APPRAISAL OF THE RIGHT TO HEALTH AND THE CAUSES OF MATERNAL MORTALITY IN NIGERIA

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ABSTRACT
The right to life is meaningless without the right to health. Ensuring health gives life its true significance. Since life is invaluable, securing the right to health should not be limited to discussions about funding. If life is important, the right to health must be a priority in policy decisions. Among the aim and objectives of this paper is to examine the legal requirements for securing the right to health, particularly in the context of reducing maternal mortality to acceptable levels. This study analysed the causes of maternal mortality which include medical, socio-cultural factors, poor family planning/Unsafe abortions, illiteracy, etc. This study while employing empirical research methodology observes that health issues are challenges faced by the rich and the poor and it is also applicable to citizens of all nations. The study further observes that disregarding right to health has some serious consequences which includes increase on maternal mortality. In conclusion, the paper recommends that Nigeria should recognize the right to health as a fundamental legal right for all citizens, fulfilling its obligations in this regard.

Keywords: Human Rights, Right to Health, Maternal Mortality and Justifiability of Health *Rights.*

1. INTRODUCTION
The right to Health has long been treated as a "second generation right" under international human rights treaties and conventions and it implies that it is not enforceable at the national level except ratified and domesticated at the national level. It is clear that it is not all countries that have provisions regarding health right and health care right in their constitutions, have in practice, lived up to such constitutional mandate.[1] Although, Eleanor K. *et al,* are of the view that such constitutional provisions may be important factors in the international campaign to promote the recognition and implementation of the international human right to health domestically throughout the world.[2] Nigeria is a party to major international human rights treaties such as International Covenant on Civil and Political Right (the "ICCPR");[3] International Covenant on Economic, Social and Cultural Rights (the "ICESCR");[4] International Convention on Elimination of all forms of Racial Discrimination (the "CERD");[5] Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (the CAT);[6] Convention on the Elimination of all forms of Discrimination against Women (the "CEDAW");[7] and Convention on the Right of

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[1] O Ajigbo, 'An Over view of the Legal Framework of Health Rights in Nigeria' *ABU AD Law Journal* [2013] (1) 15.
[2] D K Eleanor & B A Clark, 'Provisions for Health and Health Care in the Constitutions of the Countries Around the World' *Cornell International Law Journal* [2005] (37) (2) < (4) (PDF) Provisions for Health and Health Care in the Constitutions of the Countries Around the World (researchgate.net)> accessed on 7 August 2024
[3] Ratified on 29 July 1993.
[4] Ratified on 29 July 1993.
[5] Ratified on 16 October 1967.
[6] Ratified on 28 June 2001.
[7] Ratified on 23 April 1984.

the Child (The "CRC")[8] among others

At the regional level, the goal of Africa Health Strategy is to contribute to African socio-economic development by improving the health of its people and by ensuring access to essential health care for all Africans, especially the poorest and most marginalized in Africa. Therefore, the African has an ample provision of health rights in the African Charter on Human and Peoples' Rights.[9] The State parties to the Charter are encouraged to take necessary measures to protect the health of their people and to ensure that thy receive medical attention when they are sick.[10] The effect of this however, remains impugned as there continues to be a decline in the implementation and realization of health rights in Nigeria irrespective of the fact that Nigeria is a signatory to several international and regional treaties.

2. EMERGENCE OF HUMAN RIGHTS

Human rights according to Osita Eze, represent demands or claims which individuals or groups make on society, some of which are protected by law and have become *lex lata* while others remain aspirations to be attained in the future.[11] The origin of human rights remains a subject of controversy among scholars. However, the general view which is presented by Kirsten Sellers[12] is that human rights are from time immemorial. But this view of human rights being from time immemorial is disputed by Elaine Pagel who is of the view that human rights are a contemporary modern concept and a reaction to contemporary modem upheaval.[13]

Gordon S. Wood reports that Lynn Hunt in supporting the above assertion, posits that "human rights require three interlocking qualities: rights must be *natural* (inherent in human beings), *equal* (the same for everyone) and *universal* (applicable everywhere)."[14] Lynn Hunt cited the French Revolution as a reaction to events of the time, all of which contributed to the emergence of human rights.[15] She discusses how the revolutionaries' ideas were influenced by Enlightenment thinkers and how the Declaration of the Rights of Man and Citizen in 1789 became a foundational document for human rights.[16]

However, whatever the views of scholars, the overwhelming necessity for the enhancement and promotion of human rights was a response to the humanitarian horrors of the First World War and the atrocities of the Nazi regime like the slaughtering of about six million Jews during the Second World War and treatment of prisoners of war and stateless persons. These horrors and atrocities more than anything else shocked the world to the realities of human rights and the need to secure and protect them. According to Olajide Olakami,[17] the inclusion among the purpose of the United Nations of the respect for human rights and the fundamental freedoms for all ... was due above all to the events which occurred immediately before, and during

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[8] Ratified on 19 April 1991. Nigeria has also signed the two Optional Protocols related to this Convention; The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed conflict and the Optional Protocol to the Convention on the Rights of the Child against Sale of Children, Child Prostitution and Child Pornography, both signed on September, 8, 2000.

[9] Art. 16, African Charter on Human and Peoples' Rights (1981).

[10] Art 16 (2), *ibid*

[11] O Eze, *Human Rights in Africa* (Macmillan Press Lagos 1984) 5.

[12] Kirsten Sellers, *The Rise and Rise of Human Rights* (Sutton Publishing Limited, Phoenix Mills 2002) 18.

[13] E Paine, 'Human Rights: Legitimizing a Recent Concept' The *Annals of the American Academy of Political and Social Science,* [1979] (442) (1) 58.

[14] G S. Wood, 'Natural, Equal, Universal' *The New York Times* [2007] < Inventing Human Rights: A History - Lynn Hunt - Books - Review - The New York Times (nytimes.com)> accessed on 7 August 2024

[15] L Hunt, *The French Revolution and Human Rights:A Brief History with Documents Second Edition* (Bedford/St Martin's 2016) < https://archive.org/details/frenchrevolution0002hunt/page/n1/mode/2up> accessed on 7 August 2024

[16] *Ibid*

[17] O Olakanmi, *Handbook on Human Rights* (Lawlords Publications 2006) 2.

the Second World War. This and other human right clauses in the United Nations Charter reflected the reaction of the international community to the horrors of the war and the bestiality of the regimes which unleashed it. Generally, the First and Second World Wars left no one in doubt that there is need to protect and promote human rights for the sustenance of global peace. Furthermore, Enyeting,[18] corroborates the above opinion that the events of the two world wars more than anything else spurred the United Nation to take concrete steps for the promotion and protection of the rights to life and other human rights in very practical ways as evidenced in the drafting and adoption of the Universal Declaration of Human Rights and numerous other international conventions all geared towards the promotion and protection of human rights globally.

Again, it has been argued that the Universal Declaration of Human Rights (UDHR) is one of the greatest achievements of the United Nations as it set forth a global standard for the awareness of fundamental freedom for all without distinction as to nationality, race, sex, language, religion or ethnicity.[19] Bracey,[20] on the other hand is of the view that the UDHR was one of the finest ideas to come out of the Second World War, but she criticized the UDHR for lacking the force of law. An analysis of the aftermath of the UDHR shows that it wields tremendous and far-reaching influence on international conventions, national constitutions, municipal legislation and court's decision and global culture to date.[21]

The effect of the UDHR is unquantifiable as there is hardly any national constitution today that is not directly or indirectly influenced by the provisions of the UDHR. In furtherance to the foregoing, the United Nations from time to time takes steps to enhance the relevance of the provisions of the UDHR. In fact, Olajide Olakanmi[22] stated that in one of its resolutions in 1965, the United Nations invited all governments to include in their plans for economic and social development measures directed towards the achievement of further progress in the implementation of human rights and fundamental freedom proclaimed in the Universal Declaration of human rights.

However, as noted by Bracey, the UDHR lacks the force of law, but the ICESCR and ICCPR which were derived from the UDHR are international treaties and therefore binding on countries that signed them including Nigeria.[23] Like the ICESCR and ICCPR, Nigeria had ratified several international conventions including the Convention on Elimination of All forms of Discrimination against Women, the United Nations Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights (African Charter). The implication of ratification of a charter or convention was succinctly stated by the court of appeal in the case of *Fawehinmi v Abacha*[24] to mean that the Nigerian Government is willing to apply and enforce the provisions contained therein.

3. CIVIL AND POLITICAL RIGHTS

Civil and political rights refer to those classes of rights that protect individuals from infringement by governments, social organizations, and private individuals and which ensure one's ability to participate in civil and political life of the society and state without discrimination or repression. Karel Vasak referred to these class of rights as "the first-generation rights,"[25] because they were the first set of rights to be recognized. These set of rights are so firmly

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[18] P Enyeting, *Human Rights and the Niger Delta Question* (Gaba Graphics 2009) 169.
[19] O Olakanmi, *op cit*.
[20] B Dorothy, 'Human Rights', *Encyclopedia of Crime and Punishment* (2002) <http://www.sage- reference.com/crime punishment/Article n220.html> accessed 8 December 2015.
[21] *Ibid.*
[22] O Olakanmi, *op cit*.
[23] B Dorothy, *op cit*.
[24] (1998) 1 HRLRA 459.
[25] O Umozurike, *The African Charter on Human and Peoples' Rights (*Martinus Nijhoff Publishers 1997) 29.

established that no serious government can claim to be unwilling or unable to enforce them.[26]

The civil and political rights incorporate the primordial rights of man and, in the main, require governments to abstain from undue interference with them. They may only be interfered with to the extent that is absolutely necessary for public security and welfare.[27] Some of these civil and political rights are restricted while others are not. For instance, Article 2 of the African Charter provides for the right to non-discrimination whether based on race, ethnic group, colour, sex, language, religion, birth, national or social origin, fortune, or other status. However, this does not include special protection or support reasonably necessitated by sex, age, etc, provided it gives the necessary advantage to the target group and for the period that is reasonably necessary.[28] Another unrestricted right is the right of equality before the law and equal protection by the law irrespective of colour, status, religion, etc. Other civil and political rights as contained in the Nigerian Constitution include the right to personal liberty,[29] right to fair hearing,[30] right to private and family life,[31] right to freedom of thought, conscience, and religion,[32] and right to freedom of movement.[33]

On the other hand, some rights may be derogated from, abridged, limited, or suspended under certain circumstances. In international and municipal laws, it is acknowledged that certain rights are not absolute but may be qualified in certain conditions.[34] The Universal Declaration of Human Rights provides the following:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.[35]

Consequently, the right to life and integrity are subject to law or may be denied in circumstances prescribed by law. Section 33 of the Nigerian Constitution provides that:

> Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Hence, most African states prescribe the capital punishment for offences like murder and treason.[36]

4. SOCIO ECONOMIC AND CULTURAL RIGHTS

Indeed, whereas the civil and political rights were traditionally recognized, economic, social, and cultural rights emerged in the early part of the 20th century. Thus, the Constitutions of Mexico 1917, Russian Soviet Federative Socialist Republic 1918, Weimer (German) Republic 1919 and Ireland 1937 provided for them. [37] One of the goals of the UN, stated in Chapter IX of the UN

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[26] *Ibid.*
[27] *Ibid.*
[28] See generally, the Constitution of the Federal Republic of Nigeria, 1999 (as Amended), s 45.
[29] Ibid, s. 35.
[30] *Ibid,* s. 36.
[31] *Ibid*, s. 37.
[32] *Ibid* s. 38.
[33] *Ibid*, s. 41.
[34] International Covenant on Civil and Poitical Rights, art. 4.
[35] Universal Declaration onHuman Rights, art. 29 (2)
[36] The Criminal Code Act, Cap C. 38, Laws of Federation of Nigeria 2004, ss 37 and 319. The Penal Code, originally Cap 89, Laws of Northern Nigeria, 1963; but now, e.g., Penal Code,Cap 89, Laws of Kano State, 1963, Law No 228, ss. 221 and 411.
[37] V Katashkin, 'Economic, Social and Cultural Rights' in U Umozurike, *The African Charter On Human and Peoples Rights* (Martinus Nijhoff Publishers 1997) 45.

Charter on International Economic and Social Cooperation, is the achievement of higher standards of living, full employment, and related standards.[38]

Generally, the UDHR provides for these rights as an aspiration for all states and in 1966 the International Covenant on Economic, Social and Cultural Rights made them legally binding on the parties but allowed a progressive implementation. In Nigeria, the socio-economic rights are provided for in Chapter two of the 1999 Constitution as fundamental objectives and directive principles of state policy; in fact, section 17(3) a-h provides for the provision of adequate means of livelihood, good and healthy working conditions, adequate medical and health facilities, and a good salary for workers, etc.

However, the problem with this provision is that these rights are made non-justiciable and as such unenforceable.[39] The effect of this is that Nigerians cannot seek to enforce their health rights under the 1999 Constitution since the presence of these rights in the constitution is merely for decoration and of no consequence in real legal sense. This is because, while the first generation of rights generally requires government to abstain from undue interference with the liberty of the subject, the second generation of rights calls for definite action, forward planning, and expenditure of resources to make its enjoyment possible. It gives substance to the first generation of rights, to which it is clearly related and social justice is indeed impossible if the second generation of rights is not available[40]

5. FUNDAMENTALS OF THE RIGHT TO HEALTH IN NIGERIA

The source of human rights generally can be traced back to the Magna Carta of 1215 and the Bill of Rights of 1689.[41] But the right to health is a relatively new legal concept, borrowed from inspirational terms of international human rights instruments and of evolving philosophies of distributive justice.[42] In Nigeria, health right can be said to date back to the acceptance of Sir. Henry Willink's Commission's Recommendations on Human Rights Constitutional Conference which formed the basis of Chapter III of the Independence Constitution of 1960 and the Republic Constitution of 1963.

According to Babalola, the beginning of health schemes in Nigeria is traceable to the emergence of the National Development Plan in the 60s through the 70s which made provisions geared towards integrating health with other social services.[43] The Nigerian Government in 1988, introduced National Health Policy and Strategic Framework which was aimed at achieving Health for all Nigerians. Indeed, the policy seeks to improve the health of all Nigerians through devising a sustainable health system based on focusing attention on Primary Health Care (PHC) that promotes, protects, prevents, restores, rehabilitates as well as ensures a solid and productive society for all individuals.[44] This policy was subsequently revised in 2004. Presently, all socio-economic rights are classified under the Fundamental Objectives and Directive Principles of State Policy.

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[38] V Katashkin, *ibid*, 46.

[39] S, 6 (6) (c) of the 1999 Constitution

[40] C Oputa, *Human Rights in the Political and Legal Culture of Nigeria (*Nigeria Law Publications Ltd Lagos *1998)* 39.

[41] K Young, 'The Comparative Fortunes of Right to Health: Two Tales of Justifiability in Columbia and South Africa', *Harvard Human Rights Journal* [2013] .(26) 180.

[42] A Babalola, '2011 Health Scheme Development' *Proceeding at SIDCAIN Conference at the Diabetes and Hypertension Center University Teaching Hospital Ibadan*, [2012]

[43] H Ben and S Akpan, 'Causality between Poverty, Health Expenditure and Health Status: Evidence from Nigeria' *European Journal of Economics Financial Administrative Sciences*, [2010] (27) 121.

[44] O Nnamuchi, 'The Right to Health in Nigeria' [2010] <(4) (PDF) The Right to Health in Nigeria (researchgate.net) > accessed 8 August 2024.

5.1 Health as a Human Right

The human right to health entails that everyone has the right to the highest attainable standard of physical and mental health which includes access to all medical services, sanitation, adequate food, decent housing, healthy working condition, and a clean environment.[45] This translates to the following:

i. The human right to health guarantees a system of health protection for all;
ii. Everyone has the right to the health care they need and living conditions that enables him to be healthy, such as adequate food, housing, and a healthy environment; and
iii. Healthcare must be provided as a public good for all, financed publicly and equitably.

In fact, the human right to health care means that hospitals, clinics, medicines, and doctors services must be accessible, available, acceptable and of good quality for everyone, on an equitable basis, where and when needed. The design of health care system must be guided by the following key human rights standards:

a) Universal Access: Access to health care must be universal and guaranteed for all on an equitable basis. Health care must be affordable and comprehensive for everyone, and physically accessible where and when needed.
b) Availability: Adequate health care infrastructure like hospitals, community health facilities, trained health care professionals; goods like drugs, equipment; and services like primary care and mental health must be available in all geographical areas and to all communities.
c) Acceptability and Dignity: Health care institutions and providers must respect patients' dignity, provide culturally appropriate care, be responsive to needs based on gender, age, culture, language, and different ways of life and abilities. They must respect medical ethics and protect confidentiality.
d) Quality: All health care must be medically appropriate and of good quality, guided by quality standards and control mechanism and provided in a timely, safe, and patient-centred manner.

Furthermore, the right to health also entails the following principles, which apply to all human rights:

a) Non-Discrimination: Health care must be accessible and provided without discrimination (in intent or effect) based on health status, race, ethnicity, age, sex, sexuality, disability, language, religion, national origin, income, or social status.
b) Transparency: Health information must be easily accessible for everyone, enabling people to protect their health and claim quality health services. Institutions that organize, finance, or deliver health care must operate in a transparent way.
c) Participation: Individuals and communities must be able to take an active role in decisions that affect their health, including in the organization and implementation of health care services.
d) Accountability: Private companies and public agencies must be held accountable for protecting the right to health care through enforceable standards, regulations, and independent compliance monitoring.

Furthermore, it must be noted that right to health is protected in a number of international documents, for instance, Article 25 of the Universal Declaration of Human Rights; Article 16 of the African Charter on Human and Peoples' Rights; Article 12 of the International Covenant on Economic, Social and Cultural Rights; Article 24 of the Convention on the Rights of the Child; Articles 12-14 of the Convention on the Elimination of all Forms of Discrimination Against Women. Indeed, the Constitution of the World Health Organization defines the right to

[45] *Op. cit.*

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 provision of social measures to ensure adequate health.

6. MATERNAL MORTALITY IN NIGERIA

Maternal mortality represents deaths to women that occur during the reproductive process, meaning during pregnancy, childbirth or within 42 days of termination of a pregnancy.[46] Maternal mortality has also been defined as the death of a woman while pregnant or within 42 days of the termination of the pregnancy (via birth, miscarriage or abortion), from any cause related to or aggravated by the pregnancy or its management.[47] The most common cause of maternal deaths include: severe bleeding (haemorrhage) during or after birth, indirect causes aggravated by pregnancy (such as anaemia and malnutrition, malaria, hepatitis, or complications from (HIV/AIDs) infection, complication from unsafe abortion, obstructed labour, and eclampsia. Additionally, it is estimated that for every woman who dies from pregnancy - related causes, approximately thirty are injured or disabled; common results include infertility, infection and obstetric fistula,[48] while the socio economic results include grieving children and husband, loss of family income, children growing up without affection of the mother and increase in the chance of newborn death among others.

On the other hand, maternal mortality ratio is the number of women who die from pregnancy-related causes or within 42 days of pregnancy termination per 100,000 live births. Maternal deaths are largely preventable, and 90% take place in developing countries. In Nigeria, the maternal mortality rate ranges from 300 per 100,000 live births in the southwestern Nigeria, to over 1, 200 per 100,000 in the northeast of the country.[49] Generally, the report put the country MMR at 1,100 per 100,000 live births in 2005. The World Health Organization, UNICEF, UNFPA and the World Bank reports show that the maternal mortality ratio (MMR) for developing region is 15 times higher than developed region. Sub- Saharan Africa accounts for 56 per cent of global maternal deaths. The lowest rate of 37 deaths per 100,000 live births occurs in eastern Asia. At the country level, Nigeria accounts for 14 per cent (40,000) of global deaths, behind India at 19 percent (making one third of the global total).[50] Most labour related deaths are attributable to delays in recognizing the problem and deciding to seek care, in reaching a health institution capable of addressing the complication, and in obtaining proper care, once the health facility is reached.

The causes of maternal mortality are varied and extend from medical to socio economic and cultural factors. In between these factors lies the fact of ignorance as it denies victims of knowledge of family planning and access to safe abortion service. It also denies victims of pregnancy related health solutions. The WHO has stated that: "Maternal mortality is an indicator of disparity and inequality between men and women and it is a sign of women's place in society and their access to social health and nutrition services and economic opportunities."[51] The WHO additionally notes that, "the poor health and nutrition of women and the lack of care that contributes to their death in pregnancy and child birth also compromise the health and survival of the infants and children they leave behind".[52] The *WHO* position clearly captures the

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[46] C Buster, 'Free Medical dictionary'< http://www.thefreedictionarv.org> accessed 8 December 2015.
[47] K Burnett, 'The Role of International Law in Reducing Maternal Mortality' <*http://www. impowr.* orq> accessed 11 December 2015.
[48] *Ibid.*
[49] Report of Vision 2020 of the Federal Government of Nigeria National Technical Working Group on Health.
[50] *Op. cit*.
[51] WHO Report, 'Trends in Maternal Mortality' (1990-2010).
[52] *Ibid*.

situation in Nigeria where Eyema Atunikwe[53] noted that: "The lives of pregnant women and their unborn children are at risk in Nigeria because maternal services are chronically underfunded ... blood is demanded by hospitals as compulsory donations, patients are given mandatory lists of medical supplies that they must bring with them and hospitals are not equipped to tackle emergencies".

The sorry and disheartening state of maternal care further noted[54] is that in some communities in Nigeria, pregnant women, just hours from giving birth travel unprotected on motor bikes instead of ambulances. Other women go around maternity wards begging for money to pay hospital fees. The report also noted that about 59,000 Nigerian women die every year during pregnancy and childbirth. In a sad commentary, Odimegwu Onumere[55] raised the rather pathetic question – "who will save the pregnant Nigerian women in Nigeria from dying through avoidable deaths?" This question indicates that maternal mortality is a big problem besetting the Nigerian families, not only the women. According to the commentator, "It was appalling to note that about 10% of 600,000 women that died in 2008 from maternal related cases worldwide are Nigerian women."[56]

The United Nations Population Funds (UNFPA) report states that the maternal mortality rate worsened from 1,350/100,000 live birth in 2003 to 1380/100,000 in 2006. The report noted that the root cause of maternal mortality is due to weak and poor primary health care system in Nigeria as very few health centres can boast of competent staff in an organized environment with every drug and equipment in place.[57] This poor facilities problem is evidenced in the case of late Gani Fawehinmi, who was wrongly diagnosed of cold whereas cancer of the colon was actually discovered overseas as the cause of his ailment.

Globally, an estimated 287,000 women die of pregnancy related cases in 2010, perhaps a decline of 47 per cent from 1990 levels. Sub Saharan Africa and South Asia account for 85 per cent of those maternal deaths. At the country level, India and Nigeria accounted for a third of global maternal deaths, with India at 19 per cent (56,000) and Nigeria 14 per cent (40,000)[58]. The report also notes that every two minutes a woman dies of pregnancy-related complication, like severe bleeding after childbirth, infections, high blood pressure during pregnancy and unsafe abortion.

However, it is heartening to note that there has been significant improvement in health care of pregnant women which has resulted in deaths cuts by half over the past decade. Improving maternal health is one of the thirteen targets for the Sustainable Development Goal 3 (SDG-3) on health adopted by the international community in 2015. Whilst the SDGs include a direct emphasis on reducing maternal mortality they also highlight the importance of moving beyond survival.[59] Hogan report further notes that in addition to improvement in health system, factors outside the health sector such as increase in female education and increased physical accessibility to health facilities could be contributory.[60] The Millennium Development Goals report of 2011[61] indicates that improvement in the past two decades is

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[53] E Atunikwe, 'Broken Promises, Human rights, Accountability and Maternal Deaths in Nigeria', *in* Alicia Yamin, (ed) *Beyond Compassion: The Central role of Accountability in Applying a Human Rights Framework to Health* [2008] (10) HHRJ, 7.

[54] *Op. cit*.

[55] O Odimegwu, 'Maternal Mortality in Nigeria' [2015] <http://www.nigeriavillage.com> accessed 11 November 2018.

[56] *Ibid*

[57] M Hogan, 'Marternal Mortality: A Systematic Analysis of Progress towards Millennium Development Goals 1980-2008' *The Lancet Science Direct*, [2010] (375) 1609.

[58] *Ibid.*

[59] WHO 'Marternal Mortality' <WHO-RHR-19.20-eng.pdf> accessed on 8 August 2024

[60] M Hogan, *op cit.*

[61] *Ibid.*

due largely to the proportion of deliveries attended by skilled health personnel in developing regions arising from 55 per cent in 1990 to 65 per cent in 2009. The report continued that the rapid roll-out of antiretroviral therapy in sub – Saharan Africa to HIV-positive women, from 10 per cent in 2000 to 55 per cent in 2010 improved the chances of surviving the additional demands of pregnancy in Sub-Saharan Africa.

6.1 Causes and Risk Factors of Maternal Mortality

Before discussing the causes and risk factors of maternal mortality, it is ideal to note that the high number of maternal deaths in some areas of the world reflects inequities in access to health services and highlights the gap between rich and poor. Almost all maternal deaths (94%) occurred in low-income and lower-middle-income countries, and almost two thirds (65%) occurred in the World Health Organization (WHO) African Region.[62] The cause of maternal mortality is an outcome of nexus interaction of a variety of factors namely the distant factors (socio-economic, cultural) which act through the proximate or intermediate factors (health and reproductive behaviour, access to health services) and in turn influence outcome (pregnancy complication, mortality).[63] This follows other models which have their basis on the premise that social and economic determinants of mortality operate through a common set of biological mechanism and proximate determinants to exert an impact on mortality.[64] The health behaviour is the action that people take or do not take for their health, e.g., attending antenatal care or seeking help when complications arise. Reproductive behaviour includes issues like age, birth spacing, wontedness of pregnancy, etc. Access to health services is a concept ranging from whether adequate facilities exist (adequate supplies, personnel, good quality care) and if people can reach the service provided (cost, distance, and information).[65]

Some of the direct medical causes of maternal mortality include- haemorrhage or bleeding, (23%) sepsis (17%) unsafe abortion (11%) hypertensive disorder and obstructed labour (11%). Other causes include ectopic pregnancy, embolism, and anaesthesia related risks. Also, conditions such as anaemia (11%) diabetes, malaria (11%), sexually transmitted infection (STIs) including HIV/AIDs and others can also increase a woman's risk for complication during pregnancy and childbirth and this are indirect causes of maternal mortality and morbidity.[66] Other known causes of maternal mortality in Nigeria include lack of access to essential obstetric care, lack of access to family planning counselling and services, lack of drugs, equipment, essential materials, instruments, and consumables in Hospitals, non-availability of health workers on essential duties, deficient transportation, communication, and utility (Power, water etc). Most maternal deaths occur during delivery and during the postpartum period.[67]

Furthermore, a number of studies have shown that certain groups of women are at increased risk of maternal mortality than others. They include:

A. Too young -15 years and be low.
B. Too old - 35 years and above.
C. Too many -having 5 or more deliveries.
D. Too frequent - having spacing of their deliveries less than two years apart.
E. Too sick - Pregnancies contraindicated or at a very high risk of life.

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[62] WHO 'Marternal Mortality' <WHO-RHR-19.20-eng.pdf> accessed on 8 August 2024

[63] E Campbell, 'Maternal Mortality an Assessment'<tp://www4.ncsu.edu/awmede/links/papers> accessed 24 November 2018.

[64] *Ibid*.

[65] World Health Organization Report 2001.

[66] *Op. cit.*

[67] C Onyemenam, 'Factors Responsible for High Infant and Maternal Mortality in Nigeria: A Case Study of Abakaliki Ebonyi State.' <http://www.acticle.ng.com/factor-responsible- high -infant-maternal - mortality - Nigeria> accessed 30 November 2018.

Indeed, data generated by audit and other studies[68] reveal the leading causes of maternal mortality and morbidity as composed of medical, socio economic and health system-related factors. The fact that most deaths occur amongst low-income women with little or no formal education and adolescent girls locked in child marriage, reveal that multiple forms of discrimination underline these deaths.

6.2 The Major Causes of Maternal Mortality

(a) Medical Causes

Medical factors constitute the major causes of maternal mortality in Nigeria. These factors range from haemorrhage or bleeding, infections, unsafe abortion, hypertensive disorders, and obstructed labours. In Nigeria, in addition to the above, anaemia, malnutrition, malaria and HIV/AIDs constitute indirect medical causes. Anaemia is a condition associated with poor nutrition, leads to several fold increase in the risk of mother dying in childbirth. The prevalence of anaemia in female in India has been noted by UNICEF to be as a symptom of gender - based discrimination in access to food nutrition and health care. Complication from unsafe abortion accounts for a significant proportion of maternal deaths in Nigeria. The global average is 13 percent.[69] Most women in Nigeria are unable to obtain legal abortion for multiple reasons, including prohibitive cost and lack of information. As earlier argued, these conditions are largely preventable and treatable if detected on time, but corruption and ineptitude on the part of government officials most times result to unavailability of drugs and facilities to tackle their medical problems when they arise leading to the death of Nigerian women and high maternal mortality rate in the country.

b. Socio-Cultural Factors.

Socio-cultural factors relate to low status of women (gender disparity in education, access to productive resources, etc), harmful traditional practices, malnutrition, ignorance, etc. In fact, early marriage accounts for about 23% of maternal mortality due to haemorrhage resulting from obstructed and prolonged labour. The narrow pelvis of these women may also result to *fistula* and often still births.

c. Poor Family Planning/Unsafe Abortions

This accounts for at least 13% of all maternal deaths. If people are not aware of good contraceptive methods, there will be a lot of unwanted pregnancies among the young age group. This most often leads to unsafe abortions with its resultant infections, haemorrhage and injuries to the cervix and uterus.[70]

d. Economic Factors

Economic factors relate to the fact that most women have less access to productive resources, poverty, malnutrition, etc. Indeed, a higher incidence of mortality and morbidity is found to occur among women and girls who are poor or of low income.[71] These groups belong to the less educated and socially disadvantaged communities. Pregnant women living with HIV/AIDs experience an increased risk of pregnancy related fatalities due to out-right discrimination coupled with malnutrition occasioned by poverty.

Poor women are more susceptible to maternal death and morbidity than those economically

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[68] C Meera, 'Better Reproductive Health for Poor, Women in South Asia/ [2007] <http://www-wds.world bank.Org/servlet/main Menu PK = 641877510> accessed 13 November 2018.

[69] *Ibid*

[70] *Ibid*

[71] D Bracey, *Human Rights*, *Encyclopaedia of Crime and Punishment* (2002) <http://www.sage-ereference.com/crime punishment/Article n220.html> accessed 8 December 2018.

well off. Of the 595 million of the world's poor that live in south Asia, 455 million are in India, hence they have the highest maternal mortality rate in the world.[72]

e. *Illiteracy*

Lack of proper education has been noted by experts as one of the most important indicators of women's status related to maternal mortality. Female education and female literacy rates are strongly correlated to high rates of maternal mortality around the world[73]. Lack of education adversely affects women's health by limiting their knowledge about nutrition, birth spacing and contraception[74]. This is particularly evident in Nigeria where a woman's level of education strongly correlates to many indices of maternal health, including fertility rate and utilization of pre-natal care. Most illiterate women see no need to attend *ante natal* clinic for check-ups and end up being rushed to the hospital when complications arise.

6.3 Effects of Maternal Mortality

Maternal death without doubt is associated with considerable grief and depression. It also directly affects child survival as it increases the chances of new born deaths by 2-4 times.[75] The loss of a woman in the prime and productive part of her life also adversely affects family income and increase the social and economic burden on the man and children, indeed women's economic contribution is essential to reducing poverty in Nigeria, and projected losses from maternal mortality death on the national economy over a 10 year period (2001 - 2010) are estimated at about 38 Billion Naira.[76]

7. JUSTIFIABILITY OF HEALTH RIGHTS UNDER THE NIGERIAN CONSTITUTION

The term "justifiability" is generally understood to refer in rights faculty to be subjected to the scrutiny of a court of law and other judicial entities. A right is said to be justifiable when a judge can consider this right in a concrete set of circumstances and when this consideration can result in the further determination of these rights significance.[77] Chapter 2 of the 1999 Constitution of Nigeria provides for economic and socio-cultural rights, save that same Constitution made the said rights non-justifiable and as such unenforceable. Hence, economic, and social rights as provided in the Constitution are mere decoration and of no effect.

According to Kaase, arguments on the debate of non-justifiability and justifiability raised in opposition and for judicial enforcement of social rights are manifold. One of the arguments is that the separation of powers in a democratic government require the judiciary in performing its functions to restrain from intruding on the governmental functions assigned to other branches of government and this has been argued for and against by several authors.[78] Generally, the implementation of economic, social and cultural rights is viewed to be costly since this class of rights are understood as obliging the state to provide welfare to the individuals.[79] The consequence is that Nigerian public hospitals are grossly underfunded and health services are

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[72] M Chryssa, 'Female Education and Maternal Mortality: A Worldwide Survey' [2006] <http://www.sOgc.org//ogc/obstructs/ful/2006> accessed 11 November 2015.

[73] *Ibid*.

[74] K Arambuko, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Right* (Pennsylvania Press 2001) 280.

[75] *Ibid*

[76] *C* Onyemenam, 'Factors Responsible for High Infant and Maternal Mortality in Nigeria: a case study in Abakelike Eboni State.'< http://acticleng.com/factorsresponsible-high-infant-maternal-mortality-Nigeria> accessed 30 November 2015

[77] C Kaase, 'The Justiciability of Social Rights: Myth or Reality' *Human Rights Review*, [2010] (1) *4.*

[78] O Okeowo, *Economic, Social and Cultural Rights: Rights or Privileges? (Law* Legends &Company *2010)* 114.

[79] E Edwin, 'Bringing Human Rights Home: An Examination of the Domestication of Human Right Treaties in Nigeria', *Journal of African Law,* [2007] (1) 51.

not properly managed which has resulted in a comatose state of health infrastructure in the country.

The situation found in Nigeria is that whereas the World Health Organization recommends that government should spend a minimum of $34 per capita on health annually for low-income countries, Nigeria on the other hand has been spending $2 - $5 per capita on health grossly below the recommended minimum.[80] The non-justifiability of economic and socio-cultural rights in Nigeria remains an admitted aberration considering the huge deposit of natural and human resources in the country. The major problem with regard to the implementation and enforcement of economic and social rights as enshrined in the ICESCR is that such implementation is dependent upon the resources available to the state party.[81] Thus these rights are limited by lack of resources. However, our position is that Nigeria has enough financial muscle to implement the requirements of socio economic and cultural rights save that the nation's economy is bedevilled by massive corruption.

8. RIGHT TO HEALTH AND MATERNAL MORTALITY

This study shows that one can use the legal framework of the right to health to address the problem of maternal mortality as a basic human right. The problem of maternal mortality throws up the fact that we can use the framework on right to health generally to hold government accountable to address the problem of maternal mortality. As has been noted, health matters are treated in the Constitution of the Federal Republic of Nigeria 1999 (as amended) as a social objective and therefore non-justifiable. For instance, section 14(1) provides that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice while section 14(2) b states that the security and welfare of the people shall be the primary purpose of government. On the other hand, section 17 (3) (d) states that the state shall direct its policy toward ensuring that there are adequate medical and health facilities for all persons. From the provisions of sections 14 and 17 of the Constitution stated above, it is clear that while government recognized the right to health as a duty, that duty, however, is trivialized and made caricature of by its non-justifiable nature. It follows therefore that the right of victims of maternal mortality is non justifiable and therefore unenforceable. In the absence of enforceable laws on health all we have in the country are health policies.

In 1988 for instance, the Nigerian government formulated a health policy and strategy with the objective of achieving health for all citizens by the year 2000. The policy also recognized primary health care as defined in the 1978 Declaration of Alma-Ata as an integral part of the 1988 National Health Policy. It was stated in the policy that the minimum level of primary health services must include maternal, family planning and child care.[82] The next policy recognizes that maternal mortality rate in Nigeria is amongst the highest in the world.[83] Furthermore, the Revised National Health Policy of 2004 targets the reduction of maternal mortality by three-quarters, by the year 2015. It was made to address the short comings of the 1988 policy mentioned above and it clearly identified the absence of a law on the health sector as a limitation on the capacity of the policy. Its objective was to strengthen the national health system such that it will be able to provide effective, efficient, quality, accessible and affordable health services that will improve the health status of Nigerians through the achievement of health-related Millennium Development Goals (MDGs). More importantly, the policy recognizes health and access to quality and affordable health care as a human right. It also recognizes good quality health care through cost- effective interventions as a priority health problem.

Indeed, the Revised National Health Policy of 2004 was designed to address numerous *lacunas*

[80] Report on Nigeria National Health Policy and Strategy to Achieve Health for All, (1988) 7.
[81] Art. 2, ICESCR
[82] Federal Ministry of Health (Nigeria) Health Sector Reform Programme Report (2005).
[83] Integrated Maternal Newborn and Child Health Strategy Report (IMNCH) (2007).

in the health sector, including the following viz:

a. Constitutional deficiency on health rights.
b. Poor/inadequate budgetary allocation to the health sector.
c. Poor access to emergency obstetric care.
d. Poor awareness on utilization of family planning services.
e. Poor access to post abortion services.
f. Lack of training for health-care personnel in reproductive health.

The document emphasized the importance of providing a comprehensive health policy based on affordable health services and transparency, but the problem is that it is only but a policy and as such, where the government of the day fails to implement same, there is no remedy for the citizens. The second problem with the 2004 Revised National Health Policy is that it failed to identify corruption as a serious bottleneck to the attainment of health rights in Nigeria, and this is considered as a major flaw considering the fact that while the health policies abound with good intentions, corruption on the part of government officials and medical officials plays a major part in hindering any progress in the health sector.

Furthermore, the Federal Ministry of Health also developed the Integrated Maternal New Born and Child Health Strategy in 2007.[84] One of the major objectives of the policy was to address yearning gaps in managing maternal services. The above policies were reinforced by the vision 2020[85] report of the federal government which recognized funding as the main challenge to the Nigerian health sector. The core objective of the report is to strengthen the primary, secondary and tertiary health care facilities. The report also targets maternal and child health, reduction in the maternal mortality ratio and infant mortality ratio. However, as earlier noted in this article, no matter how commendable and laudable a policy may be, they cannot guarantee the right to health until there is constitutional amendment which fully makes the right to health as well as all other socio-economic rights enforceable.

9. ESSENTIAL ELEMENTS OF THE RIGHT TO HEALTH

It has been stated that the right to health is comprised of four interrelated and essential elements that are often used as standards to access the provision of health services-availability, accessibility, acceptability, and quality.[86]

A. Availability

For health services to be available, state parties must provide, in sufficient quality, functional health facilities, goods and services, as well as programmes. Availability includes adequate provision of essential drugs as defined by the WHO Programme on essential drugs, necessary to save the lives of women during pregnancy. It includes availability of experts on maternal matters and other activities that impact on health care like clean water and sanitation, literacy information on sexual and reproductive health, nutrition etc.

B. Accessibility

This includes non-discrimination in service delivery to all, physical accessibility of health services, economic accessibility, and information accessibility on health. Reducing maternal mortality depends on making health services more accessible. The Committee on Economic Social and Cultural Rights (CESCR) has expressed concern about the particularly high rates of maternal mortality among rural women and those who are poor and belong to indigenous communities. The CEDAW committee has noted that a high maternal mortality rate is

[84] Vision 2020 National Technical Working Group on Health Report (2009).
[85] K Burnett, 'The Role of International Law in reducing Maternal Mortality <*www.* impowr.org> accessed 11 December 2015.
[86] CESCR. General Comment *14, note 212, para* 129(d).

indicative of a state's failure to ensure access to health care for women.[87]

C. Acceptability

Under the right to health, state parties are obligated to ensure that health facilities, goods and services must be respectful of medical ethics and be culturally appropriate as well as being designed to respect confidentiality and be sensitive to gender requirements. This includes ensuring the availability of female providers and directors where their absence may deter women from seeking health care.[88] The CEDAW committee has explained the concept of acceptability services as those that are delivered in a way that ensures that a woman gives her full informed consent, respect for her dignity and guarantees her confidentiality and is sensitive to her needs and perspective.[89]

D. Quality

An essential component of health services requires states to ensure that health facilities, goods and services must be scientifically and medically appropriate and of good quality. UN agencies have noted that: One of the critical pathways of reducing maternal mortality is improving the accessibility, utilization, and quality of services for the treatment of complications during pregnancy and childbirth[90]

10. WHY THE RIGHT TO HEALTH?

Indeed, health and well-being are deeply personal matters. Nothing is more intimate than the experience of conceiving and bearing a child, and giving birth to a unique human being; none of us can live another's fears or pain; and death itself is something we cannot share, however real the grief we suffer.[91] However, it is precisely when we or those close to us face illness or chronic suffering that we perceive that health is in reality a very public issue. Policies which dictate what level of health care provision is guaranteed, what kinds of service will be offered, how priorities are established between competing claims, where resources are concentrated and what alternatives are available all become far more immediate when they affect us or our loved ones.[92]

Consequently, facing a particular health related condition, and then being on the receiving end of the decision or prejudices of others, be they health professionals, religious institutions, family members, neighbours, employers or insurance companies -is something that often gives us a new awareness of how limited our capacity to control some of the most central aspects of our lives is and it gives us an insight into what exclusion feels like.

Economic policies that result in the underfunding of public services and the fragmentation of the regulatory role of government tend to reduce the threshold of what is considered an acceptable minimum standard of health care provision for the population at large. Access to health care becomes dependent on the individual's capacity to pay; patients are turned from citizens who have rights and responsibilities into clients or consumers. Consequently, a human rights approach to health is critical to address growing global health

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[87] CEDAW Committee, Gen. Rec. 24 < htt://www.unhil.un.edu/ilp/anaeme.htm>. Accessed 11 December 2015.
[88] *Ibid*.
[89] *Ibid*.
[90] C Onyemenam, 'Factors Responsible for High Infant and Maternal Mortality in Nigeria: a case study in Abakeliki Eboni State.'< http://acticleng.com/factorsresponsible-high-infant-maternal-mortality-Nigeria> accessed 30 November 2015.
[91] Onyemenam Chibundu, 'Factor responsible for High infant and maternal mortality in Nigeria: a Case Study in Abakelike Ebonyi State. <http://acticle n.g.com/ factor responsible- high -infant - maternal -mortality - Nigeria> accessed 30 November 2015.
[92] Leslie London, 'What is a Human Rights Based Approach to Health and does it Matter?' (2008) vol. 10 *HHRJ*. 65.

inequalities.[93] According to Leslie, three aspects of the nature of health as a right are relevant to shaping human rights approach to health and include:

1) The indivisibility of civil and political rights and socio-economic rights.
2) Active agency by those vulnerable to human rights violations.
3) The powerful normative role of human rights in establishing accountability for protections and freedoms.

Health professional practice typically governed by ethical codes, may benefit from human rights guidelines, particularly, situations of dual loyalty where clients or communities human rights are threatened. Moreover, institutional accountability for protecting human rights is essential to avoid shifting responsibility solely unto the health professionals.[94]

According to Leslie, human rights approach to health includes the following:

a. Holding states and other parties accountable;
b. Developing policies and programs consistent with human rights.
c. Facilitating redress for victims of violations of the right to health.

However, underlying all models is the need to enable active social mobilization without which legal approaches to rights lack sustainability and power. New approaches to health policy development which draw on the agency of vulnerable groups, link local struggles with their global context and explicitly incorporate rights frameworks into public health planning are needed.[95]

11. CONCLUSION AND RECOMMENDATION

The truth is that we live in an increasingly globalized environment characterized by growing tensions between our technological capacities and the abilities of our social policies to meet basic health needs. While humankind stands at the cusp of mapping the human genome, with all its implications for generating wondrous new technologies for human health, less than 40% of all births in less developed countries are attended by skilled health professionals.[96] Indeed the failure of a state to establish accountability mechanism and procedures for seeking legal remedies for preventable maternal deaths violates the obligation to guarantee legal remedies for violation of health rights. The CEDAW committee has explicitly noted the obligation of states to respect, protect and fulfil women's right to health care, which include the responsibility to put in place a system that ensures effective judicial action.

Therefore, this study recommends an amendment of the Constitution to accommodate right to health as a fundamental human right and thus, justiciable. Availability of resources is not a barrier to Nigeria's attainment of their economic and social responsibilities to her citizens. Studies have shown that Nigeria is endowed with abundant mineral and natural resources to care for her citizens.[97] Section 6 6 (c) of the Nigerian constitution provides for the justiciability of matters in the Chapter 2 of the Constitution once it is otherwise provided for in the constitution.

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[93] *Ibid*.
[94] *Ibid.*
[95] Basu Paul, 'Technologies that Deliver' (2003) in Leslie London "What is a Human Rights Based Approach to Health and does it Matter" (2008) 10 *HHRJ* 65.
[96] *Ibid.*
[97] E D Brown and S Kakain, 'Natural Resource Abundance and Economic Growth in Nigeria (1980-2015)' *European Centre for Research Training and Development UK (www.eajournals.org)* [2017] (5) (3).1-11 <Natural-Resource-Abundance-and-Economic-Growth-in-Nigeria1980-2015.pdf (eajournals.org)> accessed on 8 August 2024