

An Appraisal of the Impact of Covid-19 Pandemic on Women Reproductive and Sexual Health Rights in Nigeria: Strengthening the Regulations on Human Rights Protection

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Abstract

Among the increasing frequent acts of violations over the past decades has been on the health rights of women. The question on women reproductive and sexual health rights has remained the most intractable issues in Nigeria and around the globe. To this effect, this study analyzes the current development and legislations on women reproductive and sexual health rights in the wake of corona virus pandemic in Nigeria. This is with the objective of examining the impact of corona virus pandemic on women reproductive and sexual health rights in Nigeria. The researchers adopted a doctrinal approach which focuses principally on the current legislations and policies on women reproductive and sexual health in Nigeria and other jurisdictions. Amongst other things, it is argued that while corona virus pandemic receives global attention and support, sexual and reproductive health (SRH) rights of women in Nigeria is yet to be systematically included in global and national efforts to reducing disaster risks and these has remained a critical gap. This paper also revealed that in situations of disasters, women and girls are often mostly affected and their reproductive and sexual health needs are neglected and marginalized. Basically, necessary recommendations are made while the study concludes that the essence of re-examining the reproductive and sexual health rights of women in Nigeria is to ensure that there is adequate protection of reproductive and sexual health rights of women and girls in the wake of corona virus pandemic and also for government at all levels to integrate sexual and reproductive health rights into national, regional or global disaster risk reduction and management.

Keywords: Women, Reproductive, Sexual, Health Rights, Corona Virus, Pandemic.

1.1 Introduction

The number of issues bothering on Women Reproductive and Sexual health Rights in the face of the Corona Virus(COVID-19) Pandemic compels intellectual attention. It is of course, at the heart of this need that the paper evaluates the strength and weaknesses of the

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human rights issues and developments provoked by the novel pandemic. It sets out principles, standards and norms that states need to consider when amending or drafting legislations relating to women reproductive and sexual health rights in the wake of COVID-19 Pandemic. Furthermore, the COVID-19 pandemic outbreak is a global disaster that affects Nigeria and are often unanticipated as well as unpredictable circumstances that influence human survival including control over one's reproductive health.¹ Thus, disasters also affects boys and men differently, but this paper focuses on women and girls who often times are victims of conflict situations or other natural disasters because of their susceptibility during natural and man-made disasters due to their elaborate reproductive system that is vulnerable to dysfunction disease and other social dysfunctions such as sexual violence and abuse that impact on their physical, mental and social health.² Here again, it should be pointed out that the impact of COVID-19 Pandemic (disaster) as well as the sexual and reproductive health implication on women or girls has therefore raises a cause for concern in Nigeria and around the globe.³ In particular, it must be emphasized that protecting reproductive health and human rights must be central to disaster risk reduction and management in any national legislation and policy on disaster such as COVID-19 Pandemic. Notwithstanding, the significance of adequate protection of women's reproductive and sexual health rights, disaster risk reduction should be a matter of international concern. In other words, studies on disaster risk reduction indicates that national governments around the globe have made frantic effort in developing plans to address priority areas for disaster risk reduction as established in the Hyogo Framework for Action.⁴ Also, since sexual and reproductive health is a significant public health issue, including in emergencies,⁵ promoting Sexual Reproductive Health (SRH) through primary health care at all times, including in emergencies which consists of family planning and comprehensive abortion care, prenatal care, stilled child birth care, and post-natal care for the mother and baby are capable of addressing the challenges. Given the overall purpose of disaster risk reduction mechanism in place, it should be noted that disasters put women and their new born at increased risk of morbidity and mortality because of the sudden loss of support and reduction of access, compounded in many cases by trauma, malnutrition or

¹R.Swatzyna & V.Pillai, 'The Effects of Disaster on Women's Reproductive Health in Developing Countries' (2013)5 *Global Health Science* 4, 206-113 <<https://www.ncbi.nlm.nih.gov/pmc/articles/pmc4776806>> accessed 30 May 2020.

² Ibid

³ World Health Organization, "Reproductive Health During Conflict and Displacement:A Guide for Programme Managers Report<<https://www.apps.who.int/iris/handle/10665/667847>> accessed 1 November 2021.

⁴ See United Nations, Hyogo Framework for Action: Building the Resilience of Nations and Communities to Disasters,2005-2015<<https://www.unisdr.org/files/103pdf>> accessed 1 November 2020.

⁵ See Inter-agency Field Manual on Reproductive Health in Humanitarian Settings Inter-agency Working Group on Reproductive Health In Crisis, 2010 <<https://www.refworld.org/docid/4d08d5422.html>> accessed 1 November 2021.

disease, and exposure to violence.⁶ Having established that, it is essential to state that up till now, sexual and reproductive health is yet to be systematically included as a priority area in Nigeria as well as at the global level on efforts in reducing disaster risks which in recent time has remain a critical gap. To be honest, during disasters, women and girls are often mostly affected and their reproductive and sexual health needs neglected and marginalized, while the sexual and reproductive health services available to victims and survivors of disasters are grossly inadequate in Nigeria.

In the light of the development therefore, it is imperative to examine the attendant reproductive and sexual health risks associated with disaster such as COVID-19 Pandemic with a view of assessing the legal and human rights approach to disaster risk management. Even more noteworthy, is the efforts to integrate sexual reproductive health (SRH) into national laws and policies on disaster risk management, of course, has received global attention and support through the United Nations International Strategy on Disaster Risk Reduction.⁷ It should be however noted that to reduce disaster risk effectively, the international community must understand the main drivers of risk, their likelihood and impact.⁸

1.2. Sexual and Reproductive Health Rights in the Context of Human Rights

It is widely acknowledged that sexual and reproductive health rights are not only an integral part of the right to health, but are necessary for the enjoyment of many other human rights. Even today, sexual and reproductive health rights have remained universal, inalienable, indivisible, interdependent and interrelated.⁹ In other words, there is an equally strong international framework recognizing the importance of sexual and reproductive health rights to the fulfillment of human rights overall and the achievement of sustainable development. Basically, the right to sexual and reproductive health is a core component of the right to health recognized in the International Covenant on Economic, Social, and Cultural Rights,¹⁰ in the Convention on the Elimination of All Forms of Discrimination against Women,¹¹ Convention on the Rights of the Child,¹² Convention on the Rights of

⁶ See UNFPA 'Women are the Fabric: Reproductive Health for Communities in Crisis' 2006 <<https://www.unfpa.org/public/publications/pid/1348>> accessed 30 May 2020.

⁷ United Nations Office for Disaster Risk Reduction Annual Report 2019 <<https://www.undrr.org/publications/undrr>> accessed 1 November 2021.

⁸ UNDRR, 'Global Assessment Framework' 2019 <<https://www.preventionweb.net/disaster.risk/graf.pdf>> accessed 30 May 2020.

⁹ See United Nations Report on Sexual and Reproductive Health Rights of Girls and Young Women with Disabilities, A/72/133, 14 July 2017 <<https://www.ohchr.org/disability/pages>> accessed 1 November 2021.

¹⁰ Article 12 of the International Convention on Economic, Social and Cultural Rights (adopted by the United Nations General Assembly Resolution 2200A(XXI) of 16 December 1966 and entered into force 3 January 1976).

¹¹ Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (adopted by the United Nations General Assembly 18 December 1979 and entered into force 3 September 1981).

Persons with Disabilities,¹³ and of course, in other agreements, but is indivisible from other human rights such as the right to life, liberty, and security to persons and rights to privacy, non-discrimination, and equality.¹⁴ It should be pointed out that the emphasis on the Beijing Declaration and Platform for Action in particular, recognizes sexual and reproductive health as human rights. It further emphasizes that the right of all people to be free and equal ‘in dignity and rights’, and identifies the advancement of gender-equality and as well the elimination of violence against women as among the cornerstones of international development programmes. Of course, the above definition of sexual reproductive health rights can take different forms, in the light of the International Conference on Population Development in Cairo, it is clear that women’s productive health is as;

a state of complete physical, mental, and social wellbeing, and not merely the absence of diseases or infirmity, in all matters relating to the reproductive system and to its functions and processes.

Furthermore, much as there are several definitions of reproductive health in relation to the positive definitions of health in the Constitution of the World Health Organization, other definitions has continued to emerge. However, reproductive health is said to be “a state of complete physical, mental and social well-being and not merely the absence of disease or disorder of the reproductive processes”.¹⁵ In a similar manner, this paper noted that sexual health is relatively new and distinct from reproductive health, though, there is a strong connection that linked the two.¹⁶ To this extent, the definition of sexual health which has been widely accepted different from the terse inclusion of a definition under reproductive health is the elaborate and inclusive definition of the World Health Organization. According to World Health Organization;

Sexual rights embrace human rights that are already recognized in national laws, international human rights documents and other consensus statements. They include the rights of all persons, free of coercion, discrimination and violence, to: (1) the highest attainable standard of sexual health, including access to sexual and reproductive health care services; (2) seek, receive and impart

¹²Articles 17, 23-25 and 27 of the Convention on the Rights of the Child (adopted 20 November 1989 by the United Nations General Assembly Resolution 44/25 and entered into force 2 September 1990).

¹³Articles 12, 23 and 25 of the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006 and entered into force 3 May 2008).

¹⁴The Beijing Declaration and Platform of Action, 1995 <<https://www.un.org/events/pdfs>> accessed 1 November 2021.

¹⁵ United Nations Population and Development Programme of Action adopted at the International Conference on Population and Development, (1994), Para 7.2.

¹⁶ R. Cook op. cit fn 3 at 1

information related to sexuality; (3)sexuality education, (4)respect for bodily integrity; (5)choose their partner; (6) decide to be sexually active or not; (7) consensual sexual relations; (8) consensual marriage; (9) decide whether or not, to have children; (10) pursue a satisfying, safe and pleasurable sexual life. The responsible exercise of human rights requires that all persons respect the rights of others.¹⁷

On the other hand, at a closer look, and having regard to the definition provided under the 1994 International Convention on Persons with Disabilities, sexual health is thus defined as:

Healthy sexual development, equitable and responsible relations, sexual fulfillment and free from illness, disease, disability, violence, and other harmful practices related to sexuality.

However, this definition has in recent times been extended to cover contemporary reproductive health issues. In this respect, it should be noted that reproductive and sexual health rights are among the most important, but controversial human rights in International Human Rights Law. It must be pointed out that these rights are intrinsically based on other well recognized and established human rights. This being so, reproductive and sexual health rights rest on the recognition of the right to attain the highest standard of reproductive and sexual health.

Interestingly, as a point of emphasis, and of course, recognizing the importance of sexual and reproductive health, it would be pertinent to maintain that the provision of reproductive health services should be based on the needs of the population, with particular attention being paid to vulnerable groups such as women and young girls.¹⁸ Also, reproductive health is not just a major health issue, but it is a development issue as well as a human rights issues¹⁹ especially within a complicated environment such as COVID-19 Pandemic and situation of conflicts. The logical conclusion, therefore, that reproductive health rights thus represent a paradigm shift from maternal and child health and family planning as it is broader and more comprehensive.²⁰ Another important point of emphasis in the light of the

¹⁷ E. Durojaiye, 'Realizing Access to Sexual Health Information and Services for Adolescents through the African Charter on the Rights of Women' (2009) 16 WASH<LEE J.C.R & 30C.JUST 135. See also World Health Organization (WHO)<<https://www.who.int/reproductive-health/gender/sexualhealth.htmlN4>> accessed 31 May 2020.

¹⁸ Ibid

¹⁹ Ibid

²⁰ A.B.C Nwosu, Foreword to National Reproductive Health Policy and Strategy to Achieve Quality Reproductive and Health for All Nigerians, Abuja Federal Ministry2001<<https://www.africanchildforum.org>> accessed 1 November 2021.

above definitions is that the right of material health is one of the foremost reproductive rights, but not specifically legislated in Nigeria. But in this context, it is important to underline that the right of maternal health was rather provided in another dimension in Section 17 of the 1999 Constitution of the Federal Republic of Nigeria.²¹

1.2.1 The Right to Health

From a scholarly perspective, it is acknowledged that the Right to Health is the economic, social and cultural right to a universal minimum standard of health to which all individuals are entitled. However, the concept of a right to health has been enumerated in international agreements which include the Universal Declaration of Human Rights,²² International Covenant on Economic, Social and Cultural Rights,²³ and the Convention on the Rights of Persons with Disabilities.²⁴ In the light of the above, it should be noted that the preamble of the 1946 World Health Organization Constitution defines Health broadly as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.²⁵ Furthermore, the constitution defines the right to health as the enjoyment of the highest attainable standard of health and enumerates some principles of this right as healthy child development, equitable dissemination of medical knowledge and its benefits, and government-provided social measures to ensure adequate health. In contemporary usage, despite the complex and multi-dimensional approach to the definition of the right to health, its fluidity accommodates different understanding of the right to health. Also, while there is real scope for this argument on positive obligation, it is complicated and requires to disentangle a range of legal issues which arise within the scope of human rights.

1.2.2 Human Rights Impact Assessment

In other to provide clarity on the impact a disaster like COVID-19 Pandemic could be on women reproductive and sexual health rights, it must be borne in mind that this should be understood as applying International Human Rights Law (IHRL) in a qualified manner in situations of disaster. This part examines what is a human rights impact assessment with a view to ascertain the level of human rights violations on the women reproductive and sexual health rights. However, in this section, human rights impact assessment is an emerging practice that aims to identify and analyze and in some cases, monitor over time

²¹ See Section 17 of Chapter 11 of the Constitution of the Federal Republic of the Federal Republic of Nigeria, (1999)

²² See the Universal Declaration of Human Rights (adopted by the United Nations General Assembly Resolution 217(111) [A] 10 December 1948 and entered into force 3 September 1953).

²³ International Covenant on Economic, Social and Cultural Rights (adopted by the United Nations General Assembly Resolution 2200A(XXI) 16 December 1996 entered into force 3 January 1976).

²⁴ The Convention on the Rights of Persons with Disabilities (adopted by the United Nations General Assembly Resolution A/RES/61106 13 December 2006 entered into force 3 May 2008).

²⁵ Constitution of the World Health Organization, 1946

the impacts of different policies, programmes, projects and other interventions on the ability of people to enjoy their human rights. In other words, it is a tool intended to inform decision-making as to the best ways to mitigate negative impacts and enhance positive impacts. Also, with particular regard to women reproductive and sexual health rights, human rights impact assessment will have be used not as a conflict-solving tool, but as a tool intended to inform decision-making capable of providing more protection for the availability of health-care services to victims of reproductive and sexual health rights violation. Human Rights impact assessments are used in various contexts, and methodologies vary depending on the specific circumstance. Recognizing that state has the primary responsibility for guaranteeing compliance with international standards on the necessary respect for and protection of women reproductive and sexual health rights, human rights impact assessment is seen as a potential way of enhancing human rights to health and state compliance,²⁶ and embedding human rights issues that are of relevance in the policy making process.

1.3 Impact of Corona Virus Pandemic on Women Reproductive and Sexual Health Rights

Generally speaking, reproductive and sexual health rights of women rest on the recognition of the right to attain the highest standard of reproductive and sexual health. For instance, it is a development issue and as well a human rights issue. It identifies the rights at risk example the right to health, right to access to healthcare, right to education, right to work, right to protection of personal data and the potential impacts directly or indirectly on reproductive and sexual health rights during disaster and the aftermath. Also, an understanding of the legal issues involved is also a necessary part of developing a robust approach to the key question of causation.

Further analysis of this phenomenon shows that vulnerable populations such as women and young girls are really exposed to more disaster risks compromising and affecting their reproductive health. Women are adversely affected by this disaster caused by COVID-19 Pandemic. These women suffer poor health, and economic and social consequences of disaster. It is clear from the foregoing that reproductive health disaster risks include rape, sexual assaults, risk of unwanted pregnancy, sexually transmitted disease; child prostitution, sexual abuse, enforced prostitution, forced termination of pregnancies and forced sterilization. However, in the wake of COVID-19 Pandemic in Nigeria and around the globe, there has been lack of access to contraception and provision of reproductive health care, and these has led to many thousands of unintended pregnancies among young women. Also, the pandemic is putting enormous pressure on health systems around the world as governments work to contain the virus and treat sick people, governments should

²⁶ See Joint Memo by Civil Society Organizations on Response to COVID-19 Pandemic in Nigeria April 29 2020, p.7.

as well need to sustain other essential services, which according to the World Health Organization include sexual and reproductive health services.

Moreso, overloaded hospital, travel bans, lockdowns and border closures are making access to those services increasingly difficult poor and marginalized women and girls especially risk losing access to needed services. The pandemic is exposing and exacerbating existing inequalities. It should be noted that the right to non-discriminatory access to women's health services is part of the right to health under international law and domestic law in most countries. Governments should ensure adequate protection of these rights, even in the pandemic. Though, pandemic is reshaping our world, but it is also an opportunity to reshape reproductive health services. Additionally, it must be noted that COVID-19 is not only a challenge for Nigeria, but also a test of our human spirit. This paper however noted that fiscal stimulus packages and emergency measures to address public health gaps have been put in place in many countries to mitigate the impacts of COVID-19.²⁷ It is important to bear in mind that all national responses should place women and girls, their inclusion, representation, rights social and economic outcomes, equality and protection at the centre of the discussion, if they are to have the necessary impacts. This is not just about rectifying long-standing inequalities, but also about building a more just and resilient world. In this context, it is in the interest of not only women and girls, but also boys and men. However, women will be the hardest hit by this pandemic but they will also be the back bone of recovery in communities. In this case, every policy response that recognizes this will be the more impactful for it.

Given the above expression, it is important to understand that in order to achieve this, three cross cutting priorities should be of major concern: first, economic, social planning and emergency responses should ensure women equal representation in all COVID-19 response planning and decision-making since evidence across sectors shows that women were not consulted or included in decision-making, second, it will be important, to target women and girls in all efforts to address the socio-economic impact of COVID-19 that will guarantee greater equality, opportunities, and social protection, and thirdly, efforts to drive transformative change for equality that will address the care economy, paid and unpaid should entrench gender norms and inequalities. These measures have become more vital in the context of the COVID-19 Pandemic. More importantly, the impact of COVID-19 Pandemic on women sexual and reproductive health cannot be over-emphasized. As previously discussed, the provision of sexual and reproductive health services, including maternal health care and gender-based violence related services, are central to health, rights and well-being of women and girls. The growing trend in the diversion of attention and critical resources away from these provisions may result in exacerbated maternal mortality

²⁷L.G. Garraza et al. 'Out-of-Pocket Spending for Contraceptives in Latin America'(2020) 28 *Sexual and Reproductive Health Matters* 2.

and morbidity, increased rates of adolescent pregnancies, HIV and sexually transmitted diseases. In Nigeria, it is a known fact that emergencies like this worsens existing inequalities for women and girls. Of course, women and girls particularly, have been disproportionately affected since the lock down, with pregnant women being placed in a position of heightened vulnerability, disabled persons not accessing necessary information, women not having access to sexual and reproductive information and services, and continuous reports of gender-based violence, including deaths.²⁸ While sexual and gender-based violence has increased, victims are unable to move around to seek refuge or help. Ultimately, there is also the issue of intersectionality of the issues that are experienced by women, which is further exacerbated by crisis such COVID-19 Pandemic. Indeed, this is not peculiar to Nigeria, as statistics from several countries have shown increased in gender-based violence.

1.3.1 National Response to Health Implications of Corona Virus Pandemic

Beyond the consequences linked to the immediate impact of these pandemic, there are more subtle policy implementations aims at addressing the health impacts on women and girls. This is made explicit in the national response strategy of the joint memo by civil society organizations on response to COVID-19 Pandemic in Nigeria.²⁹ It is critical for all public health preparedness and response plans to consider both the direct and indirect health impacts on women and girls. In these specific contexts, and beyond the immediate impact this can have on operational decisions and policies, the following responses are made:

- A. Introduction of measures that can reinforce a gender-sensitive response to the pandemic by having a gender focal person as a member of the Presidential Task Force (PTF) on Covid-19 Pandemic.
- B. To designate and strengthen Gender Desks and family support units within police department and other department of governments; while ensuring they provided with effective telephone hotlines for reporting domestic violence or any other gender-based violence.
- C. The Presidential Task Force on Covid-19 should support resource, and work with civil society organizations in providing information and services to the public, and in responding to Gender Based violence and sexual Gender Based violence such as provision of shelters, counseling and legal aid to victims and survivors.
- D. To ensure that in Covid-19 awareness programs, targeted information dissemination on gender-based violence prevention is prioritized.
- E. To protect the sexual and reproductive health (especially maternal; health) and rights of women by putting measures in place that ease access of women and girls to relevant

²⁸L.G.Garraza et al. 'Out-of-Pocket Spending for Contraceptive in Latin America' (2020)28 Sexual and Reproductive Health Matters 2.

²⁹Ibid

services, e.g. mechanism for report and rapid response, active health rights (SRHR) services, transportation for pregnant women, provision and access to family planning.

1.3.1 Women and Girls Vulnerability and Violations of Reproductive and Sexual Health Rights

The Covid-19 Pandemic has posed devastating risks for women and girls in fragile and conflict-affected contexts. However, more than 50 per cent of all maternal deaths occur from complications in pregnancy and child birth as a result of this outbreak in Nigeria. It may be pointed out at this juncture that natural disasters and socially made disasters like international armed conflict have marked human existence throughout history and have always caused peaks in mortality and morbidity.³⁰ This would mean that women and girl's social vulnerability has a greater bearing on the impact of disasters on their reproductive and sexual health than female biology. However, in some instances, female biology has a role to play on exposure to reproductive health risks during disasters.³¹ The reasoning underpinning the commentary above has raised two pertinent questions: first, what determines vulnerability to disaster risks? Second, how does these affect reproductive and health? In response to the above questions, the foregoing contention is reinforced by the fact that women are more vulnerable in natural disasters than men. There is a socially constructed gender-specific vulnerability of females built into everyday socio-economic patterns, that led to the relatively higher female disaster mortality rates compared to men.³² This shows that, to a great extent, a vulnerability approach to disasters would suggest that inequalities in exposure and sensitivity to risk as well as inequalities in access to resources, capabilities, and opportunities systematically disadvantage certain groups of people, rendering them more vulnerable to the impact of disasters.³³ Further, it is obvious that during disaster, the vulnerable population mostly women and girls, adolescents and the aged are adversely affected. However, women's fundamental human rights in disaster which are an integral part of reproductive and sexual health were regarded as specific human rights of women are inalienable, integral and indivisible. All of these rights must be interpreted broadly in the context of disasters.³⁴ In addition, these rights will be examined in order to ascertain the impacts on the vulnerable. Firstly, the right to life as the most

³⁰ J. Leaning & D. Guha-Sapir, 'Natural Disasters, Armed Conflict, and Public Health', (2013) 369 N Engl J. Med 1836-1842.

³¹ R. Murthy, 'Review of Sexual and Reproductive Health Rights in the Contexts of Disasters in Asia, Kuala Lumpur Malaysia' (2009) The Asian Pacific Resource and Research Centre for Women <<https://www.researchgate.net/publications>> accessed 2 June 2020.

³² E. Neumayer & T. Plumper, 'The Gendered Nature of Natural Disasters: Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1982-2002' (2007) 97 Annals of the Association of American Geographers 551-556.

³³ *Ibidi*

³⁴ E. Enarson & M. Fordham, 'From Women's Needs to Women's Rights in Disasters', (2001) 3 Environmental Hazard Human and Policy Dimensions 133-136 <https://www.earthscan.couk/journal/chaz> accessed 2 June 2020.

obvious right is affected in disaster. In this case, pregnant women are at a high risk of dying in child birth where basic health care infrastructures may likely be damaged by disaster, and/or due to lack of essential or emergency obstetrics care.³⁵ Also maternal mortality due to neglect, violates the right to life and health.³⁶ Secondly, the right to liberty and the security of the person is severely compromised and curtailed in disaster and situations like Covid-19 Pandemic. Many women risk and lose their lives while trying on their own to protect themselves. In a similar situations of rape and sexual Assault perpetrated by security forces during this Covid-19 Pandemic, victims of rape and sexual assaults may be afraid of reporting or seeking help from appropriate authority. Thirdly, the right to education and information is an imperative for the protection of life's vulnerable persons such as women, adolescents and the aged must be informed on how to identify early warning signs. More importantly, education on how to head the local warning system measures can greatly reduced the vulnerabilities of women.³⁷

1.4 Human Rights Mechanism, Core Obligations and Reproductive and Sexual Health Applicable Under Covid-19 Pandemic.

The enforcement of the lockdown has led to breakdown of law and social order in some states in Nigeria and around the globe, especially those on lockdown, are characterized by human rights abuses, extra-judicial killings.³⁸ Also, there have been reports of extortions and collections of bribes to break the lockdown or curfews, thus endangering people's lives through the continued spread of the disease. However, despite the longstanding position of the world Health Organization on this issue, the current challenge is to take a more practice measure that will protect and prevent reproductive and sexual health violations and abuses during and at the aftermath of Covid-19 as well as prepare for reproductive and sexual health emergencies in advance with timely and effective response and recovery services. More so, reproductive health should be advanced by law, human rights and policy, where legislations made should be based on clearly articulated reproductive health policy.³⁹ Also relevant in this context of human rights mechanism are a number of human rights instruments, setting standards and obligations that government, as stakeholders must observe for effective protection of reproductive and sexual health in disasters and conflicts. This paper however, argued that some of these human rights instruments fall short of provisions for the protection of reproductive and sexual health rights in disasters, it is thus the argument of this paper that even where these human rights instruments do not expressly

³⁵ Ibid, (n 62)

³⁶ Ibid, (n 1)

³⁷ Summary Report on the Project on Internal Displacement, Protecting and Promoting Rights in Disasters in South Asia: Prevention and Response, (2009). All India Disaster Mitigation Institute, The Brookings Institution, University of Benn. <https://www.brookings.edu/idp> accessed 2 June, 2020.

³⁸ See Joint Memo by Civil Society Organizations on Response to Covid-19 Pandemic in Nigeria (2020) Para 7.

³⁹ Ibid.

contain provisions on protecting reproductive and health rights in disasters like Covid-19 Pandemic, there is an implied ethical and legal obligation created by law which can be inferred in these provisions to make them applicable. For instance, the right to life as contained in the Universal Declaration of Human Rights⁴⁰ and the Right of Children to special protection under the Convention on the Rights of the child.⁴¹ Also, there is a similar provision on the right to life provided under the Constitution⁴² of the Federal Republic of Nigeria which is similar to the regulatory measures above. Other human rights instruments containing specific provisions on the protection of reproductive and sexual health rights applicable in disaster situation like Covid-19 Pandemic are thus: Firstly, the International Conference on Population and Development (ICPD) marked a revolution in thinking about Sexual and Reproductive Health and Rights.⁴³ The International Conference on Population and Development (ICPD) specifically mentioned the provisions of reproductive health services in the context of conflict and disasters. Also, this paper noted that (ICPD) is often used as a shorthand to refer to the global consensus that reproductive health and rights are human rights, that these are pre-condition for women's empowerment, and that women's equality is a pre-condition for securing the well-being and prosperity of all people. Moreso, this concerns on women's sexual and reproductive health and rights was further addressed at the Nairobi Summit on ICPO 25⁴⁴ which provided another opportunity to commit to a forward-looking sexual and reproductive health and rights agenda to meet the Sustainable Development Goals and targets by 2030.

Also noteworthy is the fact that the term "reproductive health" was defined by the United Nations in 1994 at the Cairo International Conference on Population and Development. All member states of the union endorsed the programme of Action adopted at Cairo. The union has never adopted an alternative definition of "reproductive health" to that given in the programme of Action, which makes no reference to abortion.⁴⁵ It is also important to mention that although, it is arguable that there is no separate United Nations Convention on the protection of the rights of people affected by disasters or rights of people living in disaster-prone areas or affected by disasters. Neither did it state the persons to whom the services should be rendered. Thus, in a broader sense, this paper maintained that where an

⁴⁰ See Universal Declaration of Human Rights (adopted by United Nations General Assembly Resolution 217 A(III) 1948 entered into force 3 September 1953).

⁴¹ Convention on the Rights of the Child (adopted by the United Nations General Assembly Resolution 44/25 20 November 1989 entered into force 2 September 1990).

⁴² Section 3(1) (2) (a) (b) (c) of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 as amended.

⁴³ Report of the International Conference on Population and Development (ICPD) Cairo, 5-13 1994 <<https://www.refworld.org/docid/4a54bc080.html>> accessed 1 November 2021.

⁴⁴ See The Nairobi Summit on International Conference on Population and Development (ICPD 25) 12-14, 2019 <<https://www.nairobisummiticpd.org/pdfs>> accessed 1 November 2021.

⁴⁵ European Parliament, 24 October 2002: Question no 86 by Dana Scallion (H-0670/02), 2002 <<https://www.europarl.europa.eu/get doc>> accessed 1 November 2021.

instrument falls short of a relevant provisions of other instruments enunciating similar rights can be read in conjunction with that instrument to compel compliance with the obligations. Essentially, the provisions of the international conference on population and Development programme of Action can be read in conjunction with the core obligation of states to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable and marginalized groups, to ensure reproductive, maternal, pre-natal as well as post-natal and child health care states have a compelling obligation to meet with these obligations.

Secondly, the Beijing Platform for Action⁴⁶ recognizes that women suffer considerably during disasters and often lose their livelihoods. It however, call for establishing gender-disaggregated data based on the impact of disasters on women, expanding the role of women in disaster risk reduction and response, and addressing needs of women displaced during disasters. However, no mention was made on reproductive and sexual health issues in disaster contexts. Unlike the international conference on population and Development programme of Action, the Beijing uses the term reproductive and sexual health and reproductive rights. The realization of the right to health which embodies reproductive and sexual health, reproductive rights can be interpreted through numerous human rights instruments, health policies and programmes. Be that as it may, Economic, Social and Cultural Rights provision on the right to the highest attainable standard of health can be interpreted to include reproductive and sexual health and reproductive rights. Thirdly, since emergencies and disasters have a disproportionate effect on the poorest and most vulnerable particularly women and children; there is a compelling need to integrate all sexual reproductive health issues in all aspects of health emergency and disaster risk management, both immediate needs, such as saving lives in obstetric complications and preventing disease, as well in the long-term to reduce vulnerabilities. Also in the management of sexual and reproductive health for emergencies or disasters, the Hyogo Framework for Action identifies priority actions⁴⁷ before an emergency across all sectors. Similarly, on sexual and reproductive health during protracted crises and disaster, although, there are clear strategies to ensure the provision of sexual and reproductive health services during a humanitarian emergency, few approaches are yet in place in the event of a protracted disaster. In other to address this “Granada Consensus”⁴⁸ on sexual and reproductive health in protected crises or disasters was developed. Thus, this Granada Consensus recommends priority reproductive and sexual health activities during an

⁴⁶The Beijing Platform for Action 1995 <<https://www.unwomen.org/features/stories/pdf>> accessed 1 November 2021.

⁴⁷HyogoFrameworkforAction(20052015):BuildingtheResilienceofNationsandCommunitiestodisasters,Geneva, United Nations Office for disaster risk Reduction,2005 <<https://www.preventionweb.net/hfa/pdf>> accessed 1 November 2021.

⁴⁸ Granada Consensus on Sexual and Reproductive Health in Protracted Crisis and Recovery 28-30 September, 2009 <<https://www.who.int/hac/pht/re>> accessed 1 November 2021.

emergency and/or disaster incorporating sexual and reproductive health into multi-sectorial and health emergency risk management policies and plans at national and local levels.

1.5 The Principle of Non-Discrimination Applicable to the Right to Health

It suffices here to state that a very important issue that needs to be addressed in terms of the scope of application is the issue of non-discrimination. However, the core obligation under the right to health emphasized that Non-discrimination and equality are fundamental human rights principles and critical components of the right to health. Thus, the international covenant on Economic, Social and Cultural Rights,⁴⁹ and the Convention of the Rights of the child⁵⁰ have identified the following non-exhaustive grounds of discrimination: race, colour, sex, language, religion, political or other opinion, national or social origin, disability, birth or other status. According to the committee on Economic, Social and Cultural Rights, “Other status” may include health status (e.g. HIV/AIDS) or sexual orientation. In this case, states have an obligation to prohibit and eliminate discrimination on all grounds and ensure equality to all in relation to access to health care and the underlying determinants of health. The international convention on the Elimination of All Forms of Racial Discrimination⁵¹ also stresses that states must prohibit and eliminate racial discrimination and guarantee the right of everyone to public health and medical care. Non-discrimination and equality further imply that states must recognize and provide for the differences and specific needs of groups that generally face with particular health challenges, such as higher mortality rates or vulnerability to specific diseases. The obligations to ensure non-discrimination requires specific health standards to be applied to particular population groups, such as women, children or persons with disabilities. It is important to point out here that the committee on Economic, Social and Cultural Rights has made it clear that there is no justification for the lack of protection of vulnerable members of society from health-related discrimination, be it in law or fact. Based on the above analysis, the principle of non-discrimination is of course, applicable to the right to health. In this paper, the right to health in international human rights law implies the right to the highest attainable standard of health as a human right recognized in international human rights law. However, the International Covenant on Economic, Social and Cultural Rights, widely considered as the central instrument of protection for the right to health, recognizes “that everyone to the enjoyment of the highest standard of physical and mental health. It is important to note that the covenant gives both mental health, which has often been neglected, and physical health equal consideration. Notably, subsequent international and

⁴⁹Article 2(2) International Covenant and Economic, Social and Cultural Rights(adopted by the United Nations General Assembly Resolution 2200A(XXI) 16 December 1966 and entered into force 3 January 1976).

⁵⁰Article 2(1) of the Convention on the Rights of the Child(adopted by the United Nations General Assembly Resolution 44/25 20 November 1989 and entered into force 2 September 1990).

⁵¹Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination(adopted by the United Nations General Assembly Resolution 2106(XX) 21 December 1965 and entered into force 4 January 1969).

regional human rights instruments address the right to health in various ways. Some are of general application while others address the human rights of specific groups, such as women and children. It is maintained that human rights principles as well as public health principles seem to reasonably guide the choice of priority health interventions. States should define what health services they provide for individuals under their jurisdictions as part of a nationally defined minimum core right to health, in accordance with available resources, and guided by the internationally defined minimum core which is inevitably formulated in broad terms. While this may be desirable, it should be noted that most human rights are not absolute even when not faced with a situation of public emergence, and thus allow for certain flexibility of restricting individual rights in the pursuit of public interests such as public order, public health, public moral, national security, or public safety, or to balance the exercise of rights with the rights of others.

1.6 Conclusion and Recommendations

Having revealed the prevailing efforts, rules, regulations and practices employed in the protection of women reproductive and sexual and health rights in the wake of COVID-19 Pandemic. This paper has examined particularly these vulnerable populations that lacked access to reproductive and sexual health services. The COVID-19 Pandemic and its social and economic impacts have created a global crisis unparalleled in the history of the United Nations and one which requires a whole of society response to match its sheer scale and complexity.

On the other hand, this paper having examined different violations of reproductive and sexual health rights, human rights and legal approaches aimed at addressing the various forms of violations, putting women and girls at the centre, every COVID-19 response plans capable of addressing the gender impacts of this pandemic will be acceptable. Also, reproductive and sexual health rights in the wake of COVID-19 Pandemic can be effectively addressed through effective application and interpretation of human rights core obligations and a combination of other existing international standards already mentioned in this paper.

It is hoped that a multi-sectorial approach to ensuring reproductive and sexual health rights is realizable. With this in mind, given the thematic issues raised in this paper, the following recommendations are proffered:

- i. The United Nations Bodies, Government, Non-governmental Organizations and Community-Based Organizations should reinforce a gender-sensitive response to the Pandemic by having a gender focal person as a member of COVID-19 Taskforce.
- ii. To designate and strengthen Gender Desks and Family support units within police departments and other department of governments; while ensuring they are provided

- with effective telephone hotlines for reporting domestic violence or any other gender-based violence.
- iii. Ensure that in COVID-19 awareness programs, Targeted information dissemination on gender-based violence prevention is prioritized.
- iv. To ensure the protection of sexual and reproductive health (especially maternal health) and rights of women by putting measures in place that that will ease access of women and girls to relevant services, e.g. mechanisms for report and rapid response, access to Sexual Reproductive Health Rights Services, Transportation for pregnant women, provision and access to family planning;
- v. Prioritize women as beneficiaries of palliatives and stimulus package.