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Access to Menstrual Hygiene Products in Nigeria: A Call for Legal Reforms

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Abstract

Menstrual hygiene products, such as pads and tampons, are essential items for women and girls to manage their monthly menstrual flow. However, in Nigeria, an estimated 37 million women and girls suffer from period poverty, struggling to access or afford these vital products, as well as pain medication and suitable underwear.[1] The lack of access to affordable menstrual products forces many women and girls to resort to unsafe and unsanitary alternatives, such as old clothes, rags, sawdust.[2] These materials are not only unhygienic but also environmental unfriendly. The unaffordability and inaccessibility of menstrual products combined with the stigma surrounding menstruation, have far reaching negative consequences for women and girls, severely limiting their participation in public life. Using doctrinal research methodology, this paper examined the need of establishing a legal framework to guarantee access to menstrual hygiene products in Nigeria. The paper revealed that the lack of access to menstrual hygiene products has significant impacts on the health and well-being of women and girls. Establishing a legal framework to guarantee access to menstrual hygiene products would be a crucial step towards improving the lives of women and girls in Nigeria. By addressing this critical issue, Nigerian can make significant progress towards promoting gender equality, protecting public health and supporting sustainable development.

Keywords: menstrauation, menstrual hygiene product, period poverty, Nigeria

1. Introduction

Menstruation, a natural and essential part of human life, has been shrouded in misconceptions and stigma in developing countries, particularly in Nigeria.[3] Effective menstrual hygiene management is a critical issue for women and adolescent girls, especially in rural areas where access to modern facilities is limited by various factors, including cultural myths and misconceptions surrounding menstruation.

In recent years, government worldwide has recognized the importance of addressing the challenges surrounding menstrual hygiene and has implemented policies and regulations to make menstrual products more affordable, accessible and safe. Effective policies have complemented broader efforts to expand knowledge and information on menstrual health and hygiene, helping to overcome stigma and taboos.

Globally, proposals to reduce or eliminate taxes on menstrual products or their inputs have gained momentum. Countries have taken different approaches to address this issue. For instance, Bangladesh temporarily removed the value-added tax on raw materials to boost local production of these products. Kenya began removing taxes on menstrual products in 2004, and by 2016, it had removed VAT on imported menstrual products as well as on the raw materials for their production. Similarly, Nigeria removed VAT from locally manufactured menstrual products.

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[1] Z B Ibrahim, 'Nigerian activists take on period poverty'<https://www.gavi.org/vaccineswork/nigerian-activists-take-period-poverty>accessed 24 May 2024.

[2] E S□nchez & L Rodriguez, 'Period Poverty: Everything You Need to Know, Global Citizen' <https://www.globalcitizen.org/en/content/period-poverty-everything-you-need-to-know/> accessed 24 May 2024

[3] Z B Ibrahim, 'Nigerian activists take on period poverty'<https://www.gavi.org/vaccineswork/nigerian-activists-take-period-poverty> accessed 24 May 2024

Moreover, countries such as Malaysia, Lebanon, Tanzania, Ireland, Colombia, and Mexico have completely removed VAT on menstrual products, setting a positive precedent for others to follow.[4]

Although, Nigeria removed Valued-Added Tax from locally manufactured menstrual products, the lack of access to menstrual hygiene products remains a pressing issue in the country, with far-reaching consequences for the health and well-being of women and girls. In the absence of a legal framework ensuring access to menstrual products, many women and girls are unable to obtain the necessary supplies to manage their menstruation, leading to poor health outcomes, economic hardship and feelings of shame and isolation.

2. Conceptual Clarification of Terms

Menstrual Products[5]

Menstrual products are product used by women during their monthly flow. They are of many types and will be discussed herein.

a. **Period pads**: They are strips of padding that have a sticky side you attach to your pants to hold them in place. One side of the pad is made of an absorbent material that soaks up the blood. Many people use pads when they first start their period because they are easy to use. They come in many sizes and absorbencies, so you can change them depending on how heavy or light your period is.
b. **Panty liners:** They are a smaller and thinner type of pad that can be used on days when your period is very light.
c. **Tampons**: They are smaller tubes of cotton wool that you insert into your vagina to absorb the blood before it comes out of your body. There is a string at one end which you pull to remove. Tampons come with the instructions that explain how to use them. Some come with applicators and other types you can put in yourself.
d. **Menstrual cups:** They are made from medical – grade silicone, and are around 2 inches in size. You put the cup inside your vagina and the cup collects the blood rather than absorbing it. Unlike period pads and tampons, which you throw away after they've been used, menstrual cups can be washed and used again. Some people choose to use them because they are reusable. This makes it a cheaper and more environmentally-friendly option.
e. **Period pants:** They are designed to be worn during period like everyday pants. They absorb menstrual blood like other period products. They are environmentally friendly as they can be washed and used again.

Period Poverty

Period Poverty is when those on low incomes cannot afford or access suitable period products. So many people especially the indigents fall under this category. Period poverty can be defined as the lack of access to safe and hygienic menstrual products during monthly periods and inaccessibility to basic sanitation services or facilities as well as menstrual hygiene education. For clarity, menstruation is a healthy biological process that occurs in women of reproductive age in which the uterus sheds blood and tissue through the vagina in a monthly cycle. Period poverty is a global community health dilemma that has long been overlooked. This condition is

[4] (n 2).
[5] NHS inform/service,' Choosing Period Products' https: www.nhsinform.scot

described as having insufficient access to menstrual products, education and sanitation facilities[6]. It has long been advocated that everyone should embrace good hygiene system in order to have an environment free from dirt. With this, one may be forced to ask whether a person who may not be able to afford two square meals may be able to expend almost a thousand five hundred naira (₦ 1500) on monthly basis for pad. This has posed as a very big challenge and if neglected could lead to negative consequences.

3. Recognizing the Right to Menstrual Hygiene

In light of the severe consequences of inadequate menstrual hygiene, it is imperative to recognize and implement a global right to menstrual hygiene. This right is rooted in the United Nations' Sustainable Development Goals (SDGS) and the rights enshrined by the United Nations, an international organization dedicated to promoting human well-being. The SDGs outline several goals that are crucial to realizing the right to menstrual hygiene, including:

a. Protecting the reproductive rights of women as a human rights issue, as emphasized in multiple SDGs.[7]
b. Ensuring healthy lives and promoting the well-being of all individuals .[8]
c. Guaranteeing access to safely managed drinking water, sanitation, and hygiene products.[9]

Furthermore, UN treaties also implicitly recognize a right to menstrual hygiene. General Comment No. 36 (2019) to the International Covenant on Civil and Political Rights underscores the importance of access to comprehensive sexual and reproductive health education, quality prenatal and post-abortion healthcare and affordable contraceptive methods.[10] The Comment emphasizes that individuals have the right to "enjoy their right to life with dignity,[11] which necessarily includes access to adequate menstrual health and hygiene for those who experience menstruation.

Moreover, the International Covenant on Economic, Social and Cultural Rights[12] affirms the right to "the highest attainable standard of mental and physical wellbeing" for all individuals, reinforcing the second SDG mentioned.[13] In the context of women in prison, this right to wellbeing includes access to preventative services available in the community, such as contraceptives to prevent painful menstruation.[14] By extension, a right to necessary menstrual

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[6] H jaafar, S Yasmin Ismail and A Azzeri, 'Period Poverty: A Neglected Public Health Issue'(May 16, 2023) <https: www.nci.nlm.nih.gov>accessed 21 May, 2024.

[7] Department of Economic and Social Affairs, 'The 17 Goals, UN Sustainable Development Goals', <https://sdgs.un.org/goals.>accessed 21 May 2024.

[8] Department of Economic and Social Affairs, Goal 3: Ensure Healthy Lives and Promote Well-being for All at All Ages, U.N. Sustainable Development Goals (2021)< https://sdgs.un.org/goals/goal3> accessed 21 May 2024.

[9] Department of Economic and Social Affairs, Goal 6: Ensure Availability and Sustainable Management of Water and Sanitation for All, U.N. Sustainable Dev. Goals (2021), < https://sdgs.un.org/goals/goal6. > accessed 21 May 2024.

[10] International Covenant on Civil and Political Rights, art. 6, general comment No. 36, ¶ 8, Sept. 3, 2019, CCPR/C/GC/36

[11] Ibid.

[12] ICESCR, 1976.

[13] G.A. Res. 65/229, U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 31 (Mar. 16, 2011), https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf; International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, G.A. Res. 2200 (XXI).

[14] Ibid

hygiene exists for women in prison,[15]and by logical implication, for all menstruating individuals, seeking to attain their highest attainable standard of well-being.

Thus, the UN SDGs and International human rights instruments, including the rights to a life with dignity, the highest attainable standard of mental and physical well-being, collectively imply recognition of a fundamental right to menstrual hygiene. This implicit recognition underscores the critical importance of addressing the systemic barriers and stigma that hinder access to menstrual hygiene products and services, and highlights the need for concerted efforts to ensure that all individuals can manage their menstruation with dignity and well-being.

4. Access to Menstrual Hygiene Products in Nigeria

Despite the implicit recognition of a right to menstrual hygiene under international law, the United States Nations' Sustainable Development Goals (SDGs) are not binding on UN member states, and many countries have not ratified these international treaties from which this right derives. However, to alleviate the financial burden of managing menstruation, the federal government announced the exemption of pads from Value Added Tax (VAT) in 2020. This move was widely welcomed by female activists, who saw it as a crucial step towards reducing period poverty and increasing access to sanitary pads for women. However, three years later, the prices of pads continue to rise, prompting many to question the effectiveness and motivations behind a policy that initially seemed economically prudent.

The efforts of government in exempting locally manufactured sanitary towels, pads or tampons could be regarded as little or nothing though it is a good development. The idea is because monthly flow of a woman is natural. It cannot be caused or induced to start or stop by human. More so, in a society where most citizens live in abject poverty, the God's gift of monthly flow may more or less be regarded as a curse. This is because with the hike in prices in Nigeria not all women can afford to purchase sanitary towel, pads or tampons.

Some scholars[16] stated that the exemption of VAT from sanitary pads has had very little effect because the product is a consumption tax and not a production tax. They were of the view that if it were latter, factors that determine its production would be subsidized by the VAT removal which would lead to the highly sought after change of a substantial reduction in price. According to Abiodun, what determines whether the price of the sanitary pad will go down or not are things like import duties, export duties and the tariff on other inputs that go into the production of sanitary.[17] He further stated that removal of VAT on sanitary pads was never meant to target the price of the product and that is why it doesn't matter even if the government makes the removal permanent. What affects the price is the cost of inputs that go into the production of the product. Some of the factors that contribute to it are inflation, foreign exchange, and cost of electricity among others.

Perhaps, the health impact of lack of access to period hygiene products in Nigeria can be significant and far-reaching. Without access to proper period hygiene products, many women and girls resort to using unhygienic materials, such as rags, leaves or pieces of cloth. These materials can easily become contaminated, leading to increased risk of infections and other reproductive health problems.

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[15] Ibid

[16] Like Abiodun Folawew and Nkem Ibenta.

[17] C Diamond, 'Despite VAT Waiver on Sanitary Pads, Nigeria's Economics Woes Push More Women into Period poverty', <htpp: www.thecable.ng>accessed on 23 May 2024.

In addition, lack of access to period hygiene products can result in poor period hygiene practices, such as infrequent changing of pads or tampons, which can also lead to infections. Poor period hygiene can also lead to increase pain and discomfort during period flow. It is therefore the writer's view that government should create an enabling productive environment particularly in promotion of local production which will make room for cheap labour and with this it can be produced at a cheaper rate.

5. Exempting Sanitary Towels, Pads and Tampons Locally Manufactured from VAT

The Value Added Tax (VAT) in Nigeria is a tax payable on goods and services consumed by any person, whether government agencies, business organizations or individuals. It can also be said to be tax on consumption levied at every stage of transaction but eventually borne by the final consumer of such goods and services. Being a tax on consumption, VAT is akin to sales tax. VAT is a consumption tax that took over the existence of sales tax.

The Value Added Tax Act also is a federal statute administered by the Federal Inland Revenue Service on behalf of Federal, State and Local Governments. They are empowered to do all such things as it may deem necessary and expedient for the assessment and collection of the tax. The proceeds are shared among the three tiers of government in accordance with a formula determined from time to time by Federal Government. Section 7 of the VAT Act[18] vests the power of administration of VAT in the Federal Inland Revenue Service (FIRS). VAT is charged on most goods and services provided in Nigeria and those imported into Nigeria.

Classification of Goods and Services under the VAT Act

For the purposes of value added taxation, the Act classifies goods and services into three distinct groups:[19]

a. Goods and Services Liable to Tax

The tax is charged and payable on the supply of all goods and services other than those goods and services exempted by the Act[20]. This provision makes virtually all goods and services liable to VAT except as expressly excluded by the Act. Thus, once a given item is classified as goods, it becomes subject to VAT. In other words, the effect of the provision might appear to be that if an item or a product is not excluded, it is liable to tax. The problem with this approach, however, is that the Act did not define what constitutes goods or service for the purpose of value added taxation. The subject matter like land or landed property has become an issue whether it is covered or sheltered under VAT Act. Good a thing that Finance Act, 2020 has come to lay to rest this ambiguity in paragraph 44 (b) where in while substituting for the definition of goods and services, defined goods to mean all forms of tangible properties, movable and immovable, but does not include land and building, money or securities.

b. Goods and Services Exempted

Some goods and services are exempted from the purview of Value Added Tax. In effect, such goods and services are VAT –free. The exempt goods are listed in part 1of the First Schedule to the Act, while service exempt are listed in Part 11 of the First Schedule. Having regard to the exempt goods and services, it appears that VAT is serving other social functions in the country besides raising revenue to meet government expenditure. Primarily, VAT is serving the purpose

[18] Cap VI Laws of Federation of Nigeria, 2004.
[19] A Ipaye, *Nigerian Tax law & Administration: A critical Review* (London: ASCO prime publishers, 2014) p 324-325.
[20] Section 3 VAT Act Cap Vi, LFN 2004

of redistribution of income and wealth. The exempt goods and services are food items, medical, agricultural, industrial and educational materials. These are basic items which are needed on a regular basis by everybody in the society. The goods and services that are therefore subject to VAT are regarded as luxury goods. In effect, the burden of VAT is on the rich who could afford the expensive luxury goods.

It is under this subheading that the crux of this work is centered. The VAT Act[21] made provisions for items which were exempted from VAT. However, items or goods like period products were not originally included but through the 2019 Finance Act, it was expanded to accommodate period products like Sanitary towels, pads, or tampons.[22] The implication is that 7.5% charged on goods and services will no longer apply to period products like sanitary towel, pad or tampons. This is a welcome idea and a good development but the question is whether this development will aid in eliminating period poverty? We shall find out in the course of this work.

c. Zero Rated Goods and Services

The amendment to the VAT Act in 2007 introduced another class of goods and services under the VAT regime. These are goods and services under the VAT regime. These are goods and services classified as zero rated. These are goods and services which are liable to VAT but are, however, taxed at zero rates. In other words, VAT is not charged on them. They include non-exports, goods and services purchased by diplomats and goods and services purchased for use in humanitarian donor-funded projects. The latter includes projects undertaken by Non-Governmental Organisations (NGOs) and religious and social clubs or societies recognized by law whose activity is not for profit and are in public interest.[23]

Rate of Tax

The Act provides that the tax shall be computed at the rate of 7.5% with effect from 1st February, 2020 on the value of all goods and services, except that goods and services listed under part III of the First Schedule to this Act shall be at zero rate[24].

6. Access to Menstrual Products in Foreign Jurisdictions

In some jurisdictions outside Nigeria, the case is absolutely different. In Scotland, an amazing example has been set for the world. Scotland just became a much friendlier place to women. In late November 2020, Scottish authorities passed "The Period Products Bill" which makes period products including tampons and pads free to anyone who needs them.[25] The Bill was introduced by *Labour Msp Monica Lennon*. She has been campaigning to end period poverty since 2016. The Period Products (Free Provision) (Scotland Bill) puts a legal duty on local authorities to ensure anyone who needs period products can obtain them for free. The said bill has now become law and is known as The Period Products (free Provision) Act 2021. It places a legal duty on local authorities to ensure 'anyone who needs' products during menstruation such as tampons, menstrual cups and sanitary towels can access them for free. In line with this development, According to McGuire, a member of the IBA European Regional Forum and co-head of the Government and Business team at Brodies, a specialist in public law stated that in Edinburgh,

[21] *Ibid*

[22] S 47(a) of Finance Act Amended First Schedule of the VAT Act: Value Added Tax Act (Modification) Order, 2021.

[2323] Part III of the First Schedule to VAT Act

[24] S 42 of Finance Act 2020 which amended section 4 of VAT Act.

[25] C Diamond,' Period Poverty: Scotland first in World to make Period Products Free' <https//: www.bbc.com> accessed on 23 May 2024.

free period products are already available online and in many venues including schools, community centers and libraries. It was also made available to the public at public building.

According to World Bank, 500 million girls and women globally don't have access to adequate facilities to manage their periods, and across developing countries roughly half of all women and girls are estimated to sometimes be forced to use items such as rags, grass and paper. In UK, a plan International study published in April found that more than a third of girls aged 14-21 struggled to afford or access period products during the pandemic. This was as a result of period poverty. That is, the regular inability to afford or access period products has an impact on many aspects of people's lives, particularly education. A follow-up Plan International survey found 64 per cent of 14-21 year old girls surveyed in UK had missed full or partial school days because of their periods, with 13 per cent of girls missing a full day at least once a month. As well as access to products, stigma was a significant concern, with one in six reporting being teased or bullied about their period.[26] The essence of providing access to free period products is to remove financial barriers to accessing them. The Act tries to eliminate stigma and financial bureaucratic barriers by providing that people should be able to obtain products with reasonable dignity. It provides that the process of accessing it should not be complex and no forms should be filled or completed.

Spain borrowed a leaf from Scotland to pass a law on free period product in 2022. The law stipulates that menstrual products must be free at schools, prisons, women's health care facilities and other public institutions.[27] Moreover, Botswana's parliament as far back as 2017 approved a motion for offering school girls all over the country free sanitary pad.

On the part of Kenyan government, she followed suit. Despite being the first country to eliminate the "tampon tax", yet has been in practice of distributing free sanitary pads to school girls since April 2018.[28] Even Zambian government in the year 2019 joined in this campaign as she also engaged in the act of distributing free pad to school girls.

7. Conclusion and Recommendations

It is true that the exemption of period products from VAT is a welcome development, yet it has been unable to solve, reduce and or eliminate financial burden on women which in most cases lead to period poverty. The impact of the said exemption is not much felt due to hike in prices. This made government effort not to be visible or much appreciated. The paper has revealed that the President has the powers to regulate prices under Federal Competition and Consumer Protection Act. The paper also found out that the government through the Board could add any good/s as ones to be subject to price control under Price Control Act. The writer therefore recommends that government should on the strength of the provisions of the aforementioned Acts of National Assembly amend those laws to declare menstrual products free for all users and as well make it available to the public without bureaucracy or procedures. Nigerian government should borrow a leaf from Scotland by making period products free and available to all users. There is also the need to amend Federal Competition and Consumer Protection Act and Price Control Act to bring in menstrual products and declare same free for all users. There should also be Effective government policies to make menstrual products affordable and accessible.

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[26] J Venis,'Poverty: Scotland creates legal duty to provide period products free to all' <https: www.ibanet.org>accessed on 15 May 2024.

[27] Reuters, 'Spain's Catalonia region to provide period products for free at pharmacies' https: www.reuters.com>dated 21st September, 2023.

[28] Claire mom *Op cit*