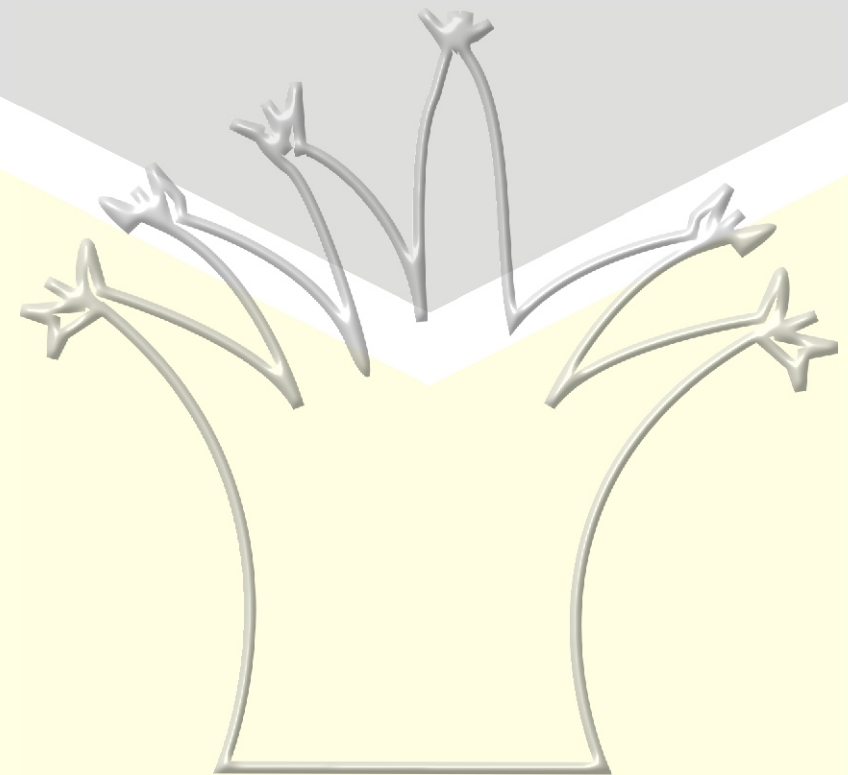


REPRODUCTIVE HEALTH AND RIGHTS



BAOBAB for Women's Human Rights



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BAOBAB for Women's Human Rights
LEGAL LITERACY SERIES 5

REPRODUCTIVE HEALTH AND RIGHTS OF WOMEN

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Edited by

Sindi Medar-Gould
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1. INTRODUCTION

In 1995, 187 United Nations Member States met in China to think about the broad issues and links between population, sustained economic growth, sustainable development, and advances in the health, as well as education, economic status and empowerment of women. The agreement reached at this meeting was expressed as a 20-year Programme of Action. This document gave a foundation to the discussion on sexual and reproductive health as against the former limiting term of family planning. However, ten years after Beijing and International Conference on Population and Development ICPD, women are still not in control of their sexual and reproductive health rights. This is the situation in Nigeria as evidenced by the number of cases of women's human rights abuses, including their lack of right to decide on their sexual health, and the continued ignorance on issues of women's reproductive health and rights both within the private and public spheres. For reproductive health rights to be attained, like other human rights, women must be able to claim control over reproductive health and sexual rights issues as these have a direct impact on their physical, emotional and psychological well being, and in the final analysis on the entire family.

This legal literacy leaflet sets out to discuss issues of reproductive health rights of women in Nigeria. It will in particular examine the various issues covered under reproductive health and rights of women, like vesico vaginal fistula (VVF), early and forced marriages, unsafe abortion/unwanted pregnancies, female genital mutilation, rape, incest, bride-price related violence, mortality rates, nutritional taboos, as they affect women's health and rights.

The leaflet will further identify factors working against women's ability to demand safe reproductive health and rights and identify steps towards promoting and protecting the reproductive health rights of women.

In addition, issues on reproductive health right from the point of view of gender equality and respect for women's human rights will also be considered.

The term "Reproductive Health Rights" can be grouped into four parts under the broad concept of women's human rights. These are:

- The right to reproductive and sexual health
- The right to reproductive decision-making
- The right to equality and equity for men and women
- The right to sexual and reproductive security

2. WHAT IS REPRODUCTIVE RIGHTS?

As defined in the Beijing Platform For Action (**BPFA**), and the International Conference on Population and Development (**ICPD**) documents, Reproductive rights are: "*certain human rights recognised in national and international legal and human rights documents and other consensus documents, including the basic rights of all couples and individuals to decide freely and responsibly the number and spacing of their children, and to have the information, education and means to do so; the right to attain the highest standard of sexual and reproductive health; the right to make decision concerning reproduction free of discrimination, coercion and violence*". In simple terms, it can be regarded as our entitlements and used as tools to intervene in areas where reproductive rights are denied and violated.

Some examples of these rights include:

- the right to self protection and to be protected against sexually transmitted infections (STIs) and HIV/AIDS
- the right to family planning education and to decide on the number and spacing of children
- the right to adequate, accessible and affordable health services including Information, education and communication programmes to women especially in the rural areas

3. WHAT IS REPRODUCTIVE HEALTH?

Reproductive health is defined as: *“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions and process”*. This includes everything that affects reproduction for instance safe motherhood, preventing and treating sexually transmitted diseases, avoiding unwanted pregnancies, and promoting responsible sexual behaviour. It extends to the need for universal education, to gender issues, such as male support for women's reproductive health, and to protection of girl children to enhance their growth and healthy life as well as equality with their male counterparts.

4. REPRODUCTIVE HEALTH AND RIGHTS ISSUES

- Rape
- Marital rape
- Incest
- Female Genital Mutilation (FGM)
- Vesico Vaginal Fistula (VVF)
- Early/forced Marriage
- Unsafe abortion
- Unwanted pregnancies
- Bride price related violence
- Maternal mortality
- Inheritance of widows
- Nutritional taboos

4.1 Rape

According to the provision of the Criminal Code Act in Nigeria, rape is an *“unlawful carnal knowledge of a woman or a girl without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear of harm, or by means of false and fraudulent misrepresentation as to the nature of the act, or, in the case of a married*

woman, by personating her husband”. It follows that any sexual intercourse with a woman without her consent, by force, fear or fraud amounts to rape. The offence of rape is complete upon mere penetration of the male sexual organ into the vagina of the female survivor. The law of evidence also provides strict evidential rules of corroboration of the testimony of the survivor and a consideration of the character of the survivor by the court. These provisions of law make the offence of rape difficult to prove and most times the rapist is allowed by the court to go free due to the difficulty in proving the offence. At times many cases of rape go unreported. Investigations into the few reported cases are either abandoned halfway or the case is prolonged. Many of the survivors, especially adult females, prefer to suffer the physical and psychological trauma silently rather than seek redress in the court of law because of the fear of stigmatization. Another reason women do not report abuse is due to pressure from family members to protect their name and image in the society. The offence of rape is a violation of the bodily integrity of the victim and the right to sexual security while it also exposes the female to health risks such as unwanted pregnancies and Sexually Transmitted Infections (STIs) and HIV/AIDS.

4.2 Marital Rape

Marital rape occurs when a husband uses force or threat of harm to have sexual intercourse with his wife against her consent or if the consent is obtained by force. This situation may be likened to rape as defined in the Criminal Code Act but it is surprising to note that the term unlawful carnal knowledge does not exist between husband and wife and as a result forced sexual intercourse is not recognized in marriage due to the mutual matrimonial consent and contract. In most communities in Nigeria, marital rape is not seen as an offence, as it is believed that the essence of contracting a marriage is to have access to sexual satisfaction whenever needed by the man. A woman's sexual rights and bodily integrity is violated when her consent is not obtained by her husband to have sexual intercourse. The position of the law in Nigeria is silent on this issue, seeing

it as a 'private' matter between the husband and wife, it seeks to uphold and protect the sanctity of a marriage and hardly interferes in domestic issues unless it is such relating to divorce. As a result no law makes marital rape a crime.

4.3 Incest

Incest is sexual intercourse within the prohibited degree of kindred. Situations exist in Nigeria where girls are forced or coerced to have sex with father, brother, uncles or other close male relatives. Though it is common knowledge that incest is prevalent in Nigeria, it is hardly spoken about by victims, as it is considered a shameful thing hence the culture of silence on it.

Incest is a gross violation of a girl's right to sexual self-determination and rights. The consequences of this on the victim include impeded development and emotional pain that may live with the girl for a lifetime. This is a criminal offence as it falls under the category of unnatural offences and should be discouraged through reporting such cases to the appropriate authorities and ensuring that action is taken.

4.4 Female Genital Mutilation (FGM)

Female genital mutilation (FGM), is the partial or total cutting of the external female genitalia, as a rite of passage preparing young girls for womanhood and marriage. FGM is often performed without anesthetic, under unhygienic conditions and with unsterilized instruments by unskilled practitioners with little or no knowledge of human anatomy or medicine. The process involves the partial or total removal of the clitoris (Clitoridectomy) and labia and the stitching and narrowing of the vaginal orifice (Infibulation) to allow only urine and menstrual blood to pass through.

The process of FGM is an affront to women's reproductive rights, their bodily integrity and also a serious health threat accentuated by the risk of anemia, infertility, inability to pass menstrual blood properly, obstructed labour, contracting HIV/AIDS and harmful reproductive tract infections. It is believed that, by this mutilation, a woman's sexuality will be controlled. This is also done with the belief that a woman's chastity will be maintained before and after marriage. Some African countries like Somalia and Ethiopia have outlawed this practice making it a punishable offence.

Although outlawed in some States in Nigeria, e.g. Edo State, FGM is still practiced in the southern part than in the northern part of the country. For instance in States like Edo, Bayelsa, Akwa Ibom, Cross River and Delta states such harmful practices still exist as a result of the cultural life style and preference of the indigenes.



■ A girl being mutilated

4.5 **Vesico Vagina Fistula (VVF)**

This is a condition suffered mostly but not solely by young girls who are forced to marry at an early age, or who have been exposed to early sexual contact, and whose reproductive organs are not well developed to accommodate the strains of childbirth. Sometimes these child brides go into labor without the benefit of the services of trained health personnel. They sustain injuries as a result of prolonged labor and develop openings between the vagina and bladder, which results in the gradual discharge of feces, leading to the continuous production of an offensive odor, social isolation and rejection. This denies young girls their rights to self-determination and is a violation of their sexual and reproductive health rights.

4.6 **Early/Forced Marriage**

This is a situation whereby a girl-child or a young adolescent girl is made to marry against her wish and/or consent. This may result in early pregnancy and Vesico Vagina Fistulae (VVF), which can be very painful and life-threatening. Early/Forced marriage can generally affect a girl's health, as well as her economic, social and psychological progress. Marriage and motherhood for a woman should be based on informed choice and consent.

4.7 **Nutritional Taboos**

In many societies there are certain foods that women are forbidden to eat totally, or should not eat when they are pregnant. Most food taboos affect women and are based on misconceived and unfounded social, reproductive, obstetric health and nutritional beliefs. The average food intake of most pregnant and lactating mothers is far below that of the average male. Cultural practices, including nutritional taboos, such as denial of snails, red meat, roasted corn, crab, unripe bananas and so forth, deprive pregnant women of essential nutrients, and as a result they tend to suffer

from iron and protein deficiencies. In addition to these observations, in some homes, women are not allowed to eat the choice part of meat, egg yoke, fish and other foods. As a result, some pregnant women become deficient in iron and protein.

4.8 **Maternal Mortality**

Maternal mortality is defined as the death of a woman while pregnant or within 42 days of termination of a pregnancy due to complications. Maternal mortality is also one of the major challenges to gender equality as many of the determinants of maternal health; access to contraception, family planning and safe abortion services, access to information about fertility and reproduction, safe motherhood, and access to health services are strongly influenced by gender norms. These factors not only contribute to depriving women of their right to life, but they are themselves violations of widely acknowledged human rights. At present, Nigeria records one of the highest mortality rates in sub-Saharan Africa, with the rate of 704 per 100,000 women.

4.9 **Unsafe Abortion**

Unsafe abortion refers to the termination of pregnancy by inexperienced or unqualified persons or doctors. It refers to any abortion performed under hazardous conditions through the use of wrong instruments and medication, which may lead to complications, such as perforation of the womb, inability to conceive, miscarriage and premature birth. This certainly has a negative health implication for women and girls, as their reproductive health concerns are not catered for on issues of abortion.

4.10 **Unwanted Pregnancy**

This is a situation where a girl or a woman is forced to carry a pregnancy against her will as a result of unplanned pregnancy arising from rape, incest, teenage pregnancy etc. Young girls being forced to keep unwanted

pregnancies could lead to eviction from school, forced marriage, rejection by friends and family members, dishonor from friends and community, forced single parenthood, prostitution, unsafe abortion and other health complications. In the case of married women they are coerced into breeding more children than they are economically and mentally capable to cater for, when they are denied access to family planning methods while in marriage.

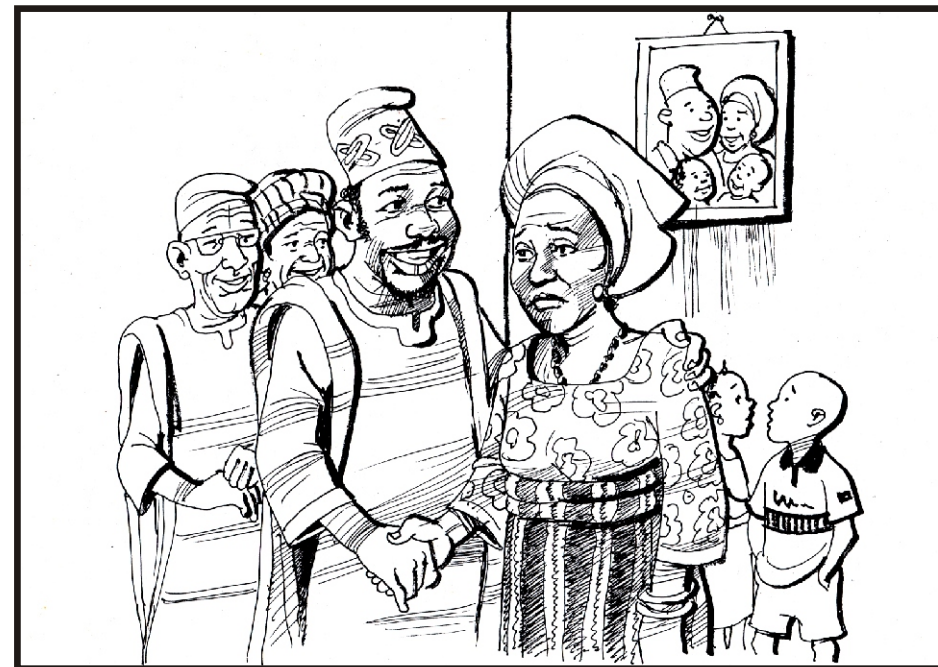
4.11 **Bride price-related violence**

Bride price can be described as a gift in kind or monetary payment to the parent/guardian of a female person on account of marriage to that female person. It is supposed to be a token of appreciation for the worth of the female chosen as a bride. The value of the bride price varies from one culture to another. The tradition of placing a bride price on a woman is common to virtually all cultural groups in Nigeria with the exception of a few. Most women have suffered severe abuses from their partners simply because of the money they claimed they spent marrying the women in question. It is believed that women will never be able to assert their reproductive rights and claim equal status in marriage due to the argument that it is not possible to be equal to someone who 'bought' you with his 'hard-earned' money.

4.12 **Inheritance of Widows**

While the trend of wife inheritance in the urban area is dying out, it is still practiced by rural dwellers. The death of a husband, brings about untold hardship to the wife he leaves behind. In most Nigerian communities the family of the late husband, especially the brother of the deceased inherits his widow. This notion is operative in some states in Nigeria where it is believed that a woman is married not just to the man but also to his family. When the period of mourning is over and the woman is still within reproductive age, she is given to the late husband's brother as a wife to continue the family name. In this instance, the woman's right to choose freely and responsibly her sexual partner is violated. Where she refuses to

be inherited, she is neglected by the husband's family and left to suffer with her children or may even be deprived of the deceased's property. Some are sent out of their matrimonial home, if she remarries, the children remain with the husband's family.



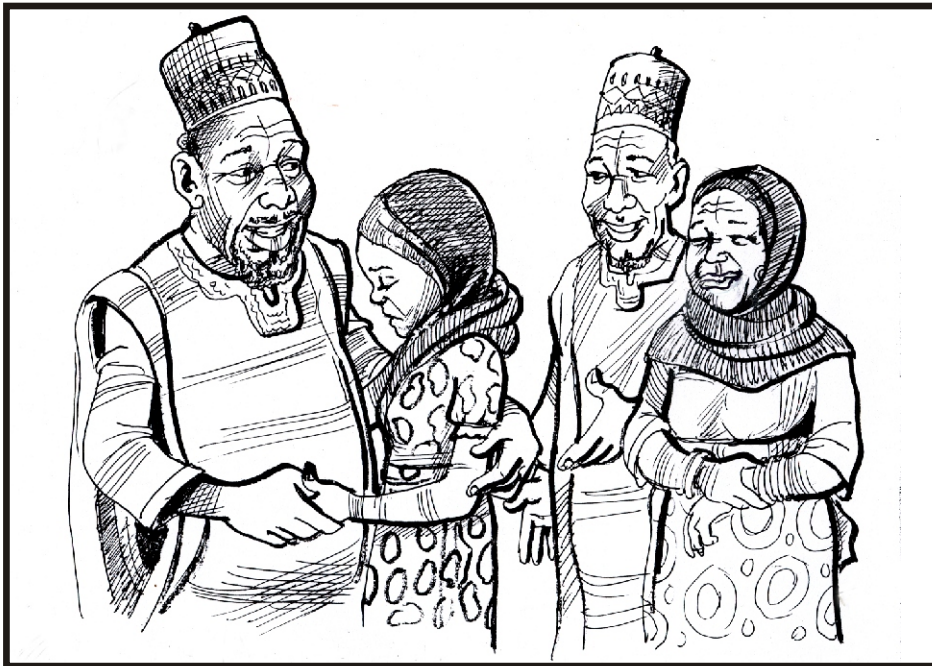
■ *A woman being betrothed to deceased husband's brother*

5. **BARRIERS TO WOMEN'S ABILITY TO NEGOTIATE REPRODUCTIVE RIGHTS**

Women lack power to discuss or make decisions concerning their reproductive health and rights due to the following reasons:

- a. Lack of opportunity to talk about safe sex due to patriarchal nature of our society. For instance in some parts of Nigeria, a woman is expected to be a 'good wife' by forfeiting her decision making rights.

- b. The issue of bride price further makes a woman more submissive, as this is seen as representing the bride's value to her husband. In societies where bride price is very high, a woman is often seen as the man's property and as such has no right to refuse sexual advances under any circumstances, as she is quickly reminded of how much was spent marrying her by the husband.
- c. Most young people do not choose their partners themselves, cases of arranged marriages abound. In most cases the man is older than the woman. The Nigerian culture places high regards on respect for elders. In this instance a wife much younger than the husband might be seen as disrespectful when she is asserting her rights and/or person hood.



■ A young girl being married off to an older man

- d. Polygynous marriage i.e. Where a man can marry more than one wife, makes it difficult for a woman to discuss or even negotiate safe sex as some women in polygynous marriages, strive to 'satisfy' their husbands, and struggle to become 'the desired wife' to win the favour of the husband.
- e. In most communities, women who ask for divorce are seen as social misfits and face social stigmatisation. To avoid this situation women stay in marriages no matter how abusive their partners are, and refuse to leave such homes even when their lives are threatened. The result is that they lose control over decision-making, and also control of their sexual rights.
- f. There are also taboos associated with pregnant women, denial of certain foods and restriction on movement to protect the foetus from harm. Women are forced to adhere to these instructions to avoid being labelled and stigmatised by family members and cultural norms.
- g. Women's right to life is also abused as many women have died during childbirth arising from complications during pregnancy. In some instances, pregnant women are not treated when there is a need for immediate surgery unless with the husband's consent. Some men refuse their wives caesarean operation, even when it is medically certified that they require it. The excuse for such denial is the fact that their own parents gave birth to them either in the farms without assistance, or that it signifies a sign of weakness on the part of the woman, and the belief that labour pain is the joy of childbirth.
- h. In some communities women are not expected to express pleasure during sexual intercourse, women who do so are labelled 'loose' women. Women who express pleasure are asked to explain where they got the knowledge of such pleasure, since they are supposed to be virgins at marriage.

- i. Interpretation of religious texts and cultural practices are male centred and support male dominance. Husbands are believed to possess a sexual right over their wives and the reverse is not the case.
- j. Finally women are more vulnerable to violations and lack the ability to negotiate safe sex in times of wars and civil conflicts. Women protect the elderly, the young, and the sick but lack protection and negotiation powers when dealing with critical issues concerning their own welfare.

6. NATIONAL AND INTERNATIONAL PROVISIONS TO PROMOTE AND PROTECT WOMEN'S REPRODUCTIVE RIGHTS

Countries all over the world are committed to the promotion and protection of human rights and this can be assessed through national constitutions and ratification of regional and international human rights conventions. Nigeria has signed and ratified the following international human rights treaties:

- International Covenant on Economic, Social and Cultural Rights (**ICESCR**)
- International Covenant on Civil and Political Rights (**ICCPR**)
- UN Convention on the Rights of the Child (**CRC**)
- Convention on the Elimination of all forms of Discrimination Against Women (**CEDAW**)
- African Union Protocol on the Rights of Women in Africa and
- African Charter on Human and Peoples' Rights (**ACHPR**)

The following are basic rights as contained in various statutes. They can be sought for the protection of women's reproductive health and rights in the following ways:

- a. **Right to Life:** The right to life can be used to campaign for safe motherhood practices, using family planning and safe abortion to avoid pregnancies which may carry high risk for maternal and infant mortality and morbidity.
- b. **The right to liberty and security of the person:** This right can be used to campaign for the protection of children and women from sexual abuse and exploitation, female genital mutilation, forced abortion, false beliefs which inhibit sexual response or impair the capacity to enjoy sexual relationships.
- c. **The right to equality, and to be free from all forms of discrimination:** This right can be used to campaign in cases where women require spousal consent to be operated upon and men do not. For instance in cases where services are only made available to married women and denial of appropriate nutrition and care.
- d. **The right to privacy:** This right can be used to campaign in the cases where service guidelines requiring personal information is lacking and when there is breach of confidentiality on young persons' sexual health and rights.
- e. **The right to freedom of thought:** This right can be used to campaign where there is restriction on the grounds of thought, conscience and religion, which in turn affect access to sexual and reproductive health.
- f. **The right to Information and Education:** This right can be used to campaign for girls' and women's access to sexual and reproductive health rights education. Information and education that is gender sensitive and free from stereotypes.
- g. **The right to choose whether or not to marry and to found and plan a family:** This right can be used as a reference point to campaign

where there is early or forced marriage, forced pregnancy and discriminatory practices against single women.

- h. **The right to decide whether or when to have children:** This right can be referred to when there is work-place discrimination against women who are pregnant and those denied family planning facilities.
- i. **The right to health care and health protection:** This right can be used to campaign for sexual and reproductive care services which are comprehensive, accessible, and confidential and which respect the dignity of the service user.
- j. **The right to the benefits of scientific progress:** This right can be used to campaign for access to benefits of all available reproductive health technology and gender sensitive research.
- k. **The right to freedom of assembly and political participation:** This right can be used to campaign for active individual and group advocacy in the field of sexual and reproductive health and rights.
- l. **The right to be free from torture and ill treatment:** This right can be used as a campaign tool for protection against sexual exploitation, forced prostitution, sexual abuse and coercion to engage in any unlawful sexual activity.

7. LIMITATIONS TO THE PROTECTION OF WOMEN'S REPRODUCTIVE RIGHTS

Though some states in Nigeria have made laws that address issues of women's health, there are still policies and laws, which show prejudice and prevent women from assessing their sexual and reproductive health rights.

7.1 Issues on Contraceptive Devices:

The Nigerian Government is yet to ensure that women have adequate information and access to safe contraceptive devices.

7.2 Issues on Abortion:

The Criminal and Penal Codes provisions criminalize abortion, thereby denying women access to safe and affordable abortion services. The provisions of the criminal code make the attempt to procure an abortion or the supply of drugs or instrument to procure abortion, a felony punishable with at least three years imprisonment. The law also intends that an abortion must be lawful. The penal code provides that only when the health of the mother will be at risk.

7.3 Issues on Rape

The definition of rape under the law does not recognize other sexual offences such as sodomy, the insertion of foreign objects into a woman's vagina. In the case of married women, Nigerian Law does not recognize rape within marriage as a crime. Though Sharia forbids marital rape, a husband can withdraw maintenance of his wife if she refuses him sexual intercourse. Nigerian customary laws do not recognize the rape of a wife by the husband as an offence at all.

7.4 Sexual Abuse of a Child Bride

There is yet no protection from sexual abuse resulting from the marriage of a child. The marriage act refers to marriageable age but there is no precise definition of marriageable age.

7.5 FGM and Other Sexual Offences

Although some states have passed laws against female genital mutilation and other forms of sexual abuse, many young girls are still not protected from this act in states where laws have not been enacted as well as in states where it has been outlawed.

7.6 Sexual Harassment

Laws in Nigeria do not recognize sexual harassment as an offence. Although the criminal code recognizes indecent assault as a crime, the punishment for indecent assault of a man carries more weight than that of a woman. This means that any woman who indecently assaults a man will receive more punishment than if it were a man carrying out the indecent assault on a woman.

8 RECOMMENDATIONS

- a. Need for human rights activists and other stakeholders to use the rights already provided by the Nigerian 1999 Constitution and International Human Rights Instruments Nigeria has signed and ratified towards removing obstacles that slow down promotion and protection of sexual and reproductive rights of women.
- b. Organise information, education and communication campaigns to address some of the problems working against women's sexual and reproductive health rights.
- c. Create enlightenment programs for law enforcement agents, religious institutions and other stakeholders to respond to the campaign for the promotion and protection of the sexual rights of women.
- d. Enact, both at the state and federal levels, laws that protect the reproductive rights of women and girls.

- e. Repeal laws that prevent the attainment and exercise of reproductive rights of women.
- f. Need to make laws to protect certain aspects of reproductive rights that are not addressed by the existing laws.

What to do if you are affected by any of these offences:

- Speak up, do not stay silent.
- Report any case affecting your reproductive health or sexual rights to the nearest women's human rights group to you or within your immediate locality.
- Go for counseling sessions at any identified women's human rights organisation, or social welfare office nearest to you.
- Rape, Incest and other sexual related offences should be reported to the nearest police station immediately.
- Do not clean self before going to the hospital as this washes away evidence.
- For rape cases, report to the nearest government hospital for treatment and record of evidence after fleeing the scene.
- Do not go to a private clinic as their report will not be accepted as evidence in a court of law.
- Get information on any women's human rights group to make a case for you, as well as link you up to the appropriate support groups.

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