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THE TWO HUNDRED AND SIXTY-FIVE (265TH) INAUGURAL LECTURE

**“ON THE REPRODUCTIVE AUTONOMY OF MY
RIGHT OR NOT MY CHOICE”**

By

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Great Students of the University of Ilorin, especially my Law
Students,
Gentlemen of the Print and Electronic Media,
Distinguished Ladies and Gentlemen.

Preamble

I start this inaugural lecture in the name of Almighty Allah, the Highest, Eternal, Absolute, Most Merciful, Beneficent and Compassionate. After attaining the esteemed position of a Professor of Law, I stand before you to present the 265th in the series of inaugural lectures of the University of Ilorin, our Better by Far University, today. My inaugural lecture is titled: “On the Reproductive Autonomy of My Right or Not My Choice”.

Vice-Chancellor sir, my journey into the legal profession started at an adolescent age. This noble profession coincidentally is indeed the family’s profession where we have great Islamic scholars and jurists. My penchant for this noble profession

glowed when I was admitted to study law in 1985 at the University of Maiduguri. The renowned Jurist, Professor Niki Tobi (a.k.a. Lord Denning of Nigeria), was then the Dean, Faculty of Law, University of Maiduguri. He would later become a Justice of the Supreme Court of Nigeria. His mentorship, teachings, knowledge, and virtues have been my source of inspiration to date.

Similarly Vice-Chancellor sir, a conference organised by Women's Aid Collective (WACOL) at Bayero University Kano on Reproductive Rights and Reproductive Health (Maternal Health) in Nigeria on the 16th December, 2002 where Professor M.T. Ladan (then a Doctor), presented the lead paper gingered and rekindled my interest in the area of Women's Reproductive and Health Rights in Nigeria. In fact, some germane issues raised in the communiqué issued at the end of the conference inspired the writing of my Ph.D. Thesis in this area of study.

Vice-Chancellor sir, I must say that I have found this area of research to be intellectually stimulating, challenging and fulfilling; though it is also tainted with sentiments and emotions expressed fairly and surreptitiously by concerned people.

Introduction

Vice-Chancellor sir, the foundation of reproductive rights is based on human rights. Rights are embedded in the concept of claims, wants, desires, aspirations, and achievements. Human rights on the other hand, encompasses “those claims made by men and women for themselves and on behalf of others supported by some theories which concentrates on the humanity of man and woman; as a member of human community” (Adebayo, 2007).

Justice Kayode Eso, J.S.C (as he then was) in the case of *Archbishop A.O Okogie v. A.G Lagos State* (1981) described ‘human rights’ as rights which stand above ordinary laws of the land and which in fact are antecedents to the political society itself. Human rights are primary conditions to a civilised

existence. **Adebayo** (2007) asserts that Nigerian constitutions since independence have those rights, so that the rights could be immutable to the extent of non-immutability of the constitution itself.

Human rights provisions contained in Chapter IV to the Constitution of the Federal Republic of Nigeria 1999 (as amended), include the right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thoughts, conscience and religion, right to freedom of movement, right to freedom from discrimination, right to own and acquire properties in Nigeria (**Adebayo**, 2010a). In the event of breach, all these rights are legally enforceable before any court of law in Nigeria.

As an advocate of women's rights, **Adebayo** (2010b) postulates that these constitutionally guaranteed rights, in particular the provisions of section 42 of the 1999 Constitution (as amended), gives to everyone irrespective of gender; the right to freedom from discrimination on grounds of sex, place of origin, religion, or political opinion. Among others factors, the words 'sex' appearing in the sub-section (1) of section 42, by extension and interpretation inclusive of women's rights. Women who are citizens of this country are entitled to all these rights and can challenge anyone who attempts to interfere with the exercise of any of the recognised rights in the constitution (**Adebayo**, 2010b).

Adebayo (2007) identifies sexual rights as a fundamental aspect of human rights. These rights according to him include the right to experience a pleasurable sexuality, which is an important means of communication and love between couple. Sexual rights include the liberty and freedom in the responsible exercise of sexuality. Sexual rights are important because they ensure respect within a relationship. According to Ezeilo (2003), gender equality cannot be obtained without sexual rights and that without respect for sexual rights as human rights, women and girls are at the risk of genital mutilation, sexual

harassment, rape, domestic violence, sexual slavery, unwanted pregnancy and sexual transmitted diseases including HIV/AIDS.

Vice-Chancellor sir, while deliberating further, I have observed that the reproductive health rights encircle certain human rights that are already recognised by national laws and international human rights documents and other consensus instruments and covenants (Adebayo, 2016). Reproductive Health Rights consist of the recognition of the basic rights of all couple to decide freely and responsibly; the number, spacing and timing of their children and to have information and means to do so, and the right to the highest standard of reproductive health. It also includes the right to make decisions concerning reproduction free from discrimination, coercion, and violence; and the rights of women to have control over her body and decide freely on matters related to their sexuality (Adebayo, 2016).

Similarly, Adebayo (2015) asserts that a manifestation of these rights suggests a protection from violence against women. Violence against women includes trafficking in women and children; sexual exploitation; female genital mutilation; early girl child marriage; harmful traditional practices against women. Others are inadequate access to and participation by women in society economy, politics and government; and gender biases.

Vice-Chancellor sir, globally, many women face barriers to the enjoyment of their rights because of factors like race, language, ethnicity, culture, religion, disability, or socio-economic class, or because they are indigenous people, migrants, displaced women or refugees. It should be noted that women may also be disadvantaged and marginalised by their general lack of awareness and lack of recognition of their human rights.

Reproductive Health Rights

Mr. Vice-Chancellor, the term reproductive rights “embrace certain human rights that are already recognised in national laws as well as, international legal and human rights

documents as expressed under principle 7.3 of the International Conference on Population and Development (ICPD) and 1994 and article 16(1) (e) of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979. In the exercise of these rights, account should be taken of the needs of the living and future children and their responsibility towards the community.

Feminists like Volokh (2022) defines reproductive rights as an individual's right to determination over their bodies for sexual, marriage and reproductive choices as rights. In my evaluation, it is evident that reproductive rights encompass two broad principles. These are the right to reproductive health care and the right to reproductive self- determination. The right to reproductive healthcare is rooted in the provisions of international human rights instruments protecting life and health (**Adebayo**, 2007).

The phrase 'My right or not my choice' is meant to represent the idea of personal bodily autonomy, bodily integrity and freedom of choice. Bodily autonomy constitutes self-determination over one's own body, without external domination or duress (*Sexinfo Online*, 2020).

Bodily integrity is the inviolability of the physical body that emphasises the importance of personal autonomy, self-ownership, and the self-determination of human beings over their own bodies. Peter and Chrisje (2001) assert that the violation of the bodily integrity of another is regarded as either unethical, an infringement of fundamental rights and/or possibly criminal act. Similarly, in the words of Suzannah (2015) the slogan 'My body, my choice' is a feminist idea which can be used synonymously with women's reproductive rights and women's rights issues.

Adebayo (2007) postulates that the scope of reproductive health rights on the overall covers fundamental aspect of women's well-being. Without regular access to safe, high quality services, women become vulnerable to a host of health complications which may include complications during

childbirth, unwanted pregnancy and sexually transmitted diseases. Whereas reproductive health is a state of complete physical, mental and social well-being and not merely the absence of diseases of infirmity, in all matters related to the reproductive system, its functions and processes (WACOL, 2003).

Adebayo (2016) advocates for women's right to have a satisfying sex life, capacity to reproduce and the freedom to decide if, when and how often to do so. Men and women should have the right to be informed and to have access to safe, effective, affordable and acceptable methods of their choice for the regulation of fertility as well as the right of access to health care for safe pregnancy and child birth. Reproductive health care is thus defined as the assemblage of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems (Article 94 and 97 of CEDAW & Article 7.9 of ICPD).

In addition, reproductive health consist of safe motherhood comprising of prenatal care, safe delivery, essential obstetric care, prenatal and neonatal, postnatal care and breastfeeding; family planning information and services. Others are, prevention and management of infertility and sexual dysfunction in both men and women; elimination of harmful practices, such as female genital mutilation and premature marriage; and management of non-infectious conditions of the reproductive system such as genital fistula.

Legal Regime of Bodily Self-Determination

Vice-Chancellor sir, there are both local and international instruments relevant to reproductive health in Nigeria. Equally, there are certain states obligations and specific actions required to be undertaken by government and other stakeholders in order to ensure the productive realisation of the components of reproductive health rights.

Adebayo (2016a) informs that the International Conference on Population and Development (ICPD) held in

Cairo, Egypt marked a critical shift in the focus of population programmes and underscored the need to meet reproductive health needs of individuals and couples throughout life cycle, as an approach to improving quality of lives of people and stabilising the world population. Nigeria as a signatory to the ICPD, committed herself to the operationalisation and realisation of the reproductive health concept and the achievements of the ICPD targeted goals.

In terms of local legislation, Sections 17, 33-45 of the 1999 Constitution contain provisions that are relevant to the promotion and protection of reproductive health rights in Nigeria. In addition, section 45 of the Nigerian Labour Law; the Criminal Code; the Marriage Act, as well as Matrimonial Causes Act, contained relevant, but controversial provisions relating to reproductive health rights of women (**Adebayo, et al** 2017).

The policies on the prohibition of discrimination and violence against women include the National Reproductive Health Policy and Strategy of 2001; National Policy on Women of 2004; National Policy on the Elimination of Female Genital Mutilation of 1998; National Policy on Women (2000/2004), National Adolescent Health Policy (1995), and National Policy on Maternal and Child Health of 1994. All these legislations have in one way or the other imparted on the framework that seeks to achieve quality reproductive and sexual health for all Nigerians.

At the international level, Nigeria has signed and ratified a host of multilateral treaties operative to the promotion and protection of the provisions that are relevant to reproductive health rights. To mention a few of these treaties/instruments are: The Protocol on the Rights of Women in Africa (2004), African Charter on Human and People's Rights (2003), United Nations Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW) of 1985; International Covenants on Civil and Political Rights (ICCPR) of 1993; International Covenants on Economic Social and Cultural Rights (ICESCR) of 1993; and the Universal Declaration of Human Rights of 1948.

Another step in the right direction for women's advancement in Nigeria was the establishment in 1989 of the National Commission for Women as a means of promoting the full integration of women in development and for eliminating discrimination on grounds of sex. Advancing this frontier further, the year 1993-1995 witnessed the establishment of Ministry of Women Affairs and the National Commission on Human Rights respectively to deal with all matters relating to the protection of human rights (Nwankwo, 2004).

Interestingly, the wives of past Head of States/Presidents, have made women issues a national agenda by embarking on some specific programmes towards protecting and promoting women's rights. To mention just a few are the Better Life Programme (BLP) initiated by the erstwhile Maryam Babangida, wife of former military ruler, General Ibrahim Babangida and the Family Support Programme (FSP) embarked upon by Hajja Laila Maryam Abacha, the wife of the erstwhile military junta, General Sani Abacha. **Adebayo** (2012) has acknowledged the fact that, today the office of the First Lady of the Republic has been institutionalised, though legally speaking, it has no constitutional backing.

The interplay of all these legislations, policies, instruments, treaties, and documents bestow on the Government through the Federal Ministry of Health, the responsibility of establishing and formulating health, policies for the country. Nonetheless, the policies and strategies were meant to achieve good health for all Nigerians, to articulate the goals of enabling all Nigerians to achieve socially and economically productive lives. According to Ladan (2006), the issues make as imperative, social, economic development, social justice, national security and general guidelines on overall healthcare service, preventive, curative, promotive and rehabilitative healthcare delivery.

Unfortunately, not much has been achieved in the advancement of women's rights. This is due to factors like economic, political, legal, social, cultural and tradition; which continue to impede the actualisation of women's human rights.

Nigerian women suffer marginalisation in politics, poorly remunerated in the labour market, widowhood rites and practices, female genital mutilation and girl child betrothal. All these challenges are not only discriminatory of women, but inimical to women's human rights advancement (**Adebayo**, 2016b).

Endless and Unresolved Battles for Supremacy on Reproductive Health

Vice-Chancellor sir, the question of whether or not women's reproductive health rights are recognised under the Nigerian law is paramount and important. This is so because I discovered in my research that the 1999 Constitution (as amended) does not recognise directly, the right to bodily autonomy or reproductive rights as a right per se (**Adebayo**, 2007b). However, several chapters of the Constitution spanning sections 33-44, contain cluster of human rights provisions that can, through the various rules of interpretation of statutes said to cover reproductive rights of women.

In particular, Chapter two of the 1999 Constitution (as amended) contains the country's Fundamental Objectives and Directive Principles of State Policy alluded to these rights. Thus, it may not be wrong for one to infer recognition of the right to bodily autonomy or reproductive health rights as basic constitutional rights. Similarly, Section 14 of the Constitution also recognises that the security and welfare of the people shall be the primary purpose of the government.

Section 17 of the same Constitution also provides that the social objectives of Nigerian states obligates the government to direct its policies to ensure adequate medical and health facilities for all persons, and ensure that the health, safety and welfare of all persons in employment are not endangered or abused (**Adebayo**, 2007b). In addition, the section provides that children, young person and the aged shall be protected against exploitation, or against moral or material neglect; and that provision is made for public assistance in deserving cases or

other condition of need and the evolution and promotion of family life as envisaged.

Paradoxically, Vice-Chancellor sir, the most striking feature of the provisions of Chapter II on Fundamental Objectives and Directive Principles of State Policy, is the non-justiciability of the concept. Nweze, C. C and Nwankwo (2003) argued and rightly too, that this is in utter disregard and contradiction to Section 13 in the same Chapter that enjoins all organs of government and all authorities and persons exercising executive, legislative and judicial powers, the duty and responsibility to conform to, observe and apply the provisions of this Chapter.

In my personal conviction, I argued that the constitutionally guaranteed fundamental human rights in Chapter four of the 1999 Constitution, particularly sections 33-34 and 42 clearly recognise that the rights to life, sanctity of the human persons and human dignity, are connected to the physical and mental health of persons (**Adebayo**, 2014). Section 17(3) of the Constitution stipulates that the conditions of work must be just and humane, and that there are adequate facilities for leisure, social, religious, and cultural life. Obviously, if these provisions are properly interpreted and applied, the provision will work to articulate and promote women's health rights generally. The prohibition of discrimination on grounds of sex (section 42 of the constitution) also implies that women and children are entitled to good health and a decent environment.

The analysis above also extends to the emerging trend in international documents, treaties and instruments; that governments should protect the right to life and take positive measures that will include the provision of adequate health facility for all, especially women and children. Thus, in situations where women and children die of preventable diseases, this is a clear violation of their right to life. Accordingly, in CIRDDOC Report (2004), the combined effect of the provisions under state laws and international instruments on the status of women's reproductive health rights; are directed

towards welfare considerations for maternal and child health as they have economic considerations. These provisions of the law try to balance the interests of pregnant women motherhood and child survival, against the interests of employers as the state are concerned mainly with high yield performance of the employee.

The implication of the above is that, women are perceived as endanger specie since there is limited tolerance of rebellion by women. The extant provisions of the laws, documents and instruments on women's rights are not far reaching enough in protecting women's reproductive health rights, as witnessed in contemporary times and especially under International Human Rights Law. For instance, rape has now been employed as a weapon of war. I submit that, the reality on ground is a kind of systemic apparatus of legal norms derived from secular, customary and religious laws, and cultural norms, all of which results in massive violation of women's human rights (Adebayo, 2016a).

Mr. Vice-Chancellor sir, another dimension to bodily autonomy or reproductive health rights of women is the religion of Islam. The Shariah sanctions the reproductive rights of women, but with some restrictions, which prevent not only women, but also men from altering their natural positions. Quran 30 says... "*let there be no changes in the creatures of Allah...*" It should be appreciated that Islam from the onset has not equivocally rejected or decreed against reproductive rights. It is my personal belief that there is no clear text from the Holy Quran or the Sunnah of the Holy Prophet Muhammed (PBUH), the Ijma or Qiyas that indicates to the contrary (Adebayo, 2016a). I submit further that the concept of reproductive health rights in Islam is different from that of English law. Islam is a complete way of life it is an action guided religion. Therefore, I agreed that reproductive rights in Islam must be understood in the context in which they occur.

Furthermore, it is a fact devoid of fallacy that the paraphernalia of the concept and philosophy of women's reproductive rights in Islam are intrinsic with the status and

relationship of individuals (**Adebayo**, 2016a). This can only exist where there is a lawful and legal marriage relationship. In order words, everything dealing with the issue of reproduction is validated in Islam only through marriage. The issues that pertain to reproductive health rights extend to all Muslims regardless of marriage. The following Qur'anic verses are illustrative and relevant to the reproductive rights of women in Islam: Quran18:46 and 6:151 are also relevant to family planning issues like sterilisation, infertility, and artificial insemination.

I also found that the general perception is that Shariah sanctions reproductive rights of women, but with strict restrictions, which prevent not only women, but also men from altering natural roles in the family set up (**Adebayo**, 2016a). Importantly, Shariah has made adequate provisions for women and do not only cater for the human rights of women, but also for everything affecting the personality of the women folks (Quran 24:4, 49:11-12 and 33). Similarly, the Hadith of the Holy Prophet (SAW) supplied in many ways/places of compilation of collections of *Al-Tibb Al-Nabawi* (The Prophetic medicine) which are collections of the prophetic sayings about medicine, health issues, illness and the treatment and the way and manner to care for the ill and aged.

Deficiency of Law and Policy

Vice-Chancellor sir, unfortunately, despite the laudable objectives behind the laws, policies, documents, instruments, declarations, and treaties on reproductive health rights, there is no iota of doubt that; there are still some lacunas either in their articulation, interpretation, implementation or application of these laws, policies and instrument. For instance, the National Health Policy fails to provide holistically for a comprehensive reproductive health rights, but focuses mainly on basic treatment, maternal and child health, family planning services, prevention and control of infectious diseases, and the provision of essential drugs and supplies (**Adebayo**, 2010a). Although the National Health Policy continue to be the guiding document on population

and family planning, less attention is given to individual's rights to determine the number and spacing of their children. Furthermore, the National Health Policy focuses on population growth and economic development rather than the legal implication/enforcement of the right to adequate facilities conducive to family planning. **Adebayo**, (2019) also notes with dismay that even the Nation's Population Policy fails to account for the emerging concerns in family planning and reproductive health.

Sadly, many of the various laws in force in Nigeria on the emerging issues in the reproductive health due to the inadequacy in them do not address the true intent of reproductive health concept. Similarly, some of these policies do not provide for strategies and institutional frameworks for policy implementation, monitoring and evaluation of policy implementation on a regular basis at all levels of government (**Adebayo**, 2010b). In addition, majority of these policies, tilts toward reducing maternal mortality and stillbirth or morbidity that are pregnancy related, reduction of incidences of sexually transmitted diseases; limiting all forms of gender-based violence and harmful traditional practices to women and children; and reducing greater imbalance in availability of reproductive health services. Others are increasing the involvement of men in reproductive health matters; reducing incidence and prevalence of infertility in men and women; and to promote research on reproductive health issues (*ARFH Monograph*, 1998).

Despite the declarations in these policies and the necessity for an enabling law to establish a permanent national statutory body or agency, no such legal framework has been passed to a law with a clearly defined functions, powers and responsibility to account to the public and stakeholders. An exception perhaps is the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) but the agency is also hindered by administrative bottlenecks. The result is that the existing institutional arrangement lacks provision for the effective

development; execution, monitoring, and revision of the existing policies.

Furthermore, **Adebayo** and Olokooba (2017a) insist that the lack of governmental commitment and financial support, coupled with low level of human resources support, have rendered weak and ineffective any review of the existing legislations on reproductive rights as human rights and the enactment of appropriate new legislations for the protection of women's reproductive rights. The result is that these rights, particularly those relating to these rights of victims of the dreaded HIV/AIDs scourge and the rights of victims of sexual violence against women and the girl child are not well articulated.

Part of my analysis on women's reproductive health rights is the rights of women in certain circumstances to contraceptives, sterilisation, and abortion. Presently there is no explicit law in Nigeria that regulates the sale or use of contraceptives drugs and devices, because they are openly sold in our chemists, pharmacy and retail outlets. The various family planning programmes only made available a variety of methods of fertility regulations to ensure free and conscious choice of all couples. However, **Adebayo**, (2010a) argues that the availability of contraceptive such as injectables, diaphragms, foaming tablets and male sterilisation at government distribution centres suggest that contraceptive use and distribution is legal in Nigeria. Perhaps, the only available legal control is through (National Agency for Food and Drug Administration and Control Act, 1993 (NAFDAC). The Act prohibits misleading labelling and advertising practice by requiring manufacturers of drugs to furnish information on drugs chemical composition, it's intended use and the result of clinical investigation and any adverse effect on the health that the drug may have.

Adebayo (2012) has also noted that abortion through contraception is also another major issue in the reproductive rights of women. The criminal law in Nigeria (sections 228-230 of the Criminal Code and Section 232 of the Penal Code) makes

the performance of abortion a criminal offence, unless it is performed to save a pregnant woman's life. Abortion in Nigeria is illegal regardless of the duration of the pregnancy; the law prohibits abortion performed from the time of fertilisation and at all stages of foetal or embryonic development.

However, Ladan (1999) submits that, the law does not clearly distinguish between abortion performed by qualified medical practitioners and by quacks, nor the facilities in which an abortion takes place. Government does not subsidise abortion services and abortion are not available in most public health facilities except where it is to be done to save a woman's life or in pregnancies resulting from rape or incest. This development has led health professionals as well as jurists and women's rights groups to call for a reform of the restrictive abortion laws to permit legal abortion for pregnancies resulting from rape, incest, and unwanted cases, in designated clinics to be handling by trained specialist medical personnel as legally enforceable human rights of women (Adebayo, 2019a).

Levitating Freedom of Choice

Vice-Chancellor sir, Adebayo and Olokooba (2017b) are of the opinion that, presently, the state of reproductive health rights in Nigeria has been hampered by external factors such as non-availability and inaccessibility of health care services, poverty, the environment, educational levels, cultural values, gender relations, and survival factors. The lapses and laxity in data recording, collating and reporting from local to federal levels, as well as poor capacity to analyse and utilise data for health policy and development and planning cannot be overemphasised. All these in the words of Braam, and Hessini (2000) remain major challenges to be overawed. Several reasons have been proffered for these lamentable situations. I equally acknowledged the weak political commitment of successive regimes to address the crisis in the health sector, inadequate budgetary allocations, over dependency on donors, the fragmentation of the health system into a mass of poorly

coordinated parallel, vertical programme and failure to give real content to the declared aim of decentralisation and community participation in healthcare management.

Furthermore, during the erstwhile administration of General Olusegun Obasanjo (rtd), there were fresh approaches to the health sector reforms. For instance, the revision of the National Health Policy in 2004 to provide a comprehensive framework for a more coordinated, integrated and sustainable reproductive health programme which specified implementation process including monitoring and evaluation techniques. There is also high-level advocacy to policy makers and opinion leaders which has resulted in the recent increase in political commitment and increasing funding of health institutions. Recently, on the 9th July, 2024, the bill to among others, create extra 74 seats for women in parliament (both Senate and House of Representative) passed the second reading. The bill seeks to amend Sections 48 and 49 of the Constitution.

Prominent too is the Protocol on the rights of women in Africa that has been adopted in Nigeria in July, 2003. It has become one of the many instruments for advancing reproductive and sexual health rights in Nigeria. For instance, article 1 -26 of the Protocol affirm reproductive choice and autonomy as major human rights. The protocol represents the first international instrument to articulate women's rights as human rights (Cook and Dickens, 2003).

In addition, the Protocol requires countries like Nigeria, to ensure that the right to health of women including sexual and reproductive health rights such as the right of women to control their fertility; right to decide whether to have children; the number and spacing of children; right to choose any method of contraception; right to protection against sexually transmitted diseases (HIV/AIDS); right to have family planning education, are respected and protected. The Protocol also enjoins countries to take appropriate measures to provide adequate, affordable, and accessible health services, including information, education and communication programmes with women in rural areas. Meme

(2000), submitted that the Protocol also prohibited all medical or scientific experiments on women without their informed consent; guarantee women's rights to consent to marriage; set minimum age of marriage for girls at 18 years and enacted laws that would uphold all forms of violence against women.

My Contribution on Accommodating Rights or Choice

Vice-Chancellor sir, I maintained that international human norms are generally couched in gender terms (**Adebayo**, 2007a). The term 'human' encompasses both women and men, and it is, therefore, assumed that these norms provide automatic protection to women the same way as it is to men. However, this assumed neutrality, in practice often amounts to a disregard of women and a failure to respond to women's distinct experiences of injustice. The contention is not whether there is a distinct category of women's rights warranting special class or treatment as those of human rights norms, but in reality, most of the human rights are made fully applicable to women as human being, not as a 'she' gender (Cook, 1997).

In my research efforts, I concluded that; what is needed is a critical re-characterisation of international human rights norms, so that women distinctive concerns are not marginalised and the implementation of human rights of women becomes part of centralised agenda of human rights framework. Thus, **Adebayo** (2007a) humbly submitted that this can be done by incorporating gender sensitivity into the interpretation and application of human rights norms. For instance, this can be achieved in the areas of women and the right to non-discrimination. As noted earlier, most of the major human rights instruments embody norms against sex discrimination, but what actually constitute sex discrimination against women is not well defined. Traditionally, the underlying assumption of the test of discrimination is that men and women are the same. The way in which women are being treated becomes the measure of equality, and equality is therefore defined as being treated like a man, (McKinnon, 1996).

I believe that this approach will go a long way in ensuring that equality between the sexes exists and that all aberrant behaviours in form of discrimination will abate. It is my humble submission that equality is not the freedom to be treated without regard to sex, but freedom from systemic subordination because of sex. A more realistic test of discrimination would thus be one based on sameness and seamless treatment of all gender (**Adebayo**, 2016b).

With regard to women, civil and political rights; the focus here is on the injustice women encounter because they are females, not those perceived as human rights violations, because they do not fall within the experience of men.

An illustration is the right to life in section 33 of the 1999 Constitution on the right to life. I discovered that this right is traditionally defined within the context of whether due process is observed before imposition of capital punishment. In reality, however, half a million of women die from pregnancy related causes every year, but the male understanding of the right to life do not encompass this type of death, probably because state execution is a more conceivable problem to men than death from pregnancy. From a female perspective, however, the right to life should entitle her to have access to basic reproductive health services.

Similarly, violence against women is another area which until recently was not considered to be human rights concern mainly because of the public/private dichotomy in the application of human rights norms, which dichotomy has served to mask oppression of women in the private spheres. But it is not until 1994, when the United Nations General Assembly, adopted a declaration on the elimination of violence against women, which recognised that violence against women is a manifestation of historically unequal power between men and women. The declaration recognised that violence is one of the crucial social mechanism by which women are forced into subordinate position relative to men; and also affirmed that violence against women constitutes a violation of human rights (UNGA, 1994).

There are other historically conditioned injustices that women suffer from and which keeps them in subordinate position to men, such as inheritance laws, widowhood practices and early child marriage. These injustices should also be regarded and reconceptualised as serious human rights violations (**Adebayo, 2007b**).

Furthermore, the provisions of basic needs and adequate standard of living are just as important as the guarantee of civil and political rights. For many of the injustices women suffers from, particularly in the socio-economic spheres are conditioned on the absence of economic and social cultural rights. According to a report in 1995 (as an illustration), women constitute nearly 70% of the world's 1.2 billion poor and more than one million rural women live below poverty line (Beijing Platform of Action, 1995).

When the plight of women is obscured by gender neutral norms and policies, equality in the enjoyment of socio-economic rights will continue to elude women. Women are, therefore, for most part; characterised by such measurements as unproductive, unoccupied and economically inactive. The characterisation of women as non-producers and the resulting perception that they are not important farmers in Africa, has resulted in both foreign and local investment and development aid, being directed to the activities which men are primarily engaged in, while women have been increasingly denied access to land, credit facilities, and appropriate technology for farming (**Adebayo, 2016b**).

What is required here is a re-conceptualisation of the gender dimensions of the right to development. Early efforts have simply had the effects of excluding women from developmental processes. Therefore, a growing acknowledgment of the need to incorporate gender awareness into the main stream of development projects, so as to ensure that the resulting conditions and outcome are equitable and repositioning women's rights to development as a fundamental human rights issue cannot be overemphasised.

By re-conceptualising these basic rights of women on the human rights agenda, it becomes a matter of entitlement and

obligation, because the traditional human rights discourse does not adequately address the distinct concerns and experiences of women (**Adebayo**, 2007c). With re-conceptualisation effort, women can safely demand the protection of their rights and governments are obliged to guarantee same. The language of right; therefore, will provide a source of potential power for women to achieve the desired changes.

Vice-Chancellor sir, it is one of my major arguments that interests relating to reproductive and sexual health rights should be promoted through specific human rights provisions. There are specific human rights that can be used to address and are indicative of rights that can be developed to advance reproductive interests. These rights are interactive, in that each depends to a larger or lesser extent on the observance or performance of other rights recognised as either national or international standards.

Most countries of the world have committed themselves to respect individual human dignity and physical integrity through their own national constitutions and other laws, through the country's membership in regional and international human rights instruments and conventions. The specific rights that contribute to reproductive and sexual health that can be clustered around reproductive health interests are those relating to life, survival, sexuality, reproductive self-determination and free choice of maternity, non-discrimination and due respect for differences; and rights to information, education and decision-making empowerment (**Adebayo**, 2016b).

These reproductive and sexual interests can be categorised differently, depending on issues at stake and individual's perception of those issues (**Adebayo**, 2016a). The purpose of clustering specific human rights around reproductive and sexual health interests is to show how different human rights can be cumulatively and interactively applied to advance interests in reproductive and sexual health; in as much as these human rights are applied more vigorously to reproductive and sexual needs.

The different ways of applying human rights to serve those needs are through the rights relating to life, survival, security and sexuality. This group of rights can be used to eliminate barriers to the basic services necessary for the reproductive and sexual health of its citizens. These rights can include right to liberty and security of the person, right to be free from torture and inhuman degrading treatment. Effective application of these rights require government to take necessary steps to ensure that women go through pregnancy and child birth safely, the confidentiality of patients seeking reproductive health services are protected, that violence against women are reduced, and that the rights of people living with HIV/AIDS are protected and respected. Where a denial of these rights has been proved, a court might consider how this denial has disrupted an individual life's span and order remedies that take account of that disruption.

The next group of rights consist of the right to life and survival. Article 16 (10) of the International Covenant on Civil and Political Rights, states that every human beings has the inherent right to life. The right shall be protected by law. Section 33 of the 1999 Constitution (as amended) also states that no one shall be arbitrarily deprived of his life. However, the recent judicial trend has been to apply the right to life to matters relating to health and human dignity. The right to life is the most obvious right that could be applied to protect women at risk of dying during childbirth due to lack of essential or emergency obstetrics. Thus, in the Indian case of *Pascim Banga Khet Samity v. State of West Bangal* (1996), the Supreme Court of India held that the right to life contained in Article 21 of the India Constitution, 1950 was breached when various government hospitals denied emergency treatment to an individual who had head injury. The court held further that the state cannot use financial constraint to ignore its constitutional obligations to provide adequate medical facilities and services to preserve human life, and even detailed which measures the state might comply.

Following the *ratio decidendi* of the above cited case, where a state neglects to provide means necessary to prevent women from dying from pregnancy and childbirth, the state is failing in its obligation to ensure access to the conditions that guarantee a dignified existence. Effective protection of the right to life requires that positive and necessary measures are to be taken to ensure access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having healthy infants (Paras: 7.2 ICPD, 1994).

The next group of rights consists of the right to liberty and security of persons. Article 9 of the International Covenant on Civil and Political Rights, 1976 provides that:

Everyone has the right to liberty and security of persons...no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as may established by law.

This right is one of the strongest defences of individual's integrity in the reproductive and sexual healthcare context. The right has moved beyond its historical prohibition of arbitrary arrest or detention, to now require government to provide health services when lack of such services jeopardise the liberty and particularly, the health security of a person. It follows, therefore, that if the government and agencies which are delegated with the responsibility to administer health services fail to provide the conditions necessary to protect reproductive and sexual health, they might be held responsible for the denial of the liberty and security of the person.

Perhaps, one of the major causes of maternal death is unsafe abortion. It may be possible to apply the right to liberty and security of person to require government to improve services for treatment of unsafe abortion, and to change restrictive laws to ensure access to contraceptive and abortion services. Furthermore, the right to liberty and security has been applied by national courts in abortion cases to protect women's freedom to decide if, when, how and how often to bear children. This was illustrated in the case of *R v Morgentaler* (1998) where the

Supreme Court of Canada held that a restrictive criminal abortion provision violated a woman's right to security of person.

In addition, several constitutional courts especially those in France, Italy, and Netherlands have found that liberal abortions laws are consistent with women's rights to liberty. Even though those laws are expressed prohibitively, they usually have an implied exception that allows lawful abortion when a woman's life or enduring health is in danger.

Adebayo (2016b) has noted that; in almost every part of the world, abortion has been the subject of religious, social, and legal concern. In some places, abortion related laws have witnessed serious challenges. While very few remained outside the 'holy see' who argues for absolute restriction on abortion; many argue and advocate for liberalising of abortion laws and others for outrightly advocated for legalisation of abortion.

Vice-chancellor sir, my research findings (**Adebayo**, 2012) has revealed two advocate groups as far as abortion issues are concerned. Both groups argued along two main lines; namely 'the health argument and the rights arguments'. Proponent of the health argument contend that existing abortion laws are too restrictive in the prescription of what constitute therapeutic reasons, while the rights argument thinks that existing abortion laws reflect an unwarranted, unsupportive, infringement of women's rights to privacy. It is argued further that the restriction of the grounds of abortion to saving a woman's life only; is too narrow and may be insensitive to the peculiar difficulties of women.

For example, to hold that a rape victim, who becomes pregnant, should not be entitled to abortion even though this is clearly a case of unwanted and forced pregnancy, does not hold forth. The trauma experienced by rape victims who finds themselves pregnant coupled with the risk of contracting HIV/AIDS, should be sufficient to ground for liberalisation of abortion laws, so that they can have access to legal abortion.

Perhaps, a better approach is what is obtainable in some national and international jurisdictions, where the right to

privacy has been employed to interpret abortion law. In one of the celebrated cases *Roe v Wade* (US 438), the United States Supreme Court asserted that the United State constitutional rights of privacy is broad enough to encompass a women's decision whether or not to terminate her pregnancy. Buttressing this assertion, is the case of *Eisentandith v Baird* (1972) where Brennan J (as he then was) opined that if the right of privacy means anything, it is the right of the individual, married or single to be free from unwanted governmental intrusion to matters fundamentally affecting a person's right as to the decision whether to bear or beget not a child.

Mr. Vice-chancellor sir, the *ratio decidendi* in *Roe's* case was not suggesting that women have an autonomous discretion to terminate pregnancy at any time throughout its terms, by merely considered that abortion laws that effectively reserved the decision-making power over women to have an abortion to other than by the woman herself, are unconstitutional. However, the court limited its recognition of unrestricted right to abortion to the first trimester of pregnancy. After this stage, the interest of the right to privacy of the women is far outweighed by the interest of the society in the mother and the child as well, that will be put at the risk by unrestricted abortion beyond the first trimester.

I have noted that throughout the history of the development of abortion laws, it was a reflection of the changing socio-economic conditions, political views and advocacy trends (Adebayo, 2012). Thus, the case of *Roe v Wade* was a victory for the 'pro-choice' advocates who argued for the liberalisation of abortion and seeks to avoid the philosophical and jurisprudential tailback, but the 'pro-life' has continued their advocacy against abortion because they believed that abortion is a crime against God and against the right of the unborn baby who has the fundamental right to life.

On this note, the debate between the pro-life and pro-choice still rage on, but some victories in some countries have whittled down the liberalisation of abortion law. For instance, on 24th June, 2022, the United States Supreme Court, in the case of

Dobbs v Jackson overturned the decision in *Roe's* case. Since 1994; El-Salvador, Nicaragua, and Poland have rolled back abortion rights. Nearly 60 countries across the globe have liberalised abortion laws and considerable amount of changes in recent years in overall trend towards liberalisation of abortion laws (WHO, 2024).

Although the legal status of abortion varies considerably by region, a large majority of countries permit abortion under at least some circumstances. Accordingly, WHO Report (2023) reported that about twenty-two countries of the world have banned abortions entirely. Most industrialised countries allow the procedure without restrictions. Around 100 countries have some restrictions typically permitting abortion only in limited situations, including for instance socio-economic factors, risks to a woman's life or mental health or the presence of foetal anomalies. However, the legal language concerning exemptions for foetal impairment is often vague, resulting in uncertainty for medical professionals about whether performing certain abortions is legal or not.

In Nigeria, however, abortion is still a crime under sections 228-230 of the Criminal Code and Sections 232-233 of the Penal Code applicable in the Southern and Northern parts of the country respectively. These provisions make abortion illegal unless it is performed to save the life of the mother. While the pro-choice advocates argue for the reproductive rights of the mother; the pro-life advocates argue for the right to life of the unborn child.

Reproductive rights are part of sexual and reproductive health that aids the well-being of a person with respect to the reproductive processes, functions and systems at all the stages of human life. For psychological well-being, reproductive health is also important. Reproductive rights refer to the total well-being of the person. Through sexual contact, many diseases can be transferred from one person to the other. For instance, the HIV/AIDS and it is imperative to educate the youth of the country and other stakeholders on the importance of reproductive

health as well as the various preventive methods against all complications therein.

Mr. Vice-Chancellor, as part of my contribution to this area of the law, I have since the year 2011 been partnering with governmental and non-governmental organisations across the nation to expand the frontiers of reproductive freedom and autonomy as a fundamental right. I have worked either as research fellow, participant, presenter, organiser of workshops and conferences, resource person and trainer in creating awareness campaign on reproductive health rights in Nigeria and some countries across the globe

Similarly, I have also carried out many administrative responsibilities and community services both within and outside the University. I was one time, the Head of Department, Private and Property Law, Faculty of Law, University of Ilorin; Faculty Representative to other Faculties/Committees and I have successfully supervised several LL.M. dissertations, Ph. D. Theses and numerous undergraduate final year long essays. I have also served as External Assessor for the promotion of colleagues to the professorial cadre across some universities in the country.

In the similar direction, I have, over the years, been Staff Adviser and mentor to the Family Law Class Students on visits to orphanage, remand homes and borstal institutions, hospitals and so on. While on sabbatical at Yobe State University in 2018/2019, I created the Faculty of Law's "Family Support Club", a unique club for giving succour to 'Widow Indigent Students' whose spouses were victims of the Boko-Haram insurgent.

By being a member of Professional and Learned Societies like the Nigerian Bar Association (NBA), National Association of Law Teachers, (NALT), Academic Staff of Nigeria Universities (ASUU), Alumni of University of Maiduguri and University of Jos respectively, I have been involved in organising outreaches, workshops and volunteer programmes to different facet of the society, especially the host community, Ilorin.

Conclusion

Mr. Vice-Chancellor sir, the idea of women rights is premised on the vision that women and girls can lead healthy, productive and dignified life free from all forms of discriminations, stigma, and violence. Women and girls everywhere should have the right to govern over their bodies and future. This includes when and whether to become pregnant, freedom to see a Doctor whenever needed and the liberty to take up space in the world without coercion or influence. Understanding these rights gives women and the girl child the ability to stand up for their rights in the society, to improve on their lives in terms of decision making, contraception, health care, sexuality, adequate information about reproductive health and rights, resolve cases of unwanted pregnancy and sexually transmitted diseases.

Given the inadequacies of the legal framework for the protection and enforcement of women's reproductive health rights in Nigeria highlighted in this lecture, I am advocating that these rights be protected through constitutional means. A permanent constitutional status of these rights would automatically repeal all provisions in the legislations that are anti-reproductive health rights in nature. This will also provide an effective criminal law regime that would sanction gender based violence both at homes, schools, and offices.

Recommendations

It is important for me to make the following recommendations on the reproductive autonomy and reproductive rights of women:

1. The inclusion of women's rights in our constitution as part of the third generation of rights (socio-cultural rights) should be made enforceable. Doing this will promote reproductive health rights in our society. Couple with this, I recommend the amendment of Chapter II of the Constitution on Fundamental objectives and Directive Principles of State Policy to be made justiceable; or in the alternative, a new and separate chapter be created for these women's rights in the proposed amendment to the constitution and tagged '*Socio Cultural Rights*' and be made enforceable in our courts of law.
2. More concerted efforts should be made in educating men and women about the advantages of allowing women exercise not only their economic rights, but also reproductive rights as this will improve the quality of life of women and their family and by implication the whole nation. A vigorous preventive awareness campaign should be mounted that will facilitate the empowerment of women through training or induction course for our policy makers and a series of well-designed programmes for staff on gender issues and the use of gender disaggregated data for assessment and reporting.
3. Governmental and Non-Governmental Organisations should partner and play a greater role in the critical areas of concern for women's reproductive health rights, giving the potentials that the private sector can mobilise abundant human, technical and financial resources like the Women Aid Collative (WACOL), Association for Reproductive and Family Health (ARFH), Civil Resources and Documentation Centre (CIRDDOC),

Federation of Moslem Women Association in Nigeria (FOMWAN), National Council for Women's Society in Nigeria (NCWS) that are currently doing good work in this direction.

4. The policies and legislations on women's reproductive health rights have not specifically addressed some of the most needed reforms in the health sector. Hence, I am recommending that there should be a mandatory provision of government legislation on mental health services to protect women against disabilities arising from effect of female genital mutilation and other harmful traditional practice. In addition, women must have free and low-cost access to legal services. There must be the harmonisation of laws to ensure a realisation of women's rights.
5. Furthermore, in order to effectively promote, protect, and enforce women's reproductive health rights, all international legislations and policies on women's reproductive health should be articulated and harmonised into a single instrument and documented. For instance, all protocols, declarations, policies, and charters on women's reproductive health rights; including the right to equality of life, liberty, security of persons, family planning, consent to marry, privacy, protection from discrimination, sexual violence, harmful traditional practices, cruel and inhuman degrading treatment, should be domesticated and implemented in line with Section 12 of the 1999 Constitution (as amended).
6. There is also the need to reform and engender the language and substantive contents of the 1999 Constitution (as amended), particularly the sections that perpetuate gender discrimination and inequality between man and woman. For instance, section 25 of the

Constitution which provides for citizenship by registration is not constitutional. Equally, Section 24 of the same constitution provides that a woman lacks the legal ability to confer on her foreign husband the right to be resident within Nigeria.

7. There must be a substantial reduction in gender gap in education and employment through policies that are responsive to the current problems of women advancement. There should be a special focus on issues of gender stereotypes through reassessment of the roles of women and men. Notable and commendable was the establishment in 1989 of the National Commission for Women by Decree Nos. 30 and the establishment of the Federal Ministry of Women Affairs and National Commission on Human Rights in 1993-1995, all geared towards promoting and protecting rights of women.
8. Finally, a separate court may be created under the constitution and give special jurisdiction to entertain cases of women's reproductive rights, abuses and violations. Such court should be given a separate legal and constitutional backing. The existing *Family Court* is non-active and functional enough to address issues of obnoxious laws and traditional or cultural practices that dehumanise women like widowhood rites, marital rape, inheritance and ownership of real property. The cases of *Mojekwu v. Mojekwu* and *Mojekwu v. Ejikeme* are milestones and welcomed in advancing women's rights in this regard.

There is no doubt, Vice-Chancellor sir, that if these recommendations are accepted and put in the proper place and perspective and are followed to the letters, they will promote the effectiveness of the legislations on women's bodily autonomy and reproductive rights and thus pave way for easy realisation and effective enjoyment of these rights of women in Nigeria.

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Mr. Vice-Chancellor, permit me at this juncture to end this lecture by acknowledging those who have played key roles in my chosen career. I will however, start with Almighty Allah. To Allah be the honour, glory and adoration for taking me this far in the journey of life and it is by His grace that I have the special privilege to present this inaugural lecture today, which is very unique to me. I owe infinite gratitude to the Almighty Allah.

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