

Barriers to a Rights-Based Approach to Fertility Control in Nigeria: Implications for the Country's Development

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Discussing population growth management in Nigeria is largely viewed as politically incorrect. Whilst this research reiterates the rancorous circle which poverty casts on Nigeria's all-round efforts in managing her Total Fertility Rate; inclusive of social, environmental, cultural, political and economic insecurities which strongly affect women negatively, it negates the nature of a so-called absolute right to have as many children as we want, and identifies the need for a workable population programme and policy framework which must be rights-centered, promote sustainable development and enhance individual growth. In extending submissions with a view to overcoming challenges posed to a rights-based approach to fertility control, this paper draws out existing barriers to any practicable population management framework that can apply to our nation without profound frustration in our system, consequent impracticality or ultimate abandonment of such policy or programme.

1. Introduction

Up to a point, population growth can be accommodated, but the goal of development extends beyond accommodation of an ever-larger population; it is to improve people's lives. Today, only the roughest forecasts of population trends in the Third World are warranted. In much of the Third World there is either no registration of births and deaths or a very incomplete one. Estimates of the population of African countries differ by as much as a third or more; for populous countries such as Nigeria, this discrepancy means tens of millions of people.¹

Status and reproduction are tightly woven dynamics. Reproductive autonomy cannot exist in a vacuum. Neither can enhancement of women's status achieve reductions in birth rates unless broad reproductive choices are available.² The concepts of bodily integrity and personhood, while often seen as the hallmarks of Western liberal philosophy and the value it places on individualism and property ownership, are firmly ensconced in international human rights instruments and various regional human rights conventions and reaffirmed in the 1994 International Conference on Population and Development (ICPD) POA.³ This research delves into the nature of procreative rights, population control and existing barriers to international, regional and locally acclaimed rights-approaches to population control.

2. The Complex Nature of Rights-Based Population Policies

The decisions of how many children to have and when to have them are two of the most fundamental and consequential decisions of anybody's life. It affects people's health and education, and can influence their participation in economic, social and political life, their earnings and their living standards.⁴ Population factors are sometimes seen as inhibitors of sustainable development.

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¹ Bauer, P. T., 'Population Growth: Disaster or Blessing?' [1998] (3) (1) *The Independent Review*, 67 at 73

² Abrams, P., 'Reservations About Women: Population Policy and Reproductive Rights' [1996] (29) (1) *Cornell International Law Journal*, 1 at 12

³ See generally, Petchesky, R. P., *Reproductive and sexual rights: Charting the course of transnational women's NGOs* (United Nations Research Institute for Social Development Geneva, Occasional Paper, No. 8, 2000)

⁴ UNFPA, *Population Matters for Sustainable Development* (New York, UNFPA, 2012)

Demographic factors combined with poverty and lack of access to resources in some areas, and excessive consumption and wasteful production patterns in others, cause or exacerbate problems of environmental degradation and resource depletion and thus inhibit sustainable development.⁵

Proposing a set of policies and measures that create benefits for an entire population is not an easy task, and interventions often have adverse effects on certain groups⁶ and entail risks of collateral damage, negative externalities or dangerous consequences. The central issue of population policy is whether individuals and families and national and international authorities should decide how many children people may have. Advocates of officially sponsored population policies often argue that they do not propose compulsion but intend only to extend the options of people by assisting the spread of knowledge about contraceptive methods.⁷

Sustainable human development is pro-nature, pro-jobs, pro-education, and pro-women. It stresses growth, but growth with employment, growth with environmental friendliness, growth with empowerment, growth with infrastructural and technological balance, and growth with equity. This relatively new orientation has produced concepts such as people-centered development, participatory development and sustainable human development.⁸ Human-centered and rights-based policies, including access to sexual and reproductive health care, education beyond the primary level and with a focus on girls, and the empowerment of women, as well as social and economic development, make a world of difference.

Efforts to these ends are matters of rights and contribute to an improved quality of life.⁹ In this work, several constraining factors are identified, as we need to look into education,¹⁰ and development, and we need to teach population too. But education is probably not enough. Habits are hard to change, and the habit of thinking of something as harmless is particularly hard to get over.¹¹ A constant increase in the use of resources just isn't possible on a finite planet. Not everyone is happy with the Nigerian economy as it is working now, given the increasing inequality we see between the rich and the poor, but even those who think it functions well must admit that it cannot keep running the same way. Just as the vicious circle of poverty continues, if we have more children than necessary based on a right to procreate, we continue to weave a ruinous web which even political advancement, social and economic development and cultural/religious literacy may not break.

3. Do We Have a Right to More Children in Nigeria?

When we claim something as a right we need to justify that claim, and we simply cannot justify the claim that we have a right to have as many children as we want when that will be as harmful to others as this much overpopulation is bound to be. We claim moral rights sometimes just because we want something a lot but wanting something and having a right to it are not the same thing. The fact that there is a justified claim to food, though, does not mean we all can claim a diet of lobster, turkey, and champagne, no matter how much we might prefer that. Similarly, for education, we think there is a right to education, but that does not mean that everyone has a right to go to Harvard or Oxford, or a right to be maintained by others in the study of biogenetic, for all of life. Similarly, for children, some people think that having a child is necessary for a decent life, and let us say, for purposes of argument, that most people need the experience of childbearing and childrearing to have a decent life. It does not follow from that, that one has a right to as many children as one may want, any more than the right to food gives one a right to champagne at every meal.

A family with one, two or three children is just as much a family as a very large family. Any parent with one child experiences both the cares and rewards of childbearing and childrearing. The fact that one would like more does not mean we have a right to more. Here, we say that respect for our autonomy as persons gives us the right to do certain things. We say, that we have a right to freedom of speech, but we know that there are limits to it all. Do we then have a right to have as many children as we want, arising from our general right to live autonomously?

⁵ United Nations, *Population, Environment and Development: The Concise Report* (New York, United Nations Publication, 2001) 4

⁶ United Nations UCLAC, *Population, Territory and Sustainable Development* (New York, ECLAC 2012) 21

⁷ Bauer (n1) 76

⁸ P. Ezeah and Others, 'Challenges of National Population Census and Sustainable Development in Nigeria: A Theoretical Exposition' [2013] (18) (1) *Journal of Humanities and Social Science (IOSR-JHSS)*, 50 at 52

⁹ UNFPA (n4)

¹⁰ Manning, A., 'Population and Sustainability: The Most Inconvenient Truth' [2016] (1) (1) *The Journal of Population Matters*, 30

¹¹ *Ibid.*, 31

We often have a right to do things that are somewhat harmful (saying cruel things, for instance) but we do not have the right to do things that are devastatingly harmful. Right now, having more than three children to our minds, in today's Nigeria is just that: a world of 11.2 billion is a world of climate change, water shortages, soil depletion, rights-claiming corruption, overcrowding, species extinction, insufficient food etc. It is too harmful to be something we have a right to do. But what can we do? We often do not see how we can stop people from having too many children in Nigeria.

There are disadvantages to any kind of child policy.¹² It would involve personal losses, disappointments, sex selection in procreation of the sort that will lead to a society that may be disproportionately male, and the loss of the larger family one may have wanted, and the loss of siblings, are real losses to some persons. There will be parents who would be happier with more children, and children who would be happier with many siblings (as well as parents and children who would not be any happier with more children). For some families, adoption may be possible, but of course with a smaller number of children in the Country in the long run, even this would not be feasible for everyone.¹³ The Chinese one child policy famously led (at least sometimes) to forced abortions and forced sterilizations, and people rightfully see these as violating the right to bodily integrity. These are legitimate concerns. Sex selection is something we want to avoid.¹⁴ When women (girl child) are not allowed to earn as much as men, and do not have equal status with men, they will naturally be the second choice for many people. This can gradually change too. When women have equal standing, there is less preference for males.

So, if there is no morally permissible way to prevent people from having more than a specific number of children in Nigeria, what is the point of talking about it. Providentially, there are morally acceptable ways to influence people's childbearing practices, but we shall examine the existing barriers to the successful implementation of rights-based population programmes and fertility reduction plans.

4. Understanding the Barriers to Rights-Based Fertility Control

Individual choices and opportunities add up to population dynamics, and population dynamics are best addressed by enlarging, not restricting, individual choices and opportunities; the choice to have less children, driven by the satisfaction derived from a developed society. The rights and policies delineated in the ICPD Programme of Action focus on the empowerment of individuals and societal development. However, existing barriers which may cause lopsided and strewn chances to achieving -to a greater extent, the goals of any form of rights-based population policy in Nigeria are identified amongst others.

4.1 Women, Religion, and Reproduction in Nigeria

In Nigeria, some religions encourage population growth, favoring large families and discouraging the practice of family planning, as most religions allow polygamy or propagate 'at all cost' fertility and of course, a woman who does not want many children may have to bow to the wishes of her husband, while there exist religious objections to abortion. Traditional African religious values have sustained high fertility as they have acted directly to equate fertility with virtue and spiritual approval and associate reproductive failure or cessation with sin, and they have placed both positive and negative sanctions on filial piety and maternal homage to the older generation so that fertility is hardly disadvantageous.¹⁵

¹² Gupta, I. S., *Human Rights of Minorities and Women's: Human Rights and Sexual Minorities* (Vol 4, New Delhi, Isha Books, 2005) 282, 283-285; H. G. Daugherty and K. C. W. Kammeyer, *An Introduction to Population* (2nd ed. New York, The Guilford Press, 1995) 238-243; Barnett, L. D., *Population Policy and the U.S. Constitution* (USA, Kluwer Njihoff Publishing, 1982) 12-14

¹³ Manning (n10) 34; Dillard, C. J., 'Rethinking the Procreative Right' [2007] *Yale Human Rights and Development Law Journal*, 1 at 4-7

¹⁴ Chan, S. W., 'The Forbidden Pregnancy and The Abandoned Children: On Mo Yan's Fiction about The One-Child Policy and Abortion in China' in W. Maierhofer and B. W. Capo's (eds) *Reproductive Rights Issues in Popular Media: International Perspectives* (North Carolina, McFarland & Company Inc. Publishers, 2017) 177

¹⁵ Bibhuti, B. S., 'Understanding Human Rights: Some Issues' in Chaudhary, S. N. (edn) *Human Rights and Poverty in India: Theoretical Issues and Empirical Evidences*. (Vol. III, New Delhi, Concept Publishing Company, 2005) 34; Phillips, D. A., *Nigeria* (Philadelphia, Chelsea House Publishers, 2004) 51-57; Famakinwa, M., 'Controlling Over-Population Via Family Planning' (The Hope, 19 Jul, 2017) <<http://thehopenewspapers.com/2017/07/controlling-population-via-family-planning/>> accessed 10 May 2018; Ehrenreich, N., *The Reproductive Rights Reader: Law, Medicine, and The Construction of Motherhood* (NY, New York University Press, 2008)

Early marriage is sanctioned as a means of increasing population,¹⁶ and children are seen as gifts from the heavens and held to be evidence of masculinity and spiritual fruitfulness. Consequently, shipments of condoms and birth control pills into society does very little. In this regard, the law must function both as norm and process.¹⁷ The knowledge of religious narratives and shaping of realities is pivotal for understanding when religion –whether Islam, Christianity, Judaism, African Traditional Religion, Hinduism, Chrislam, the Grail Movement, Atheism etc., plays a negative and oppressive role, as well as when it inspires people to claim justice and equality; having a fundamental right to religion protected under the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As Amended).¹⁸

4.2 The Status of Women in Society.

Countries and families benefit when women and men have an equal balance of power, privileges, responsibilities, and resources. Gender equality includes equal but equitable access to opportunities, such as education, employment, and representation in leadership. Gender-based violence is a barrier to women’s empowerment in Nigeria. Abused women or girls are at risk of serious social and mental health problems. Employment opportunities increase status, and necessarily decreases the desire to gain status from having children. These employment opportunities must provide desirable jobs. Employers too often use perceived family obligations as a justification for channeling women into low-status, low-paying jobs which offer them little incentive to change their reproductive behavior.

Without significant economic options, women may perceive few alternatives to large families. Gender inequality breeds a constant threat of physical violence against women¹⁹ and a majority of men and sadly, women alike, pretend to be unaware of how pervasive this is. Many societies impose strict gender roles that deprive women and girls of their rights, resources, and decision-making power. While gender push for equality has improved in other regions, progress has been uneven and slow in Nigeria.²⁰

4.3 Limited Access to Modern Family Planning Methods and Maternal Health Services.

Due to cultural and religious sensitivities surrounding family planning, people including the Nigerian lawmakers, tend to become politically correct when population fertility control is discussed. Yet it is unhelpful to shy away from acknowledging the deleterious effects of an uncontrolled population explosion on our ability to plan and manage our limited resources.²¹ It has been argued that the most effective strategy for addressing unmet need is through voluntary, rights-based family planning programmes which will help to ensure that women, men and young people have the right and ability to freely decide the timing, numbers and spacing of their children. But contraceptives do not make childbirth safer for mothers or their children. Reducing unintended pregnancies does not address the inequalities in maternal health that make it unsafe for women to give birth in the first place even if it may reduce overall maternal deaths,²² and Gennarini and Oas express also that women affected by treatable infertility are not receiving the attention they deserve.²³

Traditional methods of birth control are widely practiced in our societies also, whereas condoms, intrauterine devices, and the Pill have so far spread only very slowly or are generally unwanted. This disparity suggests that the demand for modern contraceptives has been small, either because people do not want to restrict their family size or because they prefer other ways of doing so.²⁴

¹⁶ Abrams (n2) 8

¹⁷ *Ibid.*,3

¹⁸ UNFPA, *Women, Faith and Human Rights* (New York, UNFPA, 2016) 36

¹⁹ Domestic violence, rape and other sexual abuses against women, and the girl child; See s 357 Criminal Code Act Cap C39 LFN 2004; *R v Olujojo* (1981) 3 W.L.R. 585

²⁰ M. Graff and J. Bremnera, *Practical Guide to Population and Development*. (Washington DC, Population Reference Bureau, 2014) 13

²¹ ‘The Elephant in the Room: Nigeria’s population growth crisis’ (*Nigeria Health Watch*, 21 December, 2016) <<http://nigeriahealthwatch.com/the-elephant-in-the-room-nigerias-population-growth-crisis/>> accessed 13 February, 2018

²² Hartmann, B., *Reproductive Rights and Wrongs: The Global Politics of Population Control* (Rev. ed. Boston, South End Press, 1995) 57; S. Gennarini and R. Oas, *Securing a Better Future for Mothers in the Post-2015 Development Agenda: Evaluating the ICPD Operational Review* (IORG Catholic Family & Human Rights Institute [CFAM] Group Research) 7-8

²³ Gennarini and Oas (*Ibid.*) 10

²⁴ Bauer (n1) 70

Knowledge of birth control, access to methods and their moral acceptability may constitute an important, independent part of any explanation of fertility decline.²⁵ Also Many family planning programs instead of winning over and involving trusted local healers and midwives and educating them, have alienated them. Modern methods of family planning neglect and disrespect positive local culture; losing the opportunity to build on existing family control practices such as birth spacing, breast feeding and herbal contraceptives, and have failed to address people's other reproductive needs, especially problems of infertility.²⁶

At the same time, poverty fuels overpopulation by depriving women of both the incentive and the means to have fewer children. The accessibility to modern family planning methods is also limited by problems with health sector administration, awareness, distribution, conflict, or affordability. High child mortality rates contribute to women bearing many children, as they will be unsure of how many will survive. Households may rely on the labour of their children as well as future old age benefits and security.²⁷

4.4 Culture and Fertility Control

It is nearly impossible to consider sexual and reproductive health and rights without simultaneously considering the role of culture. Cultural teachings and idiosyncrasies deeply influence personal conduct, especially in the areas of sexuality, marriage, gender, childbearing, and parental-children relationships. It affects public policies through its involvement in political processes and also through the religious and cultural beliefs of political leaders, policy makers, and implementers.

Most of our customs cause a lot of misery and underdevelopment in Nigeria as the laws that produce sexual discriminations are mostly reflected in customs.²⁸ Reproductive autonomy facilitates sexual autonomy for women; an unacceptable outcome in most cultures and religions. The emergence of reproductive self-determination for women is truly a paradigm *theoretical* shift, both in population policy and in the social perception of women. The more complex problem therefore is transformation of the cultural climate to make the exercise of rights available and meaningful to women.²⁹

Patriarchy plays a key role over all aspects of our Nigerian lives.³⁰ The African approach to contraception is problematic. Even where knowledge of a contraceptive method is widespread, actual use of contraceptives is at a relatively lower level. Condoms for instance are unpopular for a number of reasons including diminished pleasure and obstructed fertility. Men are often uncooperative about using condoms, *coitus interruptus* and other methods, more so after consuming alcohol. The male spouse also has a decisive role to play in the decision to use female controlled contraceptives.³¹ Munalula expressed that women have children in order to secure support from their partners who in turn demand children in order to secure control over the woman and justify support rendered.³²

²⁵ Eager, P. W., *Global Population Policy: From Population Control to Reproductive Rights*. (Oxon, Routledge, 2017) 44; Chamie, J., 'Trends, Variations and Contradictions in National Policies to Influence Fertility' in J. Frankie and C. A. McIntosh (eds) *The New Politics of Population: Conflict and Consensus in Family Planning* (New York, Population Council, 1994) 37-50; M. Campbell and K. Bedford, 'The Theoretical and Political Framing of the Population Factor in Development' [2009] *Philosophical Transactions of the Royal Society B*, 3101 at 3106

²⁶ Hartmann (n22) 64

²⁷ Manning (n10) 20

²⁸ Erhun, M. O., *An Appraisal of the Protection of women's Rights under Nigerian Laws in Gender and Power Relations in Nigeria* (USA, Lexington Books, 2013) 61-76 at 68

²⁹ *Ibid.*

³⁰ Munalula, M. M., 'Essential Motherhood: Implications for Law and Population Policy' in Schlyter, A. (edn) *Body Politics and Women Citizens: African Experiences* (Sida, 2009) 70 at 76

³¹ *Ibid.*, 77; Tersbol, B. P., 'How to Make Sense of Lover Relationships Among the Kwanyama People of Namibia' in Tersbol, B. P. (ed) *Gender, Sexuality and HIV/AIDS: Research and Intervention in Africa*. (Copenhagen, Institute of Public Health, 2003) 90; A. Hellum and A. Knudsen, 'From Human Development to Human Rights: A Southern African Perspective on Women and Teenage Girls' Right to Reproductive Choice' in A. Hellum and Others (eds.) *Human rights, plural legalities and gendered realities: Paths are made by walking*. (SA, Harare, Weaver Press, 2007) 334; Kethusegile, B. M., *Beyond Inequalities: Women in Southern Africa*. (South Africa, Sarc, 2000).

³² Munalula (n30) 77

The legal and cultural devaluation of women's reasoning ability creates substantial social ambivalence towards ceding reproductive autonomy to women.³³ Further, the role assigned to women by patriarchal society -essentially of service to family, husband, and children- is antithetical to an image of a woman as an individual entitled to self-determination.

4.5 Informed Consent and Abortion Decision-Making

The African Protocol³⁴ is the first human rights instrument to expressly articulate women's right to abortion in specified circumstances.³⁵ Despite advancement in women's rights, the Nigerian woman's autonomy to decide the number and timing of children she wishes to have seem illusory as Nigeria's two penal laws,³⁶ align their stand on prohibiting abortion.³⁷ Where does self-determinism and respect for individual autonomy come in? Where is the understanding of rational choice and public health?³⁸ There are no general rules for determining when abortion is or is not morally justified.³⁹ Whatever the considerations, the woman is the appropriate judge whether abortion is the response in her given circumstances; the decision which includes her interests, that of the child, a partner, family and complex factors through all possible cases.⁴⁰

By making abortion a crime under ss 228, 229,230 of the Criminal Code Act (CCA), the Nigerian law on Abortion seems set on the way to the desirable ethical protection and defense of the human life from womb to tomb. However, it is clear from ss 308, 228 and 229 CCA that Nigerian law sees life after birth, thus issues of abortion legally do not concern itself to fundamental right to life of the foetus. The tenets of ss 228, 229⁴¹ are overwhelmingly religious. Whatever the choice upon pregnancy, there are ups and downs.⁴² Has the Nigerian society created the legal, environmental, social, medical etc., environments adequate to necessitate well-informed choices against abortion, irrespective of any form of legislative coercion against the act? In Nigeria, abortion is legal only in order to save a woman's life, yet induced abortion is a widespread occurrence.⁴³ In many cases, the burden of caring for children born out of wedlock falls squarely on the shoulders of women, in addition to public ridicule and the loss of social standing in a community that now sees them -but not their sexual partners, as people of questionable character. From Mexico⁴⁴ to Beijing,⁴⁵ down to Nigeria, concerns for violence against women and women's rights have been echoed.⁴⁶ Pregnancy is not a disease, but it can be an illness and it can definitely kill. The abortion debate train is gaining ground in Nigeria.

³³ Abrams (n2) 2

³⁴ Protocol to The African Charter on Human and Peoples' Rights on The Rights of Women in Africa (Maputo Protocol) 2003

³⁵ *Ibid.*, Art 14(2) - the right to decide whether to have children, the number of children and the spacing of children.

³⁶ CCA 2004 (supra)

³⁷ SS 228, 229 CCA; ss 232 PCA. This stance is not peculiar to Nigeria as other African countries such as Egypt and Gabon have laws where abortion to save life or health of the mother is not permissible (from rape, incest or otherwise).

³⁸ See Perry, A., *Sociology: Insights in Health Care* (London, Arnold, 1996) 191-193; Soubbotina, T. P., *Beyond Economic Growth: An Introduction to Sustainable Development*. (2nd ed. USA, The IBRD/THE WORLD BANK, 2004) 53; Hartmann (n22) 243; McBride, D. E., *Abortion in the United States: A Reference Handbook* (California, ABC- CLIO Inc., 2008) 20, 24, 82; Swee-Hock, S., *Population Policies and Programmes in Singapore* (2nd ed Singapore, ISEAS Publishing, 2016) 43-48. South Africa, Cape Verde and Tunisia are African countries with completely liberal laws on abortion, with limits on the gestational age of the foetus at which this can be done. In Ghana, abortion under s 58 Criminal Offences Act 29, 1960 takes into consideration, the life, health and survival of the mother.

³⁹ Whether pregnancy occurred by incest, rape, marital, or is consensual etc.

⁴⁰ Blinded by anger, fear, shame, and shock. See Art. 3, 6 of the United Nations Convention on the Rights of the Child (1989)

⁴¹ Criminal Code Act; See *R v Edgar* (2003) 2 SCR 388; *R v Morgentaler* (1993) 3 SCR 463

⁴² Manifestations of post abortion trauma: depression, guilt, grief, anger, phobias, inability to express emotions, hyper alertness, self -punishment, infertility, premature deliveries, difficult labours etc.

⁴³ N. Haberland and D Rogow, *It's All One Curriculum: Guidelines and Activities for a Unified Approach to Sexuality, Gender, HIV, and Human Rights Education*. (Rev. 1st ed, Vol. 1, New York, The Population Council, Inc., 2011) 217; A. Bankole and Others, 'Estimating The Cost of Post-Abortion Care in Nigeria: A Case Study' in E. Lule and Others (eds) *Fertility Regulation Behaviors and Their Costs: Contraception and Unintended Pregnancies in Africa and Eastern Europe & Central Asia* (Health, Nutrition and Population (HNP) Discussion Paper, Dec 2007) 66

⁴⁴ International Women Year 1975

⁴⁵ 12 critical areas of concern were highlighted at the Fourth World Conference on Women, Beijing 1995, recognising health care, advancement of women, the girl child, violence against women and human rights amongst others.

⁴⁶ See Sandabe A. K., The Offence of Rape in Nigeria: Myths and Realities. [2016] (2) (2) *Port Harcourt Journal of Business Law*; 274

Unsafe abortion is one of the greatest dangers to women's reproductive rights and health and cause of the high rate of mortality in the female adolescent population.⁴⁷ In many corners of the nation, however, abortions are performed by people who lack the necessary skills. The risk is often greatest in rural areas. These deaths are however preventable.⁴⁸ Gennarini and Oas express that suggesting that legal abortion is a panacea for maternal health only clouds the picture when it comes to crafting effective frameworks to reduce maternal and child mortality. Maternal health policies must include access to transportation, decent roads, well equipped medical facilities staffed by competent health care workers, and the right medicines and medical interventions.⁴⁹

We can gauge the level of our preparedness by asking, were we today to secure the liberalization of abortion in Nigeria as we crusade for; are we poised to deal with the paternal rights claims against abortion?⁵⁰ Can we accept that Society can be so redefined (in all context) that pregnant victims of rape would choose to preserve life rather than take it; not being compelled by law, or a moral standard, but because their self-autonomy and dignity would be preserved, nurtured and protected?⁵¹ Would a greater number of Nigerians be relieved from the 'male reasoning' forged by patriarchal sentiments, to respect pro-choices on abortion? Should parents be able to choose the sex of their child, male or female, and be allowed to abort a foetus of 'the wrong sex'? Should abortion ever be carried out on a non-consenting woman e.g. one too young, mentally unstable or in coma?⁵²

4.6 Illiteracy, Poverty and Underdevelopment.

Radical concepts of empowerment are closely related to their challenges to mainstream views of sustainable development, attributing not only poverty and social unrest but also, more recently, environmental destruction to uncontrolled population growth.⁵³ There is hardly a need to stress that education, especially female education, is the most important deterrent to large families besides being a powerful instrument for improving levels of living.⁵⁴ Poverty in Nigeria is not caused by population growth. Economic achievement and progress depend on people's conduct, especially those in authority, and not on their numbers.⁵⁵ Population growth in Nigeria has become a threat to prosperity.⁵⁶ Population trends and dynamics can have an enormous effect on prospects for poverty reduction and sustainable development.⁵⁷ Poverty is influenced by – and influences – population dynamics, including population growth.⁵⁸ The denial of all economic and social opportunities, poor standing in society, lack of education and health facilities, poor housing, electricity, safe drinking water, sanitation, low status of women, and most important, employment lead to conditions that encourage large families.⁵⁹

The question that remains to be resolved is whether it is the high population growth which leads to poverty or is it the poverty which encourages or at least licenses high population growth. This is a debate which is not easy to resolve. The safest statement can be that both should be attacked simultaneously.

⁴⁷ Ayanleye, O. A., 'Women and Reproductive Health Rights in Nigeria' [2013] *OIDA International Journal of Sustainable Development*, 128 at 137

⁴⁸ Haberland and Rogow (n43) 247

⁴⁹ Gennarini and Oas (n22) 4. The results of these improvements include reduction of maternal deaths by all causes, including abortion, as well as benefits to the entire populations of girls and women who are not pregnant, as well as men and boys.

⁵⁰ Atsenwa, A., *Constitutionalism and Legal Feminism: Stepping Stones or Impediments on the Long Road to Freedom for Nigerian Women?* (Lagos, NIALS, 2011) 48

⁵¹ In 2003, the Rivers State Reproductive Health Law NO. 3 of 2003 was passed, providing for new initiatives for addressing issues of reproductive rights including ante and postnatal care, post abortion care for adolescents, counselling services, delivery by caesarean section for adolescents and adult women. See Akinyode-Afolabi, A., 'Women and the Law: New Realities and Development in Nigeria' [2016] (3) *Nigerian Journal of Public Law*; 199 at 225

⁵² Purdy, L., 'Women's Reproductive Autonomy: Medicalisation and Beyond' [2006] *Journal of Medical Ethics*; 287–291.

⁵³ Petchesky (n3)

⁵⁴ Jillani, M. S., 'Population Growth - The Social Development and Poverty Dimension' (4) (1) *The Labore Journal of Economics*, 48

⁵⁵ Bauer (n1) 68

⁵⁶ *Ibid.*

⁵⁷ UNFPA, *Population and Poverty* (New York, UNFPA, 2014) <<https://www.unfpa.org/resources/population-and-poverty>> accessed 7th February, 2018

⁵⁸ *Ibid.*

⁵⁹ Jillani (n54) 50

However, the alleviation of poverty argument has an edge, as its adoption would provide at least the beginnings of a decent living for the poor which would automatically lead to low birth rates.⁶⁰ Investments in better health, including reproductive health, are essential for individual security and for reducing mortality and morbidity, which in turn improve a country's productivity and development prospects⁶¹ as the world population has surpassed the 7 billion mark and is projected to grow to over 9 billion by 2043.⁶² The situation of education in the country is dismal and education has a direct bearing on socio-economic development and family planning attitude.⁶³

4.7 Education and Development in Population Control

Human capital critically depends on investment in education beyond the primary level, but even more fundamentally it begins with investment in health, including sexual and reproductive health. This is particularly true when considering entry points to unleash the economic potential of women and girls.⁶⁴ Nations can raise women's status by educating girls, by enforcing laws that prohibit child marriage, and by improving women's access to credit, information, land, training, jobs and opportunities. Where women enjoy these fundamental rights, smaller (and healthier) families become the norm.⁶⁵ Women's rights and reproductive health are vitally important in their own right, as a matter of public health and social justice.⁶⁶ Another factor is the increase in material wellbeing of some families. When people are materially well off, they give little thought to the number of children to have.⁶⁷ Whereas some others believe the more children, the more the guarantee of better life at old age.⁶⁸

Education is key to engendering inclusivity and a core goal for being ahead of the curve on a lot of changes. It cannot be denied that the entry point to conversations on the Sustainable Development Goals (SDGs) is goal 4; quality education. It is through the actualization of quality education that poverty can be eradicated and then zero hunger can be achieved.⁶⁹ The onus is on the government to revitalize the educational system in the country and provide sustainable funding for the educational sector to achieve the vision of quality education for all by 2030. There is hardly a need to stress that education, especially female education, is the most important deterrent to large families besides being a powerful instrument for improving levels of living.⁷⁰

4.8 Lack of Sexual and Reproductive Health Information and Education.

Reproductive education compared to advocacy and social mobilization for universal basic education is low. Teachers are not adequately trained in the provision of family life education, and programmes are not monitored or evaluated, unlike programmes for universal basic education. Many sexually active Nigerian adolescents and youths have multiple partners; consequently, the incidence of teenage pregnancy and childbearing is high.⁷¹ A major factor associated with poor adolescent reproductive health status is limited knowledge of relevant reproductive health issues, population concerns etc., resulting from limited access to credible sources of information.

⁶⁰ (n54)

⁶¹ UNFPA (n57)

⁶² Albrechtsen, A., *Sustainable Development and Population Dynamics: Placing People at the Centre*. (Statement by UNFPA's Deputy Executive Director of Management, at the Open Working Group on Sustainable Development Goal, 19 June 2013) <<https://www.unfpa.org/press/sustainable-development-and-population-dynamics-placing-people-centre>> accessed 17 February, 2018.

⁶³ Jillani (n54) 47

⁶⁴ UNFPA (n57)

⁶⁵ Mazur, L., *Women's Rights Are Key to Slowing Population Growth*. <<https://grist.org/population/2011-10-03-womens-rights-are-key-to-slowing-population-growth/>> accessed 17 February, 2018.

⁶⁶ *Ibid.*

⁶⁷ Odusina, E. K., *Implications of a Rapidly Growing Nigerian Population: A Review of Literature* <<http://uaps2011.princeton.edu/papers/110048>> accessed 13 February, 2018.

⁶⁸ *Ibid.*

⁶⁹ NNNGO, 'Sustainable Development Goals in Nigeria; Two Years and Counting.' (*Nigeria Network of NGOs*, 26 September, 2017) <<http://nnngo.org/2017/09/26/sustainable-development-goals-in-nigeria-two-years-and-counting/>> accessed 17 February, 2018.

⁷⁰ Jillani (n54) 48

⁷¹ I. N. Isonguyo and A. Adindu, 'Adolescents and Utilization of Family Planning Services in Rural Community of Nigeria' [2013] (3) (1) *Research on Humanities and Social Sciences*, 1 at 3-4

Where women are forced into motherhood, the incidents of dealing with abandoned children and dealing with such children in a cruel and inhuman manner will not cease⁷² as some female victims often feel that their just rage needs to be fittingly discharged. Unfortunately, abortion is often used as a way for the perpetrator to cover up evidence of a rape especially statutory rape against a minor.⁷³ Unwanted pregnancy is a health implication which threatens survival and the right to life.⁷⁴ Laws that criminalize medical procedures that are indicated to save women's lives and health, such as those that strictly prohibit abortion and make doctors that perform terminations criminally liable can function as indirect causes of maternal mortality.⁷⁵ In every action concerning a child, the best interest of the child shall be the primary consideration,⁷⁶ and every woman is entitled to her dignity as expressed in the constitution.⁷⁷ The Child Rights Act 2003 prohibits child marriage or child betrothal,⁷⁸ but in Nigeria practices of child betrothal and marriage are not only welcomed, but such marriages are consummated- with puberty rather than age, as the criterion.⁷⁹

Most schools do not teach population, family life and sexuality education, despite inclusion in secondary school curricula. Parents and other stakeholders tend to withhold reproductive health and sexuality information from young people largely due to traditional and socio-cultural beliefs. Young people have limited access to relevant reproductive health services, and where available, the unfriendly nature of these facilities deters utilization.⁸⁰

4.9 Law, Politics and Population Control

In all areas it is essential that Nigeria eliminates laws, practices and policies that exacerbate inequalities and restrict access to essential services, including sexual and reproductive health services, and that countries take special measures to support the participation of women and young people in social, economic and political life. One of the most critical determinants of the health and wellbeing of people, as well as the empowerment of women and gender equality, is sexual and reproductive health and rights.⁸¹

They include rights to access essential information and services to avoid unwanted pregnancies and go through desired pregnancies and childbirth safely; for young and adult sexually active people they include the right to protect themselves from HIV and other sexually transmitted infections; and for adolescent girls and young women they include the right to avoid harmful practices, early and forced marriage and early pregnancies, which can end their schooling and personal development, and limit their own and their children's prospects of breaking out of poverty. Sexual and reproductive health empowers individuals to make basic decisions about their body, health, sexuality, relationships, marriage and childbearing, and people must be able to exercise these rights. Legal and enforcement measures must protect the exercise of these rights, without any form of discrimination, coercion or violence.⁸² African women's movement identifies with global regime, but Aniekwu observes that 'hers is also a regime that has not quite entered the domain of liberalism and modern sexuality.'⁸³

⁷² Odunsi, B., 'Abortion and the Law' in I. O. Iyioha and R. N. Nwabueze (eds) *Comparative Health Law and Policy: Critical Perspectives on Nigerian and Global Health Law* (Oxon, Routledge, 2016) 197 at 216

⁷³ See ss 218, 221, CCA; ss 31, 21, 22, Nigerian Child Rights Act Cap C50 2003

⁷⁴ Rape threatens work life (e.g. Nigerian Police Regulation 127 of Police Act Cap P19 2004), psychology, education, physical health, self-confidence, sexual and reproductive health, positive attitude to life etc.

⁷⁵ Aniekwu, N. I., *Reproductive Health Law: A Jurisprudential Analysis of Gender Specific Human Rights for the African Region* (1st ed. Benin, Ambik Press, 2011) 169; Donnellan, C., *Abortion* (Issues Series, Vol 71, Cambridge, Independence, 2003) 22

⁷⁶ S 1 CRA 2003

⁷⁷ S 34 CFRN 1999, and so is every girl child; ss 3,11(a) CRA 2003

⁷⁸ SS 21, 22, 23 CRA 2003

⁷⁹ Imagine the attention a complainant would receive at a police station against betrothal of herself at 13 - 17 to a man (old or young), in violation of s 22 CRA 2003. So, we choose in Nigeria, which moral or legal practices stand as ethical and justiciable.

⁸⁰ Isonguyo and Adindu (n71) 5; Ferguson, J. E., *Reproductive Rights* (New York, Chelsea House Publishers, 2009) 72, 82; Soubbotina (n38) 43

⁸¹ Bhatia, K. L., *Textbooks on Legal Language and Legal Writing* (New Delhi, Universal Law Publishing Co Pvt. Ltd, 2010) 428

⁸² UNFPA, *Population Dynamics in the Post-2015 Development Agenda: Report of the Global Thematic Consultation on Population Dynamics* (New York, UNFPA, UNDESA, UN-HABITAT, IOM, 2013) 26

⁸³ See R. Manjoo and Others 'Sexual Violence and the Law: Comparative Legislative Experiences in Selected Southern African Countries' in Lutz Oette (ed) *Criminal Law Reform and Transitional Justice: Human Rights Perspectives from Sudan* (Oxon, Routledge, 2016)

4.10 Governmental Disinclination and Institutional Ineptitude.

The 2004 Nigerian National Population Policy's (NPP) achievements include: mild awareness creation and the use of contraceptives for fertility control, accessibility and availability of modern methods of contraceptives, reduction in infant and child mortality rates, improvement in maternal health, increased awareness on ways to prevent HIV/AIDS etc., but has this caused a reduction in fertility rate after over 14 years of implementation? Corruption, multiculturalism, illiteracy, inadequate resources, lack of political will, lack of incentive, lack of good leadership at the highest levels, insufficient funding for research, and data analysis and dissemination, insufficient public sector funding for carrying out NPP goals, low capacity in advocacy, absence of true and validated baseline data,⁸⁴ ineffective verticalization of the healthcare system, sequential healthcare workers' industrial actions in Nigeria, capacity gaps in the area of monitoring and evaluation; revealing that structures do not exist for review, reporting, and revision as they relate to policies and programmes,⁸⁵ etc., are some of the challenges that caused the ineffectiveness of Nigeria's NPP, driving lifetime childbearing and discouraging the uptake of contraceptives, fueling unintended pregnancies, high-risk births, and (ultimately) maternal, infant, and child mortality, all countering the goals and tenets of the NPP and other Population Control Policies.⁸⁶

5 Reproductive Rights in Nigeria towards Sustainable Development: A Rethink.

Some feminist perspectives have challenged what are sometimes called 'male' forms of reasoning, as they are concerned with how the law operates in practice and not just with what the laws say.⁸⁷ The wish of the great majority of mankind to have children has extended across centuries, cultures, and classes.⁸⁸ Widely held ideas and common attitudes reflect and recognize the benefits parents expect from having children. The practice of adoption in some countries also indicates the desire for children. All this negates the notion that children are a cost or burden.⁸⁹ The relationship between population growth and poverty is a vicious circle. Rapid population growth is an obstacle to economic progress in Nigeria, depriving societies of funds for investment to develop, but slow population growth does not necessarily result in sustainable development (SD), without more.⁹⁰ Thus, there is need to appreciate the following constructively:

- a. Nigerians should recognize their role in rearing a healthy family, developing mores to build human relationships and creating norms of conserving and protecting the environment.⁹¹ The current use of modern family planning methods among women is very low. Aside from increased risks of morbidity and mortality, the curtailment of socio-economic advancement of teenage mothers in the area of educational attainment and accessibility to job opportunities hampers overall development.⁹²
- b. Future population dynamics will be determined by today's policies. Direct policies, however, must be rights-based and gender-responsive. At their core, such policies must ensure the sexual and reproductive rights of women and men, eliminate child marriage, combat gender-based violence, and must meet any unmet demand for family planning. Complementing such policies, governments should promote quality education at all levels, infrastructural development, positive technological practices, income security through the generation of productive and remunerative employment opportunities and ensure that adequate social protection nets are in place.⁹³

⁸⁴ O. O. Oleribe and S. D. Taylor-Robinson, 'Before Sustainable Development Goals (SDG): Why Nigeria Failed to Achieve the Millennium Development Goals (MDGs)' [2016] (24) *The Pan African Medical Journal*, 156

⁸⁵ National Population Commission of Nigeria and Health Policy Project, *Nigeria's 2004 National Policy on Population for Sustainable Development: Implementation Assessment Report*. (Washington, DC: Futures Group, Health Policy Project, 2015) 23-24

⁸⁶ Ezeah and Others (n8) 51

⁸⁷ Herring, J., *Family Law* (4th ed. England, Pearson Education Limited, 2009) 16; Women are kept from transcendence.

'Transcendence' according to Simone de Beauvoir is to reach into the future by pursuing objects that increase freedom. See generally, Beauvoir, S., *The Second Sex* (trans.) C. Borde and S. Malovany-Chevallier (London, Vintage Books, 2009)

⁸⁸ Bauer (n1) 68

⁸⁹ (*Ibid.*) 69

⁹⁰ Gennarini and Oas (n22) 11

⁹¹ Jillani (n54) 49

⁹² Statement by Chief Samu'lla Danko Makama, CONChairman, National Population Commission Item 4, *General Debate on National Experience in Population Matters: Health, Morbidity, Mortality and Development* at the 43rd Session of Commission on Population and Development (CPD) New York, April 13, 2010.

⁹³ UNFPA (n82) 24

- c. As the fiscal environment becomes more constrained, programs may need to develop more diverse sources of financing.⁹⁴ Population can never be ‘managed’ that would violate fundamental human rights, but population can be influenced, indirectly yet strongly. A smart suite of strategies can ease pressure on resources, reduce conflict, and make life more worthwhile.⁹⁵ There is good reason to think, then, that financial, infrastructural and developmental incentives and disincentives would be enough to reduce the fertility rate. When a disincentive is great enough to change our behavior that may strike some as coercive, but again, the pressure here is to prevent us from doing something we do not actually have an absolute right to do, or to continue on a regressive path because we believe we have such right. Would everyone be sensitive to such pressures? Perhaps not, but we should bear in mind that sanctions for undesirable activities are not generally designed to make those actions literally impossible.⁹⁶
- d. We need to get over our fear of the ‘Population’ word and jump-start multiple, coordinated steps that can nudge down the population-growth trajectory in Nigeria. Population policies aimed at increasing family planning should not only be gender responsible but gender supportive policies.⁹⁷ There is also the need for evidence-based programming; using research to understand the needs of intended clientele, monitoring of progress toward program objectives, and evaluation of the program's and policy accomplishments, strong leadership and management of the health system, effective health communication strategies, contraceptive security, high-performing staff, client-centered care, easy access to services, affordable services that target subsidies to low-income users while shifting users who can afford to pay from the public to the private sector keeps services affordable for all clients, appropriate integration of services such as family planning with HIV care or with maternal and child health care etc.
- e. The language of faith matters to many people, if not most, of the world's peoples. It is therefore critical to ensure that there is a time and place deliberately set aside for various faith traditions to engage in serious reflections on the interlinkages between human rights and faith, based on solid theological and sociological knowledge, and grounded in actual experiences in human development.⁹⁸ The foregoing implies that, to have a workable policy, there is a need for qualitative information about Nigeria's societies, as fertility behaviour among Nigerians is substantially pro-natalist; a response to rationality, multiculturalism, religiosity etc., which have posed a great challenge to the success of any form of fertility control approach or population policy.⁹⁹
- f. Proclaiming the end of the population explosion is premature. Likewise, it is mistaken to conclude from aggregate trends and projections that population growth is no longer a serious problem anywhere in the world or that family planning programs are no longer needed in Nigeria. Indeed, much depends on the men in women's lives. The differences in male and female outlooks sometimes get expressed in ugly ways.¹⁰⁰ For such efforts to succeed ultimately, government and leaders must encourage public and policy conversations about slower population growth.

6 Conclusion

Population in Nigeria cannot be managed by private or public organisations institutions or government if there is a continuous failure to take insightful developmental strides. Facts, figures, estimates and truths from this research work shows that the idea of population control is not alien to Nigeria, but what seems intolerable is the discernment that religio-cultural sentimental inhibitions influence procreation negatively. This opens the mind of the reader to the possibility of a country whose development is not merely driven towards economic improvements alone, but to the socio-environmental progress of her people, her government and her future.

⁹⁴ J. DaVanzo and D. M. Adamson, ‘Family Planning in Developing Countries: An Unfinished Success Story’ (*RAND*, 1998) <https://www.rand.org/pubs/issue_papers/IP176/index2.html> accessed 10 May, 2018

⁹⁵ Engelman, R., ‘Africa's Population Will Soar Dangerously Unless Women Are More Empowered’ (*Scientific American Earth*, February 1, 2016) <<https://www.scientificamerican.com/article/africa-s-population-will-soar-dangerously-unless-women-are-more-empowered/>> accessed 10 May, 2018; DaVanzo and Adamson (*Ibid.*)

⁹⁶ Manning (n10) 32

⁹⁷ Ten Elements of Family Planning Success (*K4Health*; May 30, 2013) <<https://www.k4health.org/topics/ten-elements-family-planning-success>> accessed 10 May, 2018

⁹⁸ UNFPA (n18) 6, 34

⁹⁹ T. O. Michael and M. A. Odeyemi, ‘Nigeria's Population Policies: Issues, Challenges and Prospects’ [2017] (15) (1) *Ibadan Journal of the Social Sciences*, 104 at 106

¹⁰⁰ Engelman (n95)

Progressive nations desire to rise above cultural, social, political, environmental, economic, gender inhibitions and the Nigerian people are open to treads of greatness, of development and sustainability. Nigeria needs a new approach to slowing its population rise, to preserve peace and security, improve economic development and protect environmental sustainability. And the world needs to support such efforts. We need to recognize that those who have more children than necessary, when they could do otherwise are doing something they do not have an absolute right to do, and the consequences are nationally ruinous.