



## THE EFFECTS OF NATIVE CULTURES, MYTHS, MYSTERIES AND MONSTROSITIES ON THE REPRODUCTIVE RIGHTS OF WOMEN IN NIGERIA

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### ABSTRACT

This paper focuses on cultural inhibiting factors to the enjoyment reproductive health rights within the context of the Nigerian society. The critical issue of substantive and formal equality presupposes a dichotomy between the existence of reproductive rights and their full enjoyment. Freedom of information as a prerequisite for making informed choices in the exercise and the enjoyment of reproductive rights, is without much argument steeped in controversy as regards the peculiarities of the Nigerian situation. It is against this background that this paper examines the nature and scope of reproductive rights in Nigeria. We argue that Nigerian native cultures inhibit the exercise of reproductive rights. However, we focused our discourse mainly on women and the girl child arising from their peculiar vulnerability, while conceding that reproductive rights are applicable to all human beings. We further argue that the potency of legal protection of the reproductive rights of women in Nigeria is watered down by cultural beliefs and inhibitions. While an elimination of the cultural practices may not be a realistic approach to the enjoyment of reproductive rights, this paper advocates that legislative intervention may not sufficiently establish the freedom to enjoy the reproductive rights arising from the bottlenecks of culture. We therefore emphasised that the rights based approach to the implementation of reproductive health rights may not always be practicable as socio-cultural barriers imposed by the Nigerian society.

**Keywords:** Culture, Reproductive rights, Myths, Monstrosities, Mysteries.

### 1. INTRODUCTION

Reproductive rights as part of human rights connote the right of humans to freely and responsibly decide the number, spacing and timing of their children and to have the information and means to do so, the right to attain the highest standard of sexual and reproductive health<sup>1</sup> They also include the right of everyone to make decisions concerning reproduction free from all forms of discrimination, coercion and violence, and connote the

<sup>1</sup> O. Olomola: 'An Appraisal of Polygyny and the Reproductive Rights of Women in Nigeria' in *Journal of Law and Conflict Resolution* Vol 5 (1), pp 6-15, January 2013. Available Online at <http://www.academicjournals.org/JLCR> last visited on 17th January 2014

capacity of a man or woman to be in command of and make decisions about his or her life which will impact on his or her reproductive and sexual health<sup>2</sup>.

These rights are not in themselves novel to the human rights framework but have resulted in a greater accountability in the areas of reproductive and sexual health. In other words, new rights are not created by the reproductive rights regime but the amalgam of rights created is gleaned from within the framework of other human rights instruments.<sup>3</sup>

Reproductive rights are accorded protection not just as part of other rights but as rights *sui generis* necessarily protected as a prerequisite for the enjoyment of other rights. A collateral incidence of the enjoyment of these rights is the precondition that State parties to the relevant treaties and instruments create an enabling environment for the provision of the structural and institutional mechanisms for the enjoyment of these rights<sup>4</sup>. Reproductive rights in themselves cannot be considered outside in isolation due to the fact that the ideas of the basic freedoms are a broad based human rights structure which has reproductive rights at the core. According to Dixon-Mueller<sup>5</sup>, reproductive rights are at the center of individual self determination and distinguish three streams or genres of reproductive rights as gleaned from the international instruments<sup>6</sup>. They are, the freedom to decide how many children to have and when (or whether) to have them; the right to information and the means to regulate one's fertility; and the right to have dominion over one's own body.

In most United Nations instruments, the right to reproductive freedom has been distilled to include the 'right to decide freely the number and spacing of children'<sup>7</sup>, the right to marry or not, the right to choose one's spouse, to have children or not and to decide when to have them. The implication of the reiteration of these rights in the varied international instruments is that these rights are civil liberties which should not be infringed upon by individuals, by communities, or by governments. These rights are however not absolute in nature as the freedom to choose may conflict with other rights and therefore conveys certain responsibilities. Indeed the United Nations insists that individuals and couples have the right to decide freely and responsibly the number and spacing of their children, taking into account the 'needs of their living and future children and their responsibility to other members of the society'<sup>8</sup>.

The fact that these responsibilities are to be assumed freely and without coercion sets the stage for potential conflict between individual freedoms and the common good. It goes without saying that the role of the State in fulfilling certain economic and social or entitlements is critical in whether or not the freedoms espoused are actually realizable. In some jurisdictions the realizations of reproductive rights have been made possible by judicial and legislative intervention<sup>9</sup>. A classical example would be in the American jurisprudence

<sup>2</sup> International Conference on Population and Development (ICPD) (1994) available at <https://www.unfpa.org/public/global/publication/pid/1973> last visited on 17th January 2014

<sup>3</sup> For instance the Bill of Rights, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), Convention on the Elimination of Racial Discrimination (CERD), African Charter on Human and Peoples Right 2004, Convention Against Torture (CAT), ICPD Declarations, etc.

<sup>4</sup> Olomola (Ibid) at page 15

<sup>5</sup> R. Dixon-Mueller: "Population Policy & Women's Rights: Transforming Reproductive Choice" (London, Praeger Publishers, 1993)

<sup>6</sup> Such as the ones listed in footnote 5 above

<sup>7</sup> United Nations General Assembly Resolution of 1966. This right was originally vested in 'each individual family', the vesting of the rights shifted from the families, to parents, then couples and finally to couples and individuals by the United Nations Population Agency (UNPA) Plans of Action of 1974 and 1984 respectively.

<sup>8</sup> Ibid footnote 9 above

<sup>9</sup> These legislative interventions sometimes followed some judicial pronouncements.

wherein the cases of *Roe v Wade*<sup>10</sup> and *Planned Parenthood Federation v Casey*<sup>11</sup>; the US Supreme Court upheld and reiterated respectively as fundamental the right not to have a child and essentially made abortion legal.

In the Nigerian context however, the situation is different as a woman particularly a married woman cannot take a decision to terminate her pregnancy without risking the breakup of her marriage. This is particularly so due to the fact that abortion is still illegal in Nigeria with a maximum of a 14 year jail term for the provider and seven years for the woman unless carrying the pregnancy to term would endanger her life or her physical and mental health<sup>12</sup>.

The actualization of reproductive rights must first contend with the clogs imposed by culture and acceptable practice. Nigeria being a legally pluralistic society where customary law operates alongside statutory law, it is difficult to give reproductive rights the practicability it deserves because there is no gainsaying the fact that in reality, customary law is the 'mirror of accepted usage'<sup>13</sup>. Culture is a tangible meter of the values of a particular society. What one society considers as moral and justifiable may be considered as immoral and unconscionable by another society as there are no acceptable universal standards of morality. The ideology that all beliefs, customs and ethics are relative to the individual within the context of his immediate society is known as Cultural Relativism.<sup>14</sup> Falola<sup>15</sup>, Olaoba<sup>16</sup>, and Bamgbose<sup>17</sup> agree that in Africa, cultural perceptions shape to a large extent the behavior of people affecting the interaction of people with their environment. Culture is largely responsible for the behavior of people in the areas of having children, hard work, the practice of polygyny and the support of patriarchy otherwise known as male dominance<sup>18</sup>. Olaoba goes further to define culture as inclusive of a legal system which is foundational to the prevention of chaos in order to make life meaningful and worth living.<sup>19</sup> In other words, what is recognized as law in the traditional African setting cannot be defined in a vacuum, it is predicated on necessity and garbed in culture in order to justify its applicability and acceptance by the people.<sup>20</sup> The application of law must always be a resort to the culture of the people.<sup>21</sup> Cultural clogs are

<sup>10</sup> 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973). In this case the plaintiff Roe brought a class action challenging the abortion laws of Texas. The Supreme Court held among other things that the American Due Process Clause protects the right to privacy including the right to terminate a pregnancy barring the legitimate interest of the State in a woman's health at various stages of her pregnancy.

<sup>11</sup> 505 U.S. 833 (1992) was a case decided by the Supreme Court of the United States in which the constitutionality of several Pennsylvania state regulations regarding abortion were challenged. Here the court held that the Pennsylvania law which required spousal awareness or consent prior to obtaining an abortion was invalid under the Fourteenth Amendment because it created an undue burden on married women seeking abortion. It also upheld the requirement of parental consent for minors, informed consent and a 24 hour waiting period.

<sup>12</sup> The Criminal Code Act Cap C7 Laws of the Federation of Nigeria at Section 297

<sup>13</sup> Per Bairamain FJ in *Owonyin v Omotosho* (1961, SCNLR, 57) which definition was also cited and adopted with approval by the Supreme Court in the case of *Kindley & 11 Ors. v Military Governor of Gongola State* (1988) 2 NWLR (pt 77) 445. It was also applied and expatiated in *Odoemena Nwaigwe & Ors v Nze Edwin Okere* (2008) SC where Tobi JSC stated as follows 'Customary laws emerge from the traditional usage of people in a given community, which by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, element of compulsion, and force of law with reference to the community. And because of the element of compulsion which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable'.

<sup>14</sup> [www.thefreedictionary.com/Cultural\\_relavism.html](http://www.thefreedictionary.com/Cultural_relavism.html)

<sup>15</sup> Falola T, *The Power of African Cultures*, (Rochester, University of Rochester press, 2008) at page 4

<sup>16</sup> Olaoba O.B, *An Introduction to African Legal Culture*, (Lagos, Hope Publications, 2002) at page 2

<sup>17</sup> *Ibid* at page 17

<sup>18</sup> Falola (*ibid*) at page 10

<sup>19</sup> *Ibid* at page 20

<sup>20</sup> Falola *Ibid* at page 6

<sup>21</sup> *Ibid* footnote 21 above

inhibiting factors to the enjoyment of women's rights generally and reproductive rights in particular. This arises from the fact that crucial issues which form the core of reproductive rights are rights exercisable against the cultural norms and practices of people.<sup>22</sup>

## 2. INSTITUTIONAL AND LEGAL FRAMEWORK FOR REPRODUCTIVE RIGHTS

Within the ambits of international human rights exist a plethora of key instruments and key factors which established human reproductive rights as integral part of human rights. These instruments include the Universal Declaration of Human Rights (UDHR), the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>23</sup>, Convention on the Elimination of Racial Discrimination (CERD)<sup>24</sup>, African Charter on Human and Peoples Rights<sup>25</sup>, Convention Against Torture (CAT), ICPD Declarations<sup>26</sup>. The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (2003)<sup>27</sup> is one of the key instruments regarding reproductive rights of women. Though this instrument has been ratified by Nigeria, it yet remains undomesticated into our local law. In addition to the Protocol mentioned above, different local legislations exist which hinge on the reproductive health rights of women and girls in Nigeria.<sup>28</sup>

Some Nigerian policy frameworks also are germane to reproductive health rights<sup>29</sup>. National laws like the Labor Act<sup>30</sup>, in section 54 provides for the protection of pregnant women

<sup>22</sup> See page below

<sup>23</sup> Articles 11(2), 12 (2) and particularly article 16 are concerned with reproductive health rights. Further to this, in 1994 the United Nations Committee on the Elimination of Discrimination Against Women expressed their intolerance for practices predicated on gender based prejudices or stereotypes. Even though the Committee accepted varying forms of marriage and family, they advocated for the prohibition of polygamy as it 'contravenes the right of a woman to equality with men and can have severe financial and emotional consequences. Source:

[www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf](http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf) last visited on 17th January 2014

<sup>24</sup> Article 5 (iv) is concerned with reproductive health issues. Source: [www.ohcr.org](http://www.ohcr.org) last visited on 17th January 2014

<sup>25</sup> This is also known as the Banjul Charter and is an international human rights instrument targeted at the protection of the human rights of the people on the African continent. Article 18 is concerned about reproductive health rights and the protection of the family unit generally. Source: [www.achpr.org/instruments/achpr/](http://www.achpr.org/instruments/achpr/) last visited on 17th January 2014

<sup>26</sup> Particularly the Cairo Declaration of 1994 Articles 5 and 6 of which reiterate the importance of reproductive health and healthcare urging governments to take responsible and responsive action to ensure the proper protection of women via family planning. Article 6 of this declaration is on abortion rights and the use of family planning methods to prevent unplanned pregnancies. Source: [www.un.org/popin/icpd/conference/bkg/egypt.html](http://www.un.org/popin/icpd/conference/bkg/egypt.html) last visited on 17th January 2014

<sup>27</sup> This is better known as the Maputo Protocol and guarantees the comprehensive rights of women to take part in the political process, to social and political equality with men and (germane to our study) to control of their reproductive health and an end to female genital mutilation. As the name suggests, it was adopted by the African Union in the form of the African Charter on Human and Peoples Rights. Articles 5, 6, 7 & 14 of this Protocol are relevant to reproductive health rights. These articles met with stiff opposition by Christians groups particularly Roman Catholics and the articles on female genital mutilation, polygamous marriage and other traditional practices were opposed mainly by Muslims. Source: [www.achpr.org/files/.../women-protocol/achpr\\_instru\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/.../women-protocol/achpr_instru_proto_women_eng.pdf). last visited on 17th January 2014

<sup>28</sup> These include the Lagos State Prohibition of a Widow or Widowers Fundamental Rights Law (2001), the Lagos State Prohibition of Trafficking and Sexual Exploitation of Women and Girls (2000), the Zamfara State Sharia Penal Code Law (2000) which seeks to protect girls and women from all forms of cruelty, sexual exploitation, forced labor and economic exploitation as well as trafficking, the Bauchi State Hawking by Children (Prohibition) Law (1985), the Cross River State Girl Child Marriage and Female Circumcision (Prohibition) Law (2000), Akwa Ibom State Child Rights Law (2008) etc.

<sup>29</sup> These include the National Policy on Maternal and Child Health (1994), National Adolescent Health Policy (1995), National Policy on Population for Development, Unity, Progress and Self Reliance (1998) (2004), National Policy on Women (2000), National Reproductive Health Policy and Strategy



workers and their right to maternity leave. Section 58 (1) considers the breach of any provision on maternity leave, in addition to any civil liability, a criminal offence. However, sections 54 and 55 prohibit the employment of women at night and in underground work.<sup>31</sup> The prohibitions do not however apply to women within the middle level and high level cadres of employment. In a similar vein, the Factories Act<sup>32</sup>, makes provision for the health, safety and welfare of workers but does not take into account the peculiar susceptibility of women arising from their reproductive anatomy.<sup>33</sup>

The legal mechanisms for the protection and realization of reproductive health rights though laudable in their existence are inhibited in their actual realization arising from the fact that these instruments are not without requisite enforcement mechanisms and the international instruments are lacking in the domestication strictures imposed by national laws.<sup>34</sup> One would also subscribe to Olaoba's opinion that the plethora of documents and instruments relating to reproductive health rights make the regime unwieldy and advocates for a composite document relating to this regime of human rights<sup>35</sup>. Enforcement also becomes problematic as there is argument as to the exact jurisprudential context of these rights in the human rights law regime. While some authors<sup>36</sup> argue that these rights are entrenched by implication in the ICCPR<sup>37</sup> regime and are therefore inalienable and non-derogable, other authors argue that the rights are mere cultural and social issues provided for in the ICESR<sup>38</sup> and are therefore the subject of progressive realization which state parties are advised to create social and economic structures to gradually attain.

The first stream of thought has its origins in the ideas of human rights expressed in seventeenth and eighteenth century theories about the natural or inalienable rights of man. These ideas about civil and political rights from the foundations of the French and American revolutions were a launching pad for the propounding subsequent ideas about economic and social rights or entitlements.<sup>39</sup> The idea that couples should be free to decide the number and spacing of their children was first recognized as a human right in the 1968 UN Human Rights Conference at Tehran.<sup>40</sup> The second stream of thought to a large extent originates from the Malthusian theories on the relationship between population growth and the wealth of nations and believes that unrestrained population growth would perpetuate poverty.<sup>41</sup> It goes without saying therefore that while the former school provides for the non derogability of these rights; the latter school would advocate for the progressive realization of the aforesaid rights and thus give State parties the leeway to evade responsibility to provide enabling mechanisms for the realization of the aforesaid rights.

(2001), national Policy on the Elimination of Female Genital Mutilation (1998) (2002), National Policy on Women (2000), National Reproductive Health Policy and Strategy (2001), National Policy on HIV/AIDS (2003), National Health policy and Strategy (1998) (2004), etc.

<sup>30</sup> Cap L1 Laws of the Federation of Nigeria (2004)

<sup>31</sup> It is however arguable whether the provision prohibiting night work and underground work are not discriminatory. According to Omoniyi and Olaoba, this provision gives ambit for an employer to discriminate against female employees.

<sup>32</sup> Cap F1 Laws of the Federation of Nigeria (2004)

<sup>33</sup> Sections 45 to 50 which generally with removal of dust or fumes, meals in certain dangerous trades, protective clothing and appliances, protection of eyes in certain processes, power to make regulations for health, safety and welfare, power to take samples.

<sup>34</sup> For instance as seen in Section 12 of the Constitution of the Federal Republic of Nigeria (1999) which requires domestication of an international instrument before it becomes applicable as local law.

<sup>35</sup> Ibid at page 13

<sup>36</sup> Primarily those who belong to the positivist school of thought which stream Dixon-Mueller belongs

<sup>37</sup> That is the international Covenant on Civil and Political Rights

<sup>38</sup> International Covenant on Economic and Social Rights

<sup>39</sup> Ibid at page 1

<sup>40</sup> Ibid

<sup>41</sup> Ibid

### 3. REPRODUCTIVE HEALTH RIGHTS IN THE FACE OF CULTURAL MYTHS, MYSTERIES AND MONSTROSITIES

A question on the cultural clogs inhibiting the exercise of rights under the reproductive health rights regime in Nigeria would necessarily involve the realization that there is a general cultural reluctance to acknowledge the right of women to reproductive autonomy and consent. These are due to a number of cultural factors which will be highlighted briefly hereunder.

#### *3.1 Patriarchy: The Myth of Male Protection Assuring Female Chastity and Purity*

According to Aina,<sup>42</sup> patriarchy is a system of social structuring and delineation on the basis of gender where significant advantages are provided to male members of the society at the expense of the female members of the society. At the same time this system ensures that severe restrictions are placed on the female members of the society as regards their roles and inputs to the society. This system is riddled with various myths and taboos targeted at ensuring that gender roles are conformed with. Although patriarchy originally connoted 'the rule of the fathers', it has been expanded in context to include the rule of husbands, male bosses, of men running most institutions in any given community whether such institutions are political or economic. For the purpose of this study, the effect of patriarchy on female reproductive gender rights is the subrogation of females to inferior roles in the society and the perception that arising from their peculiar weaknesses and vulnerabilities, exploitation becomes inevitable as the norm with the requisite protecting mechanisms being activated and utilized. Scholars have explained that patriarchy is a system of social structure in which women are dominated, exploited and oppressed by men<sup>43</sup>.

This entrenches male rights to exclusivity in decision making even in the areas of reproductive health status of the women. Such subrogation of the rights of women, give rise to significant cultural and socio-economic norms which further limit their exercise of autonomy with respect to the reproductive health. Practices having their origins in patriarchy are briefly outlined hereunder.

#### *3.2 Male Child Preference*

In Nigerian cultures the male child is preferred over female children. They are seen as custodians and perpetuator of the family lineage and heritage. Female children are viewed as domestic appendages who sojourn in the family home awaiting their disinheritance via matrimony.<sup>44</sup> The birth of a male child is received with greater expectation and anticipation than the birth of a female child. According to Usmanu<sup>45</sup>, in Plateau State of Nigeria, among the people of Anaguta, a woman who gives birth to a female child is passes through certain purification rites to cleanse herself from the ill luck associated with female children. In Ukonu's study of Ibibio and Igbo names<sup>46</sup> indicate that while male children are given names indicative of strength, hope, and fulfillment, female children are given names that show

<sup>42</sup> Aina I.O, "Women, Culture and Society", in Amadu Sesay and Adetanwa Odebiyi (Eds) 'Nigerian Women in Society and Development' (Ibadan: Dokun Publishing House, 1998) Page 6

<sup>43</sup> S. Walby, *Gender Transformations* (London: Routledge Publishers, 1997) Page 15, Nwaubani O.O., *Women Education and National Development in Nigeria* (Lagos: Mukugamu Press, 2000) Page 23, Lener G, *The Creation of Patriarchy* (Oxford: Oxford University Press, 1986)

<sup>44</sup> Falola (Ibid) at page 26

<sup>45</sup> M. Usmanu, *Anaguta Rites of Passage*, (Jos: Oden Press, 1999) Page 35

<sup>46</sup> While male children are named Akaninyene (greater than wealth), Anie-akpon (to have and be great), Aniekan (who is greater), Obisike, Obisieimike, Obidike (my heart is strengthened), Ebisike (I can

aborted hope, delayed expectation and a desire for a son<sup>47</sup>. According to Izugbara<sup>48</sup>, informal and lay discussions on sexuality in Nigeria ascribe superiority to the men and to the penis. It is his view that as regards sexuality and reproductive health matters, these discussions are indicative of where the balance of power resides in sexual relationships their key messages being that a woman's pleasure lies in giving pleasure to the man, without thought to her personal safety and health. He posits that a woman who fails to fall into this patriarchal paradigm is classified as a nymphomaniac and loose woman. The effect of these lay discourses being that the centralization of male genitalia is the marginalizing female genitalia, sexual desire and pleasure in order to make them appear evil.<sup>49</sup> He surmises by agreeing that as submitted by Isherwood<sup>50</sup>, this is the root of a woman's lack of reproductive autonomy, inferiority and unworthiness.

### *3.3 Inferior Custodial Status of Women*

In Nigeria, the cultural ethos stipulates in the different cultures across board that a woman remains under the guardianship of her father, husband and oldest son respectively as she progresses from childhood to old age. She is socialized to accept having sexual relations with her husband at his demand and under pressure to bear as many children as possible preferably male children. In northern Nigeria in particular, a woman is expected to remain under the authority of her husband's family and remain largely invisible to outsiders. This is as a result of classifying women as minors and therefore lacking requisite decisional capacity<sup>51</sup>.

Izugbara<sup>52</sup> posits that by depicting men's dominion and rulership of women as natural, divine and cultural or normal, the cultural norms associated with the custody of women make it difficult to promote rights to choices, sexual freedom, and positive, healthy and respectful sexuality<sup>53</sup>. These are at the core of reproductive health rights and it is submitted with respect constantly eroded by the seemingly normal right to custody women.

### *3.4 The Payment of Bride price*

According to Aniaka<sup>54</sup>, the issue of payment of bride price presupposes that an intending husband gives the family of the bride to be, valuable property both in cash and kind in exchange for the bride. This exchange nullifies the right of the bride to take decisions on

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now live longer), Nwokedi (a man is here), Obiajulu (my heart is at full), Asagha (the one I urgently wanted), Ubokudom (my right hand), Iberedem (my support and pillar), etc, female children are named Nkereuwem (I am thinking of life), Ogadinma (it will be better), Ntiense (wait and see), Ndidi (Patience), Ijeoma (a good or safe journey), Anyanime (perseverance), etc.

<sup>47</sup> Ukonu D, Igbo and Ibibio male Anthroponyms; a Socio-linguistic Study, (Unpublished Thesis, University of Uyo)

<sup>48</sup> C.O. Izugbara, Patriarchal Ideology and Discourses of Sexuality in Nigeria in Understanding Human Sexuality Seminar Paper Series 2. (A Publication of the Africa Regional Sexuality Resource Centre) available at [www.arsrc.org/downloads/uhsss/izugbara.pdf](http://www.arsrc.org/downloads/uhsss/izugbara.pdf)

<sup>49</sup> Ibid at page 12

<sup>50</sup> L. Isherwood, Learning to Be a Woman: Feminist Theological Reflections on Sex Education in Church Schools as cited in Izugbara (Ibid) at page 31

<sup>51</sup> Ahmadu Bello University Zaria, Centre for Islamic and Cultural Studies, 'Promoting Women's Rights through Sharia in Northern Nigeria' available at [www.ungei.org/resources/files/dfid/promotingwomen'srights.pdf](http://www.ungei.org/resources/files/dfid/promotingwomen'srights.pdf) last visited on 17th January 2014

<sup>52</sup> C.O. Izugbara, Patriarchal Ideology and Discourses of Sexuality in Nigeria in Understanding Human Sexuality Seminar Paper Series 2. (A Publication of the Africa Regional Sexuality Resource Centre) available at [www.arsrc.org/downloads/uhsss/izugbara.pdf](http://www.arsrc.org/downloads/uhsss/izugbara.pdf) last visited on 17th January 2014

<sup>53</sup> Ibid at page 28

<sup>54</sup> O. Aniaka, Socio-Cultural Challenges to Informed Consent in Nigeria" (2013) <http://ssrn.com/abstract=2267239> last visited on 17th January 2014

reproductive health issues as her husband is deemed to have paid for the total dominion and control of the bride with respect to those and other matters<sup>55</sup>. The man is therefore deemed to have paid for the right to take all decision on her behalf including decisions on health issues like reproduction, family planning contraception, sexually transmitted infection and child spacing<sup>56</sup>. According to Nwaogugu:<sup>57</sup>

‘... for a girl, parental consent is mandatory under customary law even where she has attained majority... on the other hand an adult male may contract a valid marriage without the consent of his parents...’<sup>58</sup>.

The reason given for this inequity is the fact that under customary law the bride price is an essential ingredient of a customary marriage and cannot be properly paid nor can the bride be properly given away without the consent of her parents. Various described as a gift in kind or monetary payment to the parents or guardian of a female person on account of the marriage of that female person<sup>59</sup>, the effect of the bride price is to reduce the woman to the status of a chattel under the total dominion of the husband and as a consequence erodes her rights generally and for the purpose of this discourse, her reproductive rights in particular. According to Igbelina-Igbokwe,<sup>60</sup> “the payment of bride wealth signifies the ‘commodification phenomenon’ of a woman’s body as a site of reproductive potential”<sup>61</sup>. This is due to the fact that it signifies to most men the act of acquisition of property- the woman. It provides the legal basis for men to insist on certain privileges which violate the rights of the female to bodily integrity and reproductive autonomy.

### *3.5 Child Marriage and Motherhood*

In Northern Nigeria in particular, the custom of betrothing and marrying girls while still in infancy and childhood has acquired international notoriety. These children are married off to men their parents choice and sent off to cohabit with these men when they barely reach puberty. This is with the requisite eroding of reproductive health rights and the resultant Vesico Vaginal Fistula arising from inability to successfully bear children arising from physiological incapacity.<sup>62</sup> Obviously, this amounts to the infringement of the rights of the girl child in international and national instruments<sup>63</sup>, however under the cloak and clog of cultural practices the suffering of these young children continue<sup>64</sup>. This, according to Izugbara<sup>65</sup> has its

<sup>55</sup> Ibid at page 10

<sup>56</sup> Page 11

<sup>57</sup> N. Nwaogugu, ‘Family Law in Nigeria’ (Lagos, Heineman Publishers, 2014)

<sup>58</sup> Nwaogugu (Ibid) at page 50

<sup>59</sup> (Ibid) at page 51

<sup>60</sup> Ibid at page 3

<sup>61</sup> N. Igbelina-Igbokwe, Contextualizing Gender Based Violence within Patriarchy in Nigeria. Available at [www.pambazuka.net/en/category/features/87597](http://www.pambazuka.net/en/category/features/87597) last visited on 17th January 2014

<sup>62</sup> A. Erulkar & M. Bello, “The Experience of Married Adolescent Girls in Northern Nigeria” (2007) available at [www.popcouncil.org/pdfs/NigeriaMarriedAdol.pdf](http://www.popcouncil.org/pdfs/NigeriaMarriedAdol.pdf)

<sup>63</sup> The Child Rights Act and Child Rights Laws of the different states in Nigeria, the International Covenant on the Rights of the Child

<sup>64</sup> World Health Organization, “Eliminating Female Genital Mutilation: An Intragency Statement-OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO (Geneva:WHO,2008) available at [www.prb.org/pdf10/fgm-wallchart.pdf](http://www.prb.org/pdf10/fgm-wallchart.pdf) last visited on 17th January 2014

see also [www.unicef.org/nigeria/FGMpdf](http://www.unicef.org/nigeria/FGMpdf) last visited on 17th January 2014



roots in Islamic tenets where adult women are portrayed as seductresses who lure men away from the paths of righteousness<sup>66</sup>.

### *3.6 The Myth of Female Genital Mutilation as a Harbinger of Feminine Chastity*

The belief in the sacrosanct nature of the practice of Female Genital Mutilation (FGM) is another inhibitor of the reproductive health rights of women. FGM is a generic name for the traditional practices which include the cutting and removal of the female reproductive organs<sup>67</sup>. This may be in the form of clitoridectomy<sup>68</sup> or excision<sup>69</sup>. The most severe form of this is infibulations which is the total removal of all external female reproductive organs<sup>70</sup>. Other forms of mutilations are performed on female genitalia<sup>71</sup> and these cultural practices are in gross violation of reproductive health rights. A question arises as to the issue of customary justification that those exercises protect women and girls from abuses such as rape sexual assault and premarital sex. It is also particularly revered in cultures where a high premium is placed on chastity and virginity<sup>72</sup>. The effect of this is that failure to circumcise can lead to ostracization from the society and the implication of unchaste behavior on the part of the girls and women concerned. It is perhaps for this reason that even the girls themselves request for the procedure, the health hazards<sup>73</sup> notwithstanding.

These assaults on the female reproductive organs have been known to be performed not just by the uneducated custodians of culture but also by orthodox medical personnel like nurses or midwives<sup>74</sup>. This presupposes the need to massively reorient not just the uneducated but the educated as well on the dangers inherent in the continued practice.

Though performed for the benefit of men, the practice is done by women on other women. In some foreign jurisdictions like Canada and the United States, this practice has been outlawed even if the consent of the woman is obtained<sup>75</sup>. The various Child Rights laws in the different states of Nigeria have also prohibited FGM. Section 25 of the Akwa Ibom State Child Rights law (2008) outlaws the practice and imposes a term of imprisonment for one year. The question is, why does this practice still continue despite the plethora of legislative intervention both at national and international levels? Perhaps the sting of cultural myths is

<sup>65</sup> C.O. Izugbara, Patriarchal Ideology and Discourses of Sexuality in Nigeria in Understanding Human Sexuality Seminar Paper Series 2. (A Publication of the Africa Regional Sexuality Resource Centre) available at [www.arsrc.org/downloads/uhss/izugbara.pdf](http://www.arsrc.org/downloads/uhss/izugbara.pdf) last visited on 17th January 2014

<sup>66</sup> Islamic discourses portray unmarried adult women as bad, unlucky, unhappy and unfulfilled. Such women are viewed as inimical to men. In the Quran Suratul Talaq verse 4, the marriage of girls and virgins who are yet to menstruate is celebrated

<sup>67</sup> Aniaka (Ibid) at page 15

<sup>68</sup> This is the removal of the foreskin of the clitoris. Source: see footnote 55 above.

<sup>69</sup> The total removal of the clitoris and labia minora

<sup>70</sup> See Intra-Agency Statement (Ibid) above.

<sup>71</sup> These include pricking piercing and incision of the clitoris or labia. It also include cauterization of genitalia by burning of the clitoris and surrounding flesh, scrapping of tissues surrounding vaginal orifice and even insertion of substances into the vaginal wall. Source: [www.unicef.org/nigeria/FGMpdf](http://www.unicef.org/nigeria/FGMpdf) last visited on 17th January 2014

<sup>72</sup> Intra-agency Paper (Ibid)

<sup>73</sup> FGM causes acute pain, post operative shock, urine retention and bladder infection from lacerations to the bladder, the anal sphincter, urethra, vaginal walls and Bartholin glands. It may also cause hemorrhaging, tetanus, septicemia and vulva abscesses. The long term result include keloid formation, infertility, chronic infections of the uterus and vagina, incontinence, painful sexual intercourse, retention of blood, painful menstrual periods, growth of implantation demoid cysts, fistula formation and obstructed childbirth.

<sup>74</sup> Ibid

<sup>75</sup> This arises from the fact that the practice is seen as rooted in patriarchy and therefore in breach of the various international conventions like CEDAW and the CRC and as a result discriminatory in breach of the tenets of these conventions. Source: See footnote 50 above.

stronger than the teeth of the law. Even in regimes and systems where there are laws against the practice, natives themselves who have been indoctrinated by culture will demand for female *circumcision* while the pages of the law books still paint it as *Female Genital Mutilation*.

### 3.7 A Culture of Silence

Cultural quietude on sexual and reproductive health matters are to a large extent indicative of perceptions that issues of reproductive health rights are the sole preserve of men. Nigerian cultures disapprove of discussions on sexual matters and give euphemistic names to male and female genitalia. Izugbara<sup>76</sup> suggest that this practice has its roots in the socio-cultural values, customs, expectations, beliefs and ideas about what constitutes good and bad behavior. The euphemistic nature of words used to depict sex and sexuality reflect this cultural quietude on these matters.<sup>77</sup> This cultural quietude is a barrier to access to information which would assure autonomy in decision making as regards reproductive health and the exercise of rights arising from this regime of the law. Since women who insist on being outspoken in this area are regarded by culture as being amoral or promiscuous, women prefer the chastity imputed on them by culture to being voluble about their right to autonomy in reproductive health matters.

As a corollary to the foregoing, this pervasive cultural silence also precludes availability of information required to make informed choices regarding reproductive and sexual health issues. However, this silence does not preclude the significant increase in sexually deviant behaviors and sexual violence against women of whom men are the main perpetrators. Sexually unconventional behaviors such as rape, sodomy, sexual harassment, sodomy and the like go unchallenged, unreported and unpunished due to the silence of culture and the imputation of shame it would bring to the victim upon discovery.<sup>78</sup> According to Durojaye<sup>79</sup>, the abuses experienced by women are regarded as 'family affairs' which must not be reported to outsiders, particularly the law enforcement agents. He opines that under this oppressive and hostile environment, women and girls are unable to exercise control over their sexuality and are equally unable to access reproductive health services.<sup>80</sup>

## 4. MYSTERIES AND MONSTROSITIES CONFRONTING FEMALE REPRODUCTIVE HEALTH RIGHTS IN NIGERIA

### 4.1 *Giving Birth the Traditional Way – The Role of Traditional Birth Attendants in Circumventing Reproductive Health Rights*

This is particularly widespread in the rural areas of Nigeria. The Traditional Birth Attendants (TBAs) are the main recourse of rural and urban Nigerian women who cannot afford the orthodox maternal care or are prevented by cultural norms from doing so. While acknowledging the input of these birth attendants where sanitary methods of delivery are observed and there are prompt referrals to hospitals in the event of complications, cultural

<sup>76</sup> Ibid at Page 6

<sup>77</sup> Examples of such euphemisms are the use of words like 'ete' (father), 'mma' (mother) and 'eyen' (child) to refer to adult male, adult female and childrens' genitalia respectively and the word 'taa' (to eat) to connote the sexual act by the Efik speaking people of Obufi Village in Okobo Local Government Area of Akwa Ibom State.

<sup>78</sup> Izugbara (ibid) at page 7

<sup>79</sup> E. Durojaye, "Substantive Equality and Maternal Mortality in Nigeria", in 'Journal of Legal Pluralism and Unofficial Law', 65:103-132 available at [www.jlp.bham.ac.uk/volumes/65/durojaye-art.pdf](http://www.jlp.bham.ac.uk/volumes/65/durojaye-art.pdf) last visited on 17th January 2014

<sup>80</sup> Durojaiye (Ibid) at page 103

preference and inadequate monitoring by conventional health workers pose a problem for the actualization of the reproductive health rights of pregnant women.

Among the Hausa peoples of Northern Nigeria for instance, there is a socio-cultural preference for home delivery and most husbands are averse to the idea of having male health workers attend to their wives<sup>81</sup>. With the onset of labor, traditional birth attendants are summoned who make the pregnant women ingest bitter herbs calculated at stopping leakages of the amniotic fluid which according to superstition would obstruct childbirth<sup>82</sup>. It is viewed as a disgrace for the women to cry out during labor (*Nakuda*) and childbirth (*Haitowa*). This cultural imposition of silence in the face of difficulties during childbirth has for the most part resulted in maternal and infant mortality<sup>83</sup>.

According to UNICEF records<sup>84</sup>, a woman's chance of dying at childbirth in Nigeria is 1 in 13. Although many of these deaths are preventable, the range and quality of healthcare services in Nigeria still fails women and children. Presently, less than 20% of health facilities offer emergency obstetric care and only 35% of deliveries are supervised by skilled birth attendants<sup>85</sup>. The rest of the population falls back on traditional birth attendants. The use of unsterilized instruments by these TBAs also leads to life threatening infections. In some cases, the placenta is not expelled after birth, leading to hemorrhaging, contamination of the uterus, and death. Cases are not referred to local hospitals until there has been a lot of blood loss and the patients' conditions are critical and often times prospects for recovery, bleak<sup>86</sup>. These birth attendants are unable to cope with the complications which arise from pregnancy such as *eclampsia*, which requires monitoring of blood pressure, and pelvic malformations, which require a cesarean operation. The complications go undetected and often lead to the death of both mother and child. The reluctance to seek medical treatment is predicated on cultural taboos which view the intervention of orthodox medical practitioners as suspicious.

Some cultures believe in the dictates of deities and such deities are often said to have forbidden women of the culture from seeking orthodox medical intervention at childbirth. They hold tenaciously to such instructions even in the face of inimical complications and fatal consequences. Here also, cultural myths discard the potency of the law and its provisions.

#### 4.2 *The Avenging Spirit of Marital Infidelity (Ekpo Nka Owo of Annangs, Ibibios and Efiks and the Aleku of the Idomas)*

This practice is prevalent in the south-south states of Akwa Ibom and Cross River States where a woman is expected to be absolutely faithful to a husband and has no right at all to refuse his sexual advances in favor of another man. It is believed that the woman who is not faithful to her husband will be visited by this spirit who will wreak havoc on the woman and

<sup>81</sup> The Kinsey Institute Paper: The Sexuality of Nigerian Peoples: Legal Provisions Relating to Marriage, Sexuality and Prostitution. (The Kinsey Institute Document) [www.kinseyinstitute.org/ccies/ng.php](http://www.kinseyinstitute.org/ccies/ng.php) last accessed on 28th November 2014

<sup>82</sup> The local preventive measure is to have the women drink a concoction of bitter herbal mixtures (tsamiya or tamarind) soaked in water in order to reduce amniotic fluid and to their belief ease childbirth. The web of cultural practices does not ease childbirth nor does it in any way facilitate easy childbearing. More often than not, they result in fatalities of both mothers and babies. Source: The Kinsey Institute Paper (Ibid)

<sup>83</sup> UNICEF Nigeria, The Children- Maternal and Child Health [www.unicef.org/nigeria/children\\_1926.html](http://www.unicef.org/nigeria/children_1926.html) also Maternal, Infant Mortality Still High in Nigeria', Articles! THISDAY LIVE [www.thisdaylive.com](http://www.thisdaylive.com)>HOME>NEWS last visited on 27<sup>th</sup> November 2014

<sup>84</sup> (Ibid) See footnote 85 above

<sup>85</sup> (Ibid) footnote 85 above

<sup>86</sup> The Kinsey Paper (ibid)

cause the death of her husband and her children.<sup>87</sup> In the North Central Benue State of Nigeria, this spirit is known as *Aleku* as the same fundamental beliefs are held by the people regarding marital fidelity and obstructions during child birth<sup>88</sup>.

More importantly for purposes of this study is the fact that women in areas where these beliefs are held who encounter obstructed childbirth or other issues arising from pregnancy are deemed to have committed adultery and will be denied surgical intervention by their husbands and the husband's family until a confession of adultery is obtained<sup>89</sup>. The effect of this is denying a woman of her reproductive rights and sometimes lifesaving medical intervention on spurious suspicions which may prove fatal to both mother and child. Ironically fatality occurring in this circumstance strengthens the belief in the efficacy of the spiritual marital avenger. Apart from this, a further irony is the fact that the marital avenger is only effective against female deviants from matrimonial faithfulness and not against the males. This contravenes the discrimination provisions as contained in CEDAW and the CRC. It is also in flagrant disregard of the relevant Child Rights Laws.

#### *4.3 Application of Magun Charms on Women*

In the south western part of Nigeria, among the *Yorubas*, husbands are permitted to, and they often do, apply a charm called *Magun* (meaning 'don't climb') on their wives as a means of forbidding them from having extra marital relationships. It is believed that whenever a *Magun* laden woman has any sexual contact with a man other than the husband, the other man would die and the woman may also die. This has happened several times in that part of Nigeria. At the risk of extolling promiscuity and infidelity, it is submitted that, that practice is a violation of the reproductive rights of women. Suffice is to note that men are not visited with such atrocities which practice is grounded in the patriarchal structure of major Nigerian cultures. While infidelity is not a virtue, the punishment for it should not be a violation of rights. However, women under this yoke cannot complain, and often do not, because of a complex of cultural inhibitors which include, demand for chastity, silence culture, patriarchal culture and sheer mythology. It is submitted that this is a monstrous cultural belief and practice which clogs the enjoyment of reproductive rights of victim women in Nigeria.

#### *4.4 Traditional Widowhood Practices*

These are practices targeted at proving or absolving a widow of any form of complicity upon the death of the husband. This is due to the prevalent cultural belief with variations in the different Nigerian cultures but essentially the same practice in essence, that a widow is responsible for the death of the husband.<sup>90</sup> These practices include scraping the widow's hair with broken bottles or razor blades by the husband's relatives, having the widow scream loudly at the top of her voice, clothing her in rags and compelling her to sit in ashes as well as undergoing a period of confinement ranging from a month to one year<sup>91</sup>. The widow is also made to drink waste water used in bathing the husband and made to swear to traditional

<sup>87</sup> Oral interview with Eteidung Ibanga Udosen Uko, Village Head of Ibanang Ediene in Abak Local Government Area of Akwa Ibom State. See also: *The Sexuality of Nigerian Peoples: Legal Provisions Relating to Marriage, Sexuality and Prostitution*. (The Kinsey Institute Document) [www.kinseyinstitute.org/ccies/ng.php](http://www.kinseyinstitute.org/ccies/ng.php) last visited on 17th January 2014

<sup>88</sup> The Kinsey Institute Document (Ibid) at page 12

<sup>89</sup> Ibid above

<sup>90</sup> Aniaka (Ibid) at page 15

<sup>91</sup> Communication for Change, "The Truth about Widowhood in Nigeria: Campaign Against Harmful Widowhood Practices" (2002) [www.cfcnnigeria.org/content/tilldeath/campaign.htm](http://www.cfcnnigeria.org/content/tilldeath/campaign.htm) last visited 26th November 2014



oaths absolving her of any complicity with regards to the death of her husband. Relevant to our study is the practice of compelling the widow to choose another husband to succeed her husband should she wish to remain in the husband's family home after the death of her husband. This practice of choosing a male usually leads to the successor of the deceased husband to insist on conjugal rights attendant to the status of a husband and therefore deprives the widow of any form of autonomy as regards her sexual and reproductive rights within the context of the family and society.<sup>92</sup>

## 5. CONCLUSION AND RECOMMENDATIONS

It is trite law that the validity of a custom or customary practice fails where it is repugnant to natural justice, equity and good conscience<sup>93</sup>. This is particularly relevant in situations where reproductive health practices are obviously appalling. However submission to cultural practices which are steeped in patriarchy and perpetuate even benevolent male dominance is at the expense of female reproductive health standards. Cultural reorientation as a viable tool for the displacement of harmful cultural practices cannot be possible without access to relevant information and dynamic activism on the judicial and legislative plane. Falola<sup>94</sup> is of the view that though a replacement of oppressive culture and belief system would pave the way for the social reengineering of indigenous belief systems, this cannot be possible however where such re-engineering is unaccompanied by a replacement of culture with recognizable and believable alternatives. The biases towards access to justice and the implementation of gender rights are manifestations of the inequalities that exist in gender relations. This is because in the patriarchal system which Nigeria is deeply rooted in across cultures, a woman is expected to be quiet and remain in the background always.

In many parts of Africa including Nigeria, a clear distinction is not always made between the past and the present. This is perhaps why practices which have gone on for generations may not be easily discontinued. Access to information and social education become very important where the challenge is the erosion and gradual replacement of cultural beliefs. There is therefore the need to adequately equip both genders with requisite information and by so doing pave a way for the maximization of the enjoyment of reproductive health rights. According to the United Nations Human Rights Committee, "Inequality in the enjoyment of human rights of women throughout the world is deeply embedded in tradition, history, culture and religious attitudes... State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all covenant (ICCPR) rights."<sup>95</sup>

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<sup>92</sup> Anaika (Ibid) at page 17

<sup>93</sup> Danmole v Dawodu (1958) 3 FSC 46

<sup>94</sup> Ibid at page 4

<sup>95</sup> Human Rights Committee (HRC) General Comment 28