUSION

This paper has made an attempt to discuss the concept of reproductive health rights of women in the light of polygyny. From the work it is submitted that polygyny constitutes an infringement of women's right to reproductive health care. Though there are other factors for instance, child marriage, Female Genital Mutilation, unsafe abortion, family planning, gender inequality/ violence that affect the reproductive health status of women in Nigeria. It is important to note that polygyny has never been categorized as one of the factors which affect the reproductive health status of women; it is hereby submitted that it is one of them. The environment in Nigeria has not been sympathetic to the development of women because of the patriarchal nature of the society and the practice of polygyny is embedded in patriarchy.

From the identified gaps in the Reproductive Health policies and legislations in Nigeria, as well as the challenges of polygyny the following recommendations are made:

1. Enactment of a uniform law on reproductive health as multiplicity of laws affects implementation and enforcements.
2. Chapter II of 1999 constitution should be made justifiable/justiciable.
3. Grassroots and widespread awareness should be created to enable all women know the provisions of the law on their rights and also know how and when to seek medical attention.
4. To improve the policy environment, a vigorous preventive awareness campaign should be mounted like never before to the target populations to inform them about the health risks of polygyny and the message should be disseminated consistently and sustainably to the remotest corners of the country.
5. To meaningfully enjoy and ensure effective promotion and protection of reproductive health and sexual rights, there is the need for urgent constitutional review to upgrade these rights as fundamental human rights under chapter 4 of the constitution or at least, as part of chapter 2 on fundamental objectives and directive principles of state policy. These rights must be made part of constitutional obligations of all levels and tiers of government to respect, observe, promote and protect because they are human rights founded upon principles of human dignity and equality as well as survival issues.
6. Political activism is needed to further an agenda of change that brings social justice and erotic justice.
7. The government should be more proactive to providing the infrastructure where women could easily access their health timeously and efficiently.
8. Other existing windows of opportunity to explore as a way forward in addressing reproductive health concerns and in combating HIV-AIDS epidemic include the large network of civil society groups that should be maximized. All stakeholders, including the government, should ensure that the whole country is effectively covered in the number and diversity of intervention through public awareness campaigns.
9. There should provision of free access to reproductive health services.
10. The national response to reproductive health concerns and HIV-AIDS needs to be continuously assessed, to provide all stakeholders with constant feedback on progress with implementation, by identifying actual or potential successes and problems so as to facilitate timely adjustments to implementation. The existing management information system needs to be made more effective by enhancing its capacity (human, technical and financial) with clear statements of measurable objectives in order to serve as an indispensable tool to assess and improve performance.

Most countries, as parties to international human rights treaties, have recognized the fundamental rights of women and girls. These rights must be enshrined in national-level constitutions, which carry a force of law superior to other parliamentary and executive acts, and to customary and religious law.

Finally, reproductive health contributes enormously to physical and psychological comfort and closeness and to personal and social maturation while poor reproductive health is frequently associated with disease, abuse, exploitation, unwanted pregnancy and even death. Ultimately, it is only a healthy population that can ensure a sustainable economic development in a stable democratic environment.

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