

A HOLISTIC APPROACH TO REPRODUCTIVE HEALTH

INTRODUCTION

1. The World Health Organisation (WHO) gives a working definition of the term sexual and reproductive rights as *“the highest attainable standard of sexual health, including access to sexual and reproductive health care services.”*
2. However, at the 1994 International Conference on Population and Development in Cairo and the 1995 Fourth World Conference on Women, held in Beijing, the definition of WHO was built upon and reproductive health was 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 reproductive systems and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicitly in this last condition, are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and child birth and provide couples the best chance of having a healthy infant”, paragraph 94.*
3. Furthermore, the Cairo Programme of Action clearly spells out the concept of reproductive rights in its Chapter 7 which states in part that such rights “rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of reproductive and sexual health. It also includes the right of all to make decisions concerning reproduction, free of discrimination, coercion, and violence as allegedly expressed in human rights documents.
4. *Article 10* of the International Covenant On Economic, Social And Cultural Rights (ICESCR), 1966 states thus:

“Article 10 –

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Whilst Article 12 of that Covenant states thus:

“Article 12-

The states parties to the present convention recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by the States parties to the present convention to achieve the full realization of this right shall include those necessary for:

The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.

The improvement of all aspects of environmental and industrial hygiene;

The prevention, treatment and control of epidemic, endemic, occupational and other diseases.

The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

5.a) In the event, whereas the proponents of the philosophy of alleged right to have access to the information and means needed to enable a woman make voluntary choices in pursuit of the exercise of control over her sexual and reproductive life, including a pregnant woman having the right to an abortion in exercise of her control over her sexual and reproductive life, the cross-cutting issues and groups in focus, in relation to Articles 10(2) & 12 of the Covenant, which stipulates special protection to mothers during a reasonable period before and after childbirth, with paid leave and social benefits as well as reduction in the rate of still births, the issues and groups to be emphasized must necessarily include, pre-natal and post-natal care, safe delivery, as well as prevention and treatment of reproductive tract infections and sexually transmitted diseases.

5.b) A combined reading of Articles 12 and 10(2) of the Convention does not define Sexual and Reproductive Health Rights in the context of a right to abort or not abort a child. Rather those Articles dwell on the rights and benefits which should be accorded to expectant and nursing mothers and their rights to adequate healthcare services for themselves and their children.

6. A recent Report released by Dr. Nafis Sadik, the Executive Director of the UN Population Fund, Claims that:

- An estimated 1,600 women die every day from complications caused by pregnancy and child birth, 99% in developing countries.
- Each year, approximately 2 million girls are at risk of female genital mutilation.
- About 70,000 women die every year from unsafe abortions, and many more suffer infections and other consequences.
- Women are more likely than men to contract HIV through sexual encounters and about 42 per cent of all persons infected with HIV are women.
- Fifty-one percent of all pregnant women suffer from iron-deficiency anemia.
- In many countries of South Asia, Africa, Latin America, and the Middle East, one-third to one-half of women are mothers before the age of 20.
- Cancer of the cervix, the most common form of cancer in developing countries, is often linked to the sexually transmitted human papilloma virus.
- Domestic violence, rape and sexual abuse are a significant cause of disability among women.

It is clear from this, that women and children are the most vulnerable members of the society and that abortion and sexually transmitted diseases, such as HIV & AIDs, are threatening human existence.

- 7.a)** What some member states have done in tackling this problem is to make States Policy that provides free Medical care during a reasonable period before and after child birth. Indeed some Non Governmental Organisations have taken it upon themselves to disseminate information, conducting Seminars and Workshops to educate pregnant mothers on steps to take and all incidentals to safe delivery.
- 7.b)** The lack of proper medical facilities, especially in Developing Countries of the world must be addressed. There seem to be many hospitals which in actual fact are just buildings without proper facilities to ensure the safety of mothers who go in there. It is also noteworthy to state that even in the few hospitals which have the required facilities, the requirement that a particular amount of money be deposited before the commencement of treatment automatically excludes the poor from attaining the required medical intervention.
- 7.c)** International efforts should intensify, in order to increase cooperation between United Nations Agencies, Non-governmental Organisations and Human Rights Treaty Bodies to better promote, implement and monitor health-related issues. Besides, state parties should be encouraged to assist in the maintenance of children of large families and make laws which out law discrimination on the grounds of pregnancy.
- 8.** The decision to terminate a pregnancy, most often, is a heart -wrenching decision, which sometimes results in a mental repercussion for the woman involved. It is not a proposition to be made casually by men and feminist proponents who do not have to feel the full force of a decision to terminate the life of ones own unborn child. We should rather propose ways of reducing the incidences of women who are involved in what they will later term “an unwanted pregnancy and feel the need for abortions” by educating them on the correlation between freedom and responsibility.
- 9.a)** The proponents of the philosophy of sexual and reproductive Health Rights have hinged their argument on the basis of the health of the woman, and have sought to canvass for such right to be entrenched as a fundamental human right.

However, this philosophy has failed to meet the criteria to qualify as a basic human right to the extent that it infringes on the fundamental right to life of the women’s unborn child.

- 9.b)** The right to sexual and reproductive health exists especially for the benefit of every single mother and child on earth. Although the right of the mother is not in dispute and generally accepted, that of the child is still a subject of intense debate, particularly because of the question bothering on “*when a*

human being becomes a person”, to be entitled to the various UN and State Conventions and similar States Laws and provisions.

WHEN DOES A HUMAN PERSON BEGIN?

- 10.a)** There have been both legal and logical arguments on the exact moment a person is said to have attained humanity, in order to benefit from the various Universal Declarations, Conventions and Laws enshrined in the UN Conventions and State Laws.

The crux of the debate often centers on whether a human person begins at conception, following fertilization, or at some other stage during the development of the embryo in the uterus or even after birth.

As complex as the debate on the beginning of the human person is and it has polarized the opinions of Philosophers, Bioethicists and Theologians, we need to determine the first point in the development of the human being, so that we can begin to view it as a person worthy of a measure of respect and protection.

- 10.b)** For a long time, the dominant doctrine about the beginning of human personhood was that of successive ensoulment, proposed by *Aristotle* and subsequently defended by many medieval Philosophers. On this view, there are two distinct forms of conception, active and passive. The former occurs at fertilization, the latter the moment the child is said to have cognitive capacity, takes place only after the first few weeks of birth.

However, the fundamental question is: what does science (biology) say about the beginning of the human being. Whilst some Scientists attribute human personhood at fertilization, others insist on other stages after fertilization.

- 10.c)** Generally speaking, of all the theories on the subject, e.g. philosophical, moral and scientific perspectives, the most popular theory of the beginning of personhood is that of “*immediate humanization*”, which states that rational ensoulment takes place at conception. This means that the human being is a person from the moment of fertilization when the sperm penetrates the ovum.

Following the fusion of their pronuclei, the mixing of the maternal and paternal chromosomes, the zygote that results is a human being or person with its own unique genetic code. It has an intrinsic dignity and possesses a moral significant life with a right to life and inviolability, irrespective of the stage and quality of its development.

- 10.d) Teena Justice said as quoted by the Lexington Herald: “I saw my daughter’s first child during an ultrasound when she was 7 months pregnant and he was sucking his thumb. How was something that’s not a something sucking its thumb?”

GLOBAL ACCEPTANCE AND RECOGNITION OF THE INHERENT DIGNITY AND HUMAN RIGHTS OF THE HUMAN PERSON.

- 11.a) There is generally, a global acceptance of the recognition of the inherent dignity and human rights of the human person.

The accepted position of the United Nations League of member-Nations; according to Principle 1, ICPD Programme of Action, is that “all human beings are born free and equal in dignity and rights. That everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without *distinction* of any kind, such as race, creed, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person.”

A wide range of actors and legal mechanisms form an interconnected network of support for protecting human rights. This network includes the Family, the Schools, Public Institutions, the Private Sector, the Media, Multilateral and Bilateral Organisations, NGOs, Communities, Associations, Leaders and Political Parties, Civil Society, International Organisations as well as Religious Leaders all playing a critical role in educating individuals and persons about the rights they are entitled to and helping them to exercise them for their individual enjoyment and complete formation as a rational being.

- 11.b) On the 10th day of December 1948, the Universal Declaration of Human Rights was proclaimed and adopted by the United Nations General Assembly. Over the years, the Declaration has not only inspired Constitutions of many Independent States and Democracies, it has now become a yardstick by which we measure respect for what we know, or should know, as right and wrong.

On the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, Secretary General of the UN, Ban Ki-Moon, in his Publication titled “*Dignity and Justice for all of us*”, said as follows:-

“It is our duty to ensure that these rights are a living reality - that they are known, understood and enjoyed by everyone, everywhere. The

Declaration exist for the benefit of every single human being on earth, particularly those most in need of protection of their human rights.”

12. By virtue of the Declaration of the Rights of the Child, given on 20th November 1959, the following provisions are instructive:

Principle 2 –

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In enactment of laws for this purpose, the best interest of the child shall be the paramount consideration.

Principle 4 –

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, **including adequate pre-natal and post-natal care**. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 6 –

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; and a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 8 –

The child shall in all circumstances be among the first to receive protection and relief.

13. The International Covenant on Civil and Political Rights 1966, is very specific about the right to life and states clearly in Article 6 that

“Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life”.

This definition includes an unborn child, as a foetus or embryo (as some proponents of the law would prefer to call the unborn child) is a human being, given the fact that the cells which constitute a foetus or embryo grows into a human being, if it survives. It should therefore be accorded dignity as such.

Indeed Article 6 (1) of the Convention on the Rights of the Child recognizes that every child has the inherent right to life, and Article 6 (2) provides for States Parties to ensure to the maximum extent possible, the survival and development of the child. It is argued that this “maximum extent possible” condition can only be satisfied where such protection commences at the conception of the child.

This philosophy and value runs through the Universal Declaration of Human Rights, and is clearly stated in Article 3, thus “Everyone has the right to life, liberty and security of person, without exception or discrimination as to “status”, whether born or unborn. This essence is evident in Article 5 of the African Charter on the rights and welfare of the child which requires member states to provide adequate resources to ensure the survival of the child.

THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC), 1989

14. Article 2 (1) provides:

State Parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, **birth or other status**.

Article 2 (2) -

States Parties shall take all appropriate measures **to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status**, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3 (1) –

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child shall be a primary consideration**.

Article 3 (2) –

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 4

State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

15. In Nigeria for instance, the Constitution of the Federal Republic of Nigeria, 1999, Chapter IV, Section 33(1) states as follows: ***“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.”*** and in compliance with Article 4 of the Convention on the Rights of the Child, Sections 3,4 and 17 of the Child’s Right Act (CRA) 2003 provides as follows:

Section 3 –

A child is entitled to all the fundamental human rights as listed in the Nigeria Constitution including right to private and family life.

Section 4 –

Survival and Development – The right to continue to live and grow well.

Section 17 –

Rights of the unborn child - a child has the right to seek relief against any person for harm done to him or her before, during or after he or she was born.

Thus according to the provisions of Section 17 of the Child’s Right Act (CRA) 2003 the un-born child has the right to seek relief for harm done to him/or her before, during or after delivery.

16. And in recent years, states in the United States of America have expanded the debate on Fetal rights to include the issue of fetuses killed by violent

acts against pregnant women. In some states, legislation has increased the criminal penalties for crimes involving pregnant women. These laws have focused on the harm done to a pregnant woman and the subsequent loss of her pregnancy. Legislations have defined the fetus as a person under fetal homicide or “feticide” laws such as the Fetal protection Act, the preborn Victims of violence Act and the Unborn victim of Violence Act. Currently, at least 38 states of the USA have fetal homicide laws. Out of which at least 21 states have fetal homicide laws that apply to the earliest stage of pregnancy.

17. Thus some jurisdictions in the world have given legal interpretation to the word child/or person to include an un-born child. Consequently, an unborn child should be entitled to protection of law, even from his/her parents.
18. As indicated in the Declaration on the Rights of the Child, “the child , by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before* as well as after birth”.

CONCLUSION

19. Whilst we agree, with the following postulations:- Beijing Para. 89 – That women have the right to the enjoyment of the highest attainable standard for physical and mental health, that the enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life and that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

Para. 92 – That women’s right to the enjoyment of the highest standard of health must be secured throughout the whole life cycle in equality with men;

Para. 96 – That the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence,

20. It is our considered opinion that the principle proclaimed in the Charter of the United Nations, recognizing the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, applies to persons, both born and unborn. The rights of adults stop where the rights of the unborn child begin.
21. The taking of human life has been strongly condemned by most world religions and philosophies over the centuries. International Human Rights

law should continue to uphold this most sacrosanct of human rights, and ensure that it is not taken away arbitrarily, even by a mother of her unborn child, in an attempt to exercise her “reproductive right” which must be limited by the right to life of her helpless unborn child, who needs the state and its laws to preserve his/her survival and development.

22. Everyone should have the right to the enjoyment of the highest attainable standard of physical and mental health on a basis of equality of men and women and universal access to health-care services, including those related to reproductive health care. Couples and individuals who decide freely to engage in sexual activities should responsibly bear the consequences of a pregnancy. The information, education and means for attaining the highest attainable standard of physical and mental health should include being helped to take responsibility for one’s actions. The approach should be holistic, taking into consideration the rights of the unborn child, the connection between individuals and endeavour to create a dynamic of accountability.

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