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Editorial

I am delighted to present the Proceedings of 6th Annual International Conference on Law, Regulations and Public Policy (LRPP 2017) organized by the Global Science and Technology Forum in Singapore on 5th - 6th June, 2017.

This conference serves as an annual forum for scholars, policy makers, experienced professionals, and business executives to present and exchange new ideas and advances in law, regulations and public policy. We seek the widest possible dissemination of these ideas and advances both within the fields represented at the conference, and to scholars in related fields.

All papers selected for presentation at the conference and for publication in these proceedings have been subjected to double-blind peer review. We are most grateful to review committee members, partner universities, organizing committee members, and especially to the conference participants for making this conference a great success.

I am sure that the participants will benefit from the contributions found in these Proceedings and I trust that this volume will be useful to you in your research endeavours.

Professor Paul Babie
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Preface

We are pleased to welcome you to the 6th Annual International Conference on Law, Regulations and Public Policy (LRPP 2017). LRPP 2017 continuously aims to foster the growth of research in law, regulations and public policy and its concomitant benefits for the community at large. The research papers published in the proceedings are comprehensive in that they contain a wealth of information that is extremely useful to academics and professionals working in this and related fields.

It is my pleasure to announce the participation of leading academics and researchers in their respective areas of focus from various countries at this event. The Conference Proceedings and the presentations made at LRPP 2017, are the end result of a tremendous amount of innovative work and a highly selective review process.

We have received research papers from distinguished participating academics from various countries. There will be “BEST PAPER AWARDS” for authors and students, to recognize outstanding contributions and research publications.

We thank all authors for their participation and are happy that they have chosen LRPP 2017 as the platform to present their work. Credit also goes to all Program Committee members and Review Panel members for their contributions in reviewing and evaluating the submissions and for making LRPP 2017, a success and for increasing the standing of this annual conference from year to year.

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CEDAW and Abortion Right for Nigerian Women

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Abstract— The Convention on the Elimination of all forms of Discrimination against Women, (CEDAW) was adopted by the United Nations General Assembly on the 18th December 1979. This Convention is a human right instrument which promotes the principle of non-discrimination and equal status of men and women. The Convention focuses on three key issues. One of such issues is reproductive right. The right to choose forms an aspect of reproductive right. To the radical feminists of the West and North America, the right to choose under CEDAW could be extended to cover right to choose abortion for women worldwide. This to them, could pave the way for the legalization of abortion all over the world. Consequently, a case study was carried out in 5 different states in Nigeria, wherein interview and focus group discussion were employed in order to know whether or not the contention of the radical feminists can be sustained in Nigeria. The result shows that, the right to choose as contained under CEDAW does not extend to abortion right for Nigerian women. The reasons given by the participants of this study could form a solid foundation for effective future policies in the area of reproductive right in Nigeria.

Keywords- Abortion, Right to choose, Women, Feminism, Nigeria

I. INTRODUCTION

One area that has captured the interest of the United Nations is the equality of rights for men and women.¹ Women, being classified as a minority group therefore, enjoy special considerations, and rights affecting them are given very high priority. Consequently, the United Nations General Assembly adopted the Convention on the Elimination of all forms of Discrimination against Women, (CEDAW) on the 18th December 1979. This Convention is a human right instrument which promotes the principle of non-discrimination and equal status of men and women. The Convention focuses on three key issues. One of such issues is reproductive right. The right to choose forms an aspect of reproductive right.²

¹Article 2 of the *Universal Declaration of Human Rights* (1948); John A. And Jerry Pubantz, *The New United Nations: International Organization in the Twenty-First century* (NY: Routledge, 2015), 246; Devaki Jain, *Women, Development and UN: A Sixty-Year Quest for Equality and Justice*, (Bloomington USA: Indiana University Press, 2005), 11-12.

²The World Health Organization, *Birth Spacing Cluster Representatives and Health Volunteers Guide* (2008) 2-3

However, the right to choose according to the radical feminists of the 1960s means the right women has to determine what happens to their bodies.³ To radical feminists, this right extends to the decision whether or not to abort a pregnancy. This decision should be left absolutely with the women. This view was boosted in 1973 by the United States Supreme Court in the case of *Roe v. Wade*⁴. By this decision, the court affirms that a woman has a right to have an abortion under the 14th Amendment to the American Constitution. The court ruled that when the state interests are compelling, the state can make laws regulating or limiting the woman's fundamental right to privacy.⁵

Since this decision, most nations of the world began to have a more liberal view towards abortion. According to Susan Cohen, 60% of women of reproductive age (15-44) live in countries where abortion is legal, while the remaining 40% of women of reproductive age live in countries where abortion is restricted.⁶

www.enro.who.int/mps/pdf (Last accessed May 13, 2017); Jadwiga E. Pieper Mooney, *Family Planning and Reproductive Rights in Chile*, (USA: Oxford University Press 2016), 12.

³Tara Fox Hall, *Hope Return* (USA: Melange Books, LLC, 2015), 91; R. west, "Jurisprudence and Gender," in *Feminist Jurisprudence* ed. Patricia Smith, (Madison NY: Oxford University Press, 1993), 505-506; Martha C. Nassbaum, "R. west, Jurisprudence and Gender, Defending Radical Feminism," *University of Chicago Law Review* 75, no.3 (2008): 985; Mc Elvaine, Robert S, *Eve Seed: Biology. the Sexes and the Course of Human History*, (New York NY: McGraw-Hill Company, 2000), 1.

⁴410 US 113 (1973).

⁵Gayle Binion, "Reproductive Freedom and the Constitution: The Limits on Choice" *Berkeley Women L. J.* 12, (2013): 13-18; D. Sperling, *Management of Post-Mortem Pregnancy. Legal Philosophical Aspect* (England: Ashgate Publishing Company, 2006), 2; R. J. Cook and B. M. Dickens, "Human Right Dynamics of Abortion Law Reform," *Human Rights Quarterly* 25, no.1 (2003): 22-25. <http://www.jstor.org/stable/4003000> (Last accessed May 13, 2017).

⁶Chae S, Desai S, Crowell M, Sedgh S, and Singh S, "Characteristics of Women Obtaining Induced Abortions in Selected Low-and Middle-Income Countries" *PLOS ONE* 12.

Nigeria is one of those countries with restrictive abortion laws. Termination of pregnancy in Nigeria is restricted under both the Penal Code (applicable in the North) and Criminal Code (applicable in the South) and carries very heavy jail term of up to 14 years for the provider and 7 years for the woman, except it is performed to save the woman's life.⁷

This work intends to showcase that the right to choose as contained within CEDAW cannot be extended to mean abortion right for women in Nigeria despite the radical feminists' interpretation of the right to choose.

1. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

A. Article 12(1) CEDAW

"States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on the basis of equality of men and women, access to health services, including those related to family planning".

B. Article 16(1) (e) CEDAW

"State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on the basis of equality of men and women; the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them exercise these rights".

C. Recommendation No 24 CEDAW Committee Rule

Despite the original contents of CEDAW as regards right to choose as clearly stipulated under Articles 12 and 16 CEDAW, Recommendation No 24 of CEDAW Committee Rule provides;

"The obligation to respect rights requires state parties to refrain from obstructing action taken by women in pursuit of their health goals. State parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, state parties should not restrict women's access to health services or to the clinics that provide those services on the grounds that women do not have the

authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures".

Recommendation No. 24 of the CEDAW committee can therefore, be interpreted to include abortion. This is in contravention to the provisions of the Articles 12 and 16 of CEDAW.⁸ According to Recommendation 24, state parties should not criminalize any medical procedure needed by only women. The only medical procedure needed by women as far as reproductive right is concerned is abortion.⁹

It must be clearly stated that General Recommendations of CEDAW Committees are interpretations of an accord to assist state parties in implementing their obligations. The Committees of CEDAW are not expected to make rules.¹⁰ In view of the fact that the legal status of the General Recommendations of CEDAW Committee is that of a soft law¹¹, it has become imperative for this study to show that the right to choose as contained under CEDAW does not extend to abortion right as far as women in Nigeria are concerned.

II. METHODOLOGY

Qualitative research is very labor intensive. Analyzing a large sample can be time consuming and most often impractical. Thus, '15' has been said to be the smallest acceptable sample for all qualitative research.¹² However,

⁸Susanne Zwingel, *Translating International Women's Rights: The CEDAW Convention in Context* (USA: Springer 2016), 65-70; Maja Kirilova Erickson, *Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law* (Netherlands: Kluwer La International, 2000), 301.

⁹Lori A. Brown, *Contested Spaces: Abortion Clinics, Women's Shelters and Hospitals: Politicizing the Female Body* (NY: Routledge 2016), 108

¹⁰Julia Schast "Battle of the Sexes: Why the United States has not yet Ratified the Convention on the Elimination of all Discrimination Against Women (CEDAW)," *Papers and Publications: Interdisciplinary Journal of Undergraduate Research* 3 (2014): 2-4.

¹¹Benny Spanier, Isreal (Issi) Doron and Faina Milman-Sivan, "In Course of Change: Soft Law, Elder Rights and the European Court of Human Rights" *Law & Inequality: A Journal of Theory and Practice* 34, Issue 1 (2016): 58-63.

¹²Andrew J. B and Henry W.W. Potts, "Supporting Thinking on Sample Sizes for Thematic Analyses: A Quantitative Tool" *International Journal of Social Research Methodology* 18 (2014)

www.tandfonline.com/doi/full/10.1080/13645579.2015.1005453 (Last accessed May 18, 2017); Bertaux Daniel, "From the Life-History Approach to the Transformation of Sociological Practice," in *Biography and Society: The Life History Approach in the Social Sciences* ed. Daniel Bertaux (London, California, India: Sage Publications, 1981), 35.

no. 5 (2017). See also, <https://www.guttmacher.org/article/2017/03/characteristics-women-obtaining-induced-abortions-selected-low-and-middle-income> (Last accessed May 18, 2017); Susan Cohen, "Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide" *Guttmacher Policy Review* 12, no.4 (2009). <http://www.guttmacher.org/pubs/gpr/12.4/gpr120402.html> (Last accessed May 13, 2017).

⁷Secs 232 and 235 Penal Code Law of Nigeria 1963 and secs 228, 229 and 230 Criminal Code Law of Nigeria 1990.

Charmaz¹³ has suggested that '25' participants are adequate for small project and according to Ritchie et al¹⁴, qualitative samples often lie under '50'. 'Experience of most qualitative researchers is that, in interview studies, little that is 'new' comes out of transcripts after you have interviewed 20 people.¹⁵ A non-probabilistic sampling was favored as statistical generalization is not within the purview of this study.¹⁶ The non-probabilistic sampling employed in this study is the purposeful or judgment sampling, wherein the author uses her judgment as to who can provide the best information needed to buttress the fact that, right to choose as contained under CEDAW does not extend to abortion right for women in Nigeria. In a purposeful sampling, random sampling makes little sense.¹⁷ The author therefore selects samples from which the most can be learned.

In the light of the above, '31' samples were selected for the purpose of this study, '10' out of which were participants from the '2' focus group sessions. Samples were not selected at once. The author picked a sample representing each unit of analysis one at a time, until the whole unit of analysis was exhausted. Initial contacts were made via telephone calls to the selected samples. If he or she agrees to participate, a meeting was then fixed.

Data was collected through structured interviews¹⁸ and unstructured interviews.¹⁹ The questions asked relates to how

the participants perceived the idea of the extension right to choose as contained under CEDAW to cover abortion right for women in Nigeria. Focus group discussion, as a form of participant observation²⁰ was also employed in this study in order to elicit views from these groups.

An interview guide (pre-drafted questions) was used in order to avoid losing focus and to ensure that relevant questions are asked. Questions asked were both closed and open-ended. While some indicators require a brief and precise answer, it is also desirable to let information emerge from the field. Participants were given opportunity to express their thoughts on the topic as freely as possible. Participants for this study are non-governmental organizations, league of Muslim and Christian women, African traditionalists, Doctors as well as married and unmarried men and women.

Engaging various participants was essential as this study seeks to analyze their views to know whether or not the right to choose as contained under CEDAW extends to abortion right for women in Nigeria.

Ultimately, the researcher secured 21 Key informants and 2 focus group sessions (the focus group '1' comprised of four participants, while the focus group '2' comprise of six participants).²¹ The participants consist of both Christians and Moslems. They came from various backgrounds and professions, had varying qualifications and worked in both government as well as non-government organizations.

The participants (key informants) that took part in the study lived across eight towns within Nigeria namely, Ilorin, Ile-Ife, Osogbo, Ilesha, Lokoja, Ajaokuta, Lagos and the Federal Capital Territory, Abuja. These towns can conveniently be distributed within five different States within the country namely, Kwara State (Ilorin), Osun State (Ile-Ife, Osogbo and Ilesha), Kogi State (Lokoja and Ajaokuta), Lagos State (Lagos) and FCT (Abuja). The choice of location is further to ensure heterogeneity of views.

III. RESULT

From the manual thematic analysis, it was discovered that most of the participants (key informants) do not feel that the right to choose extends to abortion. There were different reasons given for that. However, there were also some alternative explanations suggesting that the right to choose for women could be expressed by the use of an abortion. It is important to note that, both categories of participants (key informants), i.e., those that felt the right to choose does not extend to abortion and those who felt that the right to choose

¹³Charmz Kathy, *Constructing Grounded Theory: A Practical Guide Through Qualitative Analysis* (London, California, India: Sage Publications, 2006), 114; Timothy C. Guatterman, "Descriptions of Sampling Practices within Five Approaches to Qualitative Research in Education and Health Sciences" *Fprum: Qualitative Social Research* 16, No.2 (2015) www.qualitative-research.net/index.php/fqs/article/view/2290/3825 (Last accessed May 18, 2017).

¹⁴Ritchie Jane, Lewis Jane, Gilliam Ellam, Rosalind Tennant and Nilufer Rahim, "Sampling Strategies for Qualitative Research" in *Qualitative Research Practice: A Guide for Social Science Students and Researchers* eds. Jane Ritchie, Jane Lewis, Carol McNaughton Nicholis and Rachael Ormston (London, California, India: Sage Publications, 2014), 118.

¹⁵Ibid.

¹⁶Kelvin Joseph, "Understanding Methodology Aspects of Measuring Multi-Dimensional E-Government: Pointers for Research and Practice" in *Digital Solutions for Contemporary Democracy and Government* eds. Michael Kelvin Joseph Bwalya and Stephen M. Mutula (USA: IGI Global, 2015), 215-227.

¹⁷Allan Bryman, *Social Research Method* (Oxford: Oxford University Press, 2015), 188.

¹⁸Howard N. Garb, Scott O. Lilienfeld and Kathrine A. Fowler, "Psychological Assessment and Clinical Judgment" in *Psychopathology: Foundation for a Contemporary Understanding* eds. James E. Maddux and Barbara A. Winstead (NY: Routledge, 2016), 111-114.

¹⁹Ibid.

²⁰Diana Kapiszewski, Lauren M. MacLean and Benjamin L. Read, *Field Research in Political Science*, (UK: Cambridge University Press, 2015), 151-265.

²¹Daniel L. Stufflebeam and Guili Zhang, *The CIPP Evaluation Method: How to Evaluate for Improvement and Accountability* (NY: The Guilford Press, 2017), 205.

extends to abortion, even while giving their explanations, constantly made reference to culture and religion.

While those who felt the right to choose does not extend to abortion refuse to agree that the right to choose can justify the legalization of abortion in Nigeria, those who felt the right to choose extend to abortion supports the idea that legalization of abortion could be justified on the right to choose for women.

Two of the key informants felt that the right to choose within CEDAW can justify the legalization of abortion in Nigeria on the basis of women's right.²² To them, it is a woman's body, it is a woman's issue as well as being a woman's decision, and so she ought to be left alone to choose whatever she wants to do without intervention or coercion. One of the leading radical feminist had asserted as far back as 1977 that, the essence of moral decision is the exercise of choice and the willingness to take responsibility of that choice. That birth control and abortion provide women with effective means for controlling their fertility.²³

There were arguments on women's right to decide about their lives, their bodies and on reproductive roles as fundamental human right. The discourse that demanded 'women's right' as human right and reproductive self determination directly and explicitly involved the issue of abortion and defending the autonomy of women's body.²⁴

Basically, the reason why these two key informants assume this position cannot be divorced from the fact that, they are unmarried. In Nigeria, adolescents generally have a low level of contraceptive use, but their reliance on unsafe abortion is very high.²⁵ Even in the words of one of the key informants, she said if she were to be married, she will not support the idea that the right to choose should extend to abortion. But because she is unmarried and she does not need children now, she will rather opt for the right to choose to extend to abortion, and so will support legalization of abortion in Nigeria on the basis of the right to choose. This shows the reason why adolescent girls are the major victims of abortion complications.²⁶

The reason why the third participant (key informant) felt that the right to choose extends to abortion cannot be divorced from his profession. As a doctor, he must have come in contact with many women demanding abortion. Based on this, he finds it easy to attribute 'right' to abortion. He however sounds cautious on the right to choose under CEDAW being used as the basis for the legalization of abortion in Nigeria. This can better be explained again in view of his professional standing, when in his words, he felt there will be more maternal mortality if abortion is legalized in Nigeria in the absence of both human and material resources.²⁷

It is important to point it out here that, the other two doctors within the unit of analysis of doctors also will not support the right to choose to extend to abortion and so, will not support the legalization of abortion in Nigeria on the basis of the right to choose under CEDAW. They fear if there will be enough human and material resources that will cope with the turnout of women needing abortion if it is eventually legalized.

Legalization of abortion alone does not guarantee availability of safe abortion services. In Ethiopia, Cambodia and Nepal, Studies have shown that weak health systems poses a significant challenge to the roll out of abortion services.²⁸ Furthermore, worldwide evidence confirms that abortion promotion only leads to greater numbers of abortion and does not solve the underlying health problems that cause maternal death. For instance, legalized abortion has not bettered the health of the Ghana people, and according to the World Health Organization (WHO), Ghana remains off-target for achieving the health related Millennium Development Goals (WHO Country Cooperation Strategy, 2009:3).²⁹

It is the lack of modern medicine and quality health care which results in high maternal mortality rate, and not prohibition of abortion (Minnesota Citizens Concerned for Life Global Outreach, 2009). In the developing countries where maternal health care is poor, legalization of abortion would further increase the number of women who die or are harmed by abortion.³⁰

²²Kate Greasley, *Arguments about Abortion: Personhood, Morality and Law* (UK: Oxford University Press, 2017), 33.

²³Carol Gilligan, "In a Different Voice: Women's Conception of Self Morality," *Harvard Educational Review* 47, no.4 (1977): 487 and 490.

[http://facweb.northseattleu.edu/karchibald/PSYC200/Articles/Gilligan\(1977\)_In%20A%20Different%20Voice.pdf](http://facweb.northseattleu.edu/karchibald/PSYC200/Articles/Gilligan(1977)_In%20A%20Different%20Voice.pdf) (Last accessed May 13, 2017); See also, Fact Sheet, "Reproductive Health is part of the Economic Health of Women and their Families"

(2015). http://www.nwlc.org/sites/default/files/pdfs/reproductive_health_is_part_of_the_economic (Last accessed May 18, 2017).

²⁴Greasley, *Arguments about Abortion*. 33-35.

²⁵Olayinka A. Onasoga et al, "Adolescents' Knowledge, Attitude and Utilization of Emergency Contraceptive Pills in Nigeria's Niger Delta Region" *International Journal of MCH and AIDS* 5, no. 1 (2016): 53-60.

²⁶Emechebe C. I. Et al, "Complications of Induced Abortion: Contribution to Maternal Mortality in a Tertiary Centre of a

Low Resource Setting" *Saudi J. Health Science* 5, (2016): 34-38.

²⁷Akinrinola Bankole et al. "The Incidence Of Abortion in Nigeria" *Guttmacher Institute* 41, Issue 4 (2015): 170-181.

²⁸Jessica Malter, "Legalization Alone does not Guarantee Availability of Safe Abortion Services," *Guttmacher Institute*. (2012)<http://www.guttmacher.org/media/nt/2012/05/10/index.html> (Last accessed May 14, 2017).

²⁹WORLD HEALTH ORGANIZATION, *WHO Country Cooperation Strategy 2008-2011, Ghana* (World Health Organization: 2009), 3.

http://www.who.int/countryfocus/cooperation_strategy/ces_gha_en.pdf (last accessed May 14, 2017); See also, Ghana Millennium Development Goals, "2015 Report" 39-44.

³⁰Julie A. Mertus and Nancy Flowers. *Local Action/Global Change: A Handbook on Women's Human Rights* (NY: Routledge, 2015), 134-137. Minnesota Citizens Concerned for Life Global Outreach, "Does Legalization of Abortion protect Women's Health? Assessing the Argument for Expanded

IV. DISCUSSION OF FINDINGS

The following reasons were given by the participants (key informants) for maintaining the stand that right to choose under CEDAW does not extend to abortion, and so cannot justify the legalization of abortion in Nigeria.

A. Human and Material Resources

Chief Executive Officer of Hope Worldwide, Nigeria a partner with the United States Agency for International Development (USAID), at a media briefing in Lagos condemned the low ratio of members of social health workers at Primary Health Care centers to Nigerian population of 0-02 to 100,000 to make meaningful difference in the nation's health care drive. The poor state of Primary Health Care is said to contribute to the nation's maternal mortality rate.³¹

It has been viewed that if urgent and radical measures were not taken by the three arms of government to upgrade the health care delivery system in the country, the consequences would be too grave for the country.³² The Association of Professional Bodies in Nigeria (APBN) has described the rising number of patient to a doctor in the country, following the over three-week strike embarked by doctors in the employment of the Lagos State government. Before the crisis, the ratio in Nigeria was 1:33,000. Now, the ratio is 1:50,000.³³ Nigerian health system generally has been plagued by problems of service quality, including unfriendly staff attitude to patients, inadequate skills, decaying infrastructure, chronic shortage of essential drugs and well known out-of -shock syndrome. In some hospitals, equipments such as sphygmomanometers, thermometers, weighing scales, delivery kits, waste bins, and mucus extractors are unavailable. Many do not have regular supply of electricity because they cannot maintain standby generators. Some do not even have regular water supply and thus require patients to provide their own water. Coupled with all these, staff is demoralized by inadequate and irregular remuneration. This has resulted in incessant strike actions by doctors in Nigeria. In fact, a 2003

study revealed that only 42% of public facilities in Nigeria met internationally accepted standards for obstetrics care.³⁴ The health sector as a whole is in a dismal state.

In the just concluded conference of the Society of the Protection of the Unborn Children held in London, professor Robert Walley, a leading obstetrician told the conference that, "in the countries in which I worked, one in 7 mothers will die due to lack of medical equipments...it is ridiculous to supply women with abortion and condom when they need access to emergency obstetrical care...Abortion is a sin of commission, but failing to provide mothers with obstetrical care is a sin of omission".

In view of the facts above, some of the participants (key informant) felt that it is doubtful if the present condition and availability of health facilities in Nigeria will be able to cope with the large turnout of patients if abortion is eventually legalized on the basis of the right to choose under CEDAW.

B. Complications

Complications that arise as a result of abortion, whether carried out by a qualified doctor, or unqualified doctor, prompted the response from majority of the participants (key informants) that, the right to choose under CEDAW does not extend to abortion, and so cannot justify the legalization of abortion in Nigeria. To these set of participants (key informants), there is nothing without risk. Even with qualified doctors, complications arise.³⁵

The Centre for Disease and Control and Prevention reports that, in the United States of America, the world's leaders in modern medicine, over 300 women have died from legal abortions since the procedure was legalized in 1973.³⁶ If this happens in the United States under the best medical condition, the case of developing countries, where condition may not always be fully sanitary, where emergency facilities and supplies are absent or inadequate, where the doctors may not be trained or equipped to handle trauma and where even basic medical and surgical supplies such as antibiotics and sterile gloves may be scarce or unavailable, the situation will be

Abortion Access around the Globe," (2009) <http://nrle.org/UN/MMEnglish.pdf> Accessed 15th May 2012, (last accessed May 14, 2017).

³¹Musa Abubakar Kana et.al, "Maternal and Child Health Interventions in Nigeria: A Systematic Review of Published Studies From 1990-2014" *BMC Public Health* 15, (2015): 334. Available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4429684/>

(Last assessed May 18, 2017).

³²Davies Adeloye et al, "Health Workforce and Governance: The Crisis in Nigeria" *International Journal for Equity and Health* 15, no.32 (2017). Available at <https://human-resources-health.biomedcentral.com> (Last assessed May 18,2017).

³³Ibid. See also, Oyetunji Abioye, "APBN Laments Doctor-Patient Ratio," *The Punch News Papers* May 23, 2012. <http://www.punchng.com/business/apointments-managements-apbn-laments-doctor-patient-ratio/> (Last accessed May 14, 2017)

³⁴Bolatito A. Lanre-Abass, "Poverty, Maternal Mortality in Nigeria: Towards a more Viable Ethics of Modern Medical Practice," *International Journal of Equity in Health* 7, no.11 (2008): 3, <http://www.equityinhealthj.com/content/7/1/11> (Last accessed may 14, 2017); See also, Oladapo O. T. et al, "When Getting there is not Enough: A Nationwide Cross-Sectional Study of 998 maternal Deaths and 1451 Near-Miss in Public Tertiary Hospitals in a Low-Income Country" *Europe PMC* 123 no.6 (2016): 928-938.

³⁵Tom J. Obengo, *The Quest for Human Dignity in the Ethics of Pregnancy* (USA: Wipf and Stock Publishers, 2016), 94-95.

³⁶See, "U.S Abortion Statistics: "Facts and Figures Relating to the Frequency of Abortion in the United States" ABORT73.COM [abort73.com/ abortion facts/ us-abortion_statistics](http://abort73.com/abortion/facts/us-abortion_statistics) (Last accessed May 19, 2017).

pathetic as mortality rate would be substantially higher, whether abortion is legalized or not.³⁷

To these set of participants (key informants), legalization of abortion on the basis of the right to choose under CEDAW, will further add to the already high rate of maternal death. Nigeria has the second highest maternal death rate in the whole world. Nigeria, which constitute just 1% of the world population accounts for 10% of the world's maternal and under five mortality rates. Nigeria rank second in the world after India. Nigeria ranks as one of the 13 countries in the world with the highest maternal mortality rate and is still not listed among the 10 countries seen to have made rapid progress to meet the MDGs.³⁸ Of all maternal deaths, 50% occurs as a result of criminal abortions.³⁹

Because the Criminal laws of the country forbid abortion⁴⁰, women resorted to abortion in clandestine places⁴¹ leading to increase in abortion-related maternal morbidity and death⁴² including infertility, chronic pelvic pain, recurrent and spontaneous abortion and ectopic pregnancies⁴³.

Women experiencing these complications require immediate treatment, and according to the description of the current health facilities in Nigeria, it is doubtful if such treatment can

be given accordingly. These women might ease on, or suffer long term morbidity.

C. *Morality of Abortion*

The participants (key informants) in this study viewed that promiscuity will be rampant if the right to choose extends to abortion. Morality will also go down the drain if abortion is legalized on the basis of the right to choose under CEDAW. The society will be in a shamble. This thus, serves as a value judgment indicating that legalizing abortion is bad. To these participants (key informants), all rational persons will hold this view.

All persons do not share the same religion, but all persons possess the same human nature and the same desire for justice. All persons belong to the human race and are endowed with the gift of reasoning, and are born with conscience, an innate moral law that is God-given and natural; the basis for natural law.⁴⁴

The natural law is one of the oldest moral concepts in the history of civilization. Natural law is not invented or formulated by any man, but discovered as inherent in the structure reality, in the nature of things. The natural law is independent of opinion and not relative to culture. It encompasses individuals of all nations, race and religion and is the basis of international law, what the founding fathers call "the law of nature and nature's God".⁴⁵

It is the view of these participants (key informants) that, legalizing abortion is a kind of action which the natural law prohibits⁴⁶ because of its resultant effect of making the generality of the people to be promiscuous. To them, adultery and fornication will be the order of the day, and since there is a law to back the people up, abortion will be used to get rid of any resultant pregnancy⁴⁷, which in itself is harm to others

³⁷Daniel H. Kress, Yanfang Su and Hong Wang, "Assessment of Primary Health Care System Performance in Nigeria: Using the Primary Health Care Performance Indicator Conceptual Framework" *Health System & Reform Journal* 2, Issue 4 (2016).

www.tandfonline.com/doi/full/10.1080/23288604.2016.1234861 (Last assessed May 19, 2017).

³⁸Obinna O. O. and Simon D. T, "Before Sustainable Development Goals (SDG): Why Nigeria Failed to achieve the Millennium Development Goals (MDGs)" *The Pan African Medical Journal* 24, (2016). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5072827/> (last accessed may 19, 2017).

³⁹Media Centre WHO: "Fact Sheet on Preventing Unsafe Abortion 2016" www.who.int/mediacentre/factsheets/fs388/en/ (Last assessed May 19, 2017).

⁴⁰Secs 232,235 Penal Code of Northern Nigeria and secs 228, 229 and 230 Criminal Code of Southern Nigeria.

⁴¹Mustafa A. L, "Prevalence of Abortion and Contraceptive Practice among Women Seeking Repeat Induced Abortion in Western Nigeria" *Journal of Pregnancy* 2015, (2015). <https://www.hidawi.com/journals/jp/2015/486203> (Last assessed May 19, 2017).

⁴²Okonofua F. E, "Is Abortion Incidence Rising in Nigeria?" *African Journal of Reproductive Health* 19, no.4 (2016); 9-13.

⁴³Caron R. K. et al "WHO Multi-Country Survey on Abortion-Related Morbidity and Mortality in Health Facilities: Study Protocol" *BMJ Global Health* (2016) gh.bmj.com/content/1/3/e000113 (Last assessed May 19, 2017).

⁴⁴George H. S, "Immanuel Kant and the Natural Law Tradition" (2016). <https://www.libertarianism.org/columns/> (Last assessed May 19, 2017).

⁴⁵Thomas Kleinlein, "Christian Wolff: System as an Episode" in *System, Order and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* eds. Stefan Kadelbach, Thomas Kleinlein and David Roth-Isigkeit (Oxford: Oxford University Press, 2017), 234. See also, Ganiat Mobolaji Olatokun and Rusniah Ahmad, "Fundamental Principles of International Human Right Law: Basis for the Right to Life of the Unborn Child," *UUM Journal of Legal Studies* 5 (2014): 145-150.

⁴⁶Paul Kengor, "Neil Gorsuch and Natural Law" *National Catholic Register* (2017). www.ncregister.com (Last visited May 19, 2017).

⁴⁷Susan J. Stanbile, "Can a Catholic Realist Approach Aid in the Efforts to find Common Ground in Debates about Abortion" in *In Search of Common Ground on Abortion: From Culture War to Reproductive Justice* eds. Robin West, Justin Murray and Meredith Esser (NY: Routledge, 2016), 171.).

(killing the fetuses), as well as harm to oneself (being promiscuous result in harm to one because of sexually transmitted diseases).

D. Religion

Religion is a strong social force, a psychological force that can influence the outcomes of individual human lives.⁴⁸ For many people, religion and religious norms and values rank among the most significant influences in their lives and are the primary factor in the formulation of their conscience. By their nature, religious traditions impart values to their believers. It was not surprising therefore, to see some of the participants (key informants) in this study being influenced by their religion. These set of participants will not agree that the right to choose within CEDAW extends to abortion, and will not support the use of the right to choose within CEDAW for the legalization of abortion in Nigeria on the grounds of their religious conviction.

i. Christianity

For two thousand years, from the beginning of the Roman Empire, the Christian tradition consistently and persistently defended the sanctity of life from conception until death.⁴⁹ Historian John T. Noonan writes,

"As soon as the Christian community in the Roman Empire became vocal, (from the 2nd century on)... they emphatically and unanimously proclaimed their complete rejection of abortion at any stage of pregnancy. The grounds were that it was a horrendous evil which would seriously lead to hell"⁵⁰

The Catholic Church has always expressed complete disapproval of abortion, and considers it a grave evil. Christian writers from the 1st Century author of the Didache to Pope John Paul in his Encyclical *Evangelium Vitae* ('the gospel of life'), have maintained that the Bible forbids abortion, just as it forbids murder.⁵¹ The Church imposes the canonical penalty of excommunication for this crime against human life. According to Cardinal Raymond Burke, who heads the highest court of the Vatican, 'any Catholic who publicly supports

legislation permitting the gravest injustice should be punished.⁵²

The Bible maintains that God values all human life and that He wants all people to come to repentance to inherit eternal life.⁵³ The Bible further explains that the entire life of a human from the beginning to its natural end is sacred, since it is God that determines the length of those days.⁵⁴

Although the Bible does not specifically define when life begins, it does give us enough information to formulate a solid biblical position. The Old Testament provides most of the information on God's view of life before birth, since it gives us the law. The law specifically addresses the issue of taking the life of a fetus in the book of Exodus;

And if men struggle with the other and strike a woman with child, so that she has a miscarriage, yet there is no further injury, he shall surely be fined as the woman's husband may demand from him; and he shall pay as the judges decide. But if there is any further injury, then you shall appoint as penalty life for life.⁵⁵

Therefore, the law tells us that a man who induces an abortion or miscarriage is to be punished, indicating that God values life before birth. Furthermore, the Bible tells us that, God is involved in our creation from the womb; "Did not he who made me in the womb make him and same one fashion us in the womb?"⁵⁶ Another verse provides; "Yet thou art He who didst bring me forth from the womb. Thou didst make me trust when upon my mother's breasts. Upon thee I was cast from birth; thou hast been my God from my mother's womb".⁵⁷ The Bible went further;

From thou didst from my inwards parts; thou didst weave me in my mother's womb. I will give thanks to thee, for I am fearfully and wonderfully made. Wonderful are thy works, and my soul knows it well. My frame was not hidden from thee, when I was made in secret, and skilfully wrought in the depths of the earth. Thine eyes have seen my unformed substance; And in thy book they were all written, the days that were ordained

⁴⁸Penny Edgell et al, "Atheists and Other Cultural Outsiders: Moral Boundaries and the Non-Religious in the United States" *Social Forces* 95, no.2 (2016); 607.

⁴⁹Jayard S. S, Irudayadason A. N and Davies C. J, "Healing Ministry and Palliative Care in Christianity" *Indian Journal of Medical Ethics* (2017). ijme.in/articles/healing-ministry-and-palliative-care-in-christianity/?galley=html (Last assessed May 19, 2017).

⁵⁰John T. Noonan Jr ed. *The Morality of Abortion: Legal and Historical Perspective* (Cambridge: Harvard University Press, 1970), 8.

⁵¹Section 2322, the Catechism of the Catholic Church.

⁵²Michael W. Chapman, "Catholic Politicians who supports Abortion, 'Not Really Catholic' says Philadelphia's new Archbishop," *cnsnews.com* September 12, 2011, <http://cnsnews.com/blog/michael-w-chapman/catholic-politicians-who-support-abortion-not-really-catholic-says> (Last accessed May 14, 2017). See also, Catholic4Trump, "Cardinal Ratzinger's 2004 Letter Forbids Catholics to Vote for Hillary Clinton Under Pain of Mortal Sin" (2016). <https://www.catholic4trump.com> (Last assessed May 19, 2017).

⁵³Peter 3:9.

⁵⁴Psalm 139:16.

⁵⁵Exodus 21: 22-23.

⁵⁶Job 31:15.

⁵⁷Psalm 22: 9-10.

for me, when as yet there was not one of them.⁵⁸

The participants (key informants) who use the Christian religion as the basis for their opposition of the right to choose within CEDAW being used as an extension of abortion and also as a justification for the legalization of abortion in Nigeria, believe that fetuses are human beings because, life to them, begins from conception, from the womb.⁵⁹

This being the case, they believe that aborting that fetus amounts to killing a human being, which equals to murder. To them, both abortion and murder is opposed to in the bible⁶⁰, and it is on that basis that they maintained their stand.

ii. Islam

Islam teaches that human life is sacred, because its origin is none other than God. A very high regard is given to the sanctity of life. The Quran states; "Whosoever has spared the life of a soul, it is as if though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all mankind".⁶¹

It is on this basis that, most Muslim scholars would say that a fetus in the womb is recognized and protected by Islam as human life. No wonder, the Holy Quran, the most important source of Islamic Jurisprudence explain the stages of creation of a human within the uterus.⁶² It can be said that, the Muslim participants (key informants) in this study regarded the fetus in the womb of its mother as a human being. This explains why the participants (key informants) do not agree that, the right to choose under CEDAW extends to abortion. They also do not support the idea of using the right to choose under CEDAW as the basis for the legalization of abortion in Nigeria.

Aside from the fact that, the fetus is considered as human, the key informants (those who disagree based on Islam) viewed abortion as the killing of children, which the Holy Quran has spoken vehemently against.⁶³ Allah has stated in His Holy Quran;

O Prophet: when believing women come to you give you their pledge not to associate anybody with God in worship, that they shall not steal, that they shall not commit adultery, that they shall not kill their children, that they shall not utter slander, intentionally forge falsehood, and they shall not disobey you in any just cause: then accept their pledge and pray for their forgiveness, for Allah is oft-forgiving Most merciful.⁶⁴

Thus, to the key informants in this study (those who disagree based on Islam), abortion which is seen as a method of birth control and the killing of children is not supported as an extension of the right to choose under CEDAW, and should not be used as the basis for the legalization of abortion in Nigeria. The reason for maintaining this stand by the participants (key informants) cannot be divorced from the fact that, in Nigeria, acts and actions of Muslims are predominantly guided by the Maliki School of Islamic Jurisprudence.⁶⁵

E. Culture

The participants (key informants) in this study who based their stand on culture, are the Yorubas. To them, women have no right to choose (decide). Hence, the right to choose, being non-existence cannot justify the legalization of abortion in Nigeria.

Basically, under the Yoruba culture, women are supposed to be subordinate to their husbands. No reasonable woman will take a unilateral decision without seeking the consent of her husband. This explains why she has no right to choose to decide the number and spacing of her children. Traditionalists believe that a woman is a man's property. In most Yoruba culture, a wife is regarded as 'eru' (slave). To be an 'eru' implies subordination of the woman to the man. It presupposes that a wife is a property to be owned and used as the owner wishes.⁶⁶

⁵⁸Psalm 139: 13-16; Isaiah 44:2 and Isaiah 44: 24.

⁵⁹Fritz Baumgartner, MD "Life Begins from the Beginning: A Doctor gives the Scientific fact on when Life Begins," *Pro-Life America* (2005), http://www.prolife.com/life_begins.html (Last accessed May 14, 2017). See also, Jayard S. S, Irudayadason A. N and Davies C. J, "Healing Ministry and Palliative Care in Christianity"

⁶⁰(Exodus 20:13).

⁶¹Quran 5:32.

⁶²Quran 23:12-14.

⁶³Nor Adila Mohd Noor, Mohd Ashraf Aripin and Kamaruzaman Jusoff, "The Detrimental Crime of Abortion: A Comparative Study between Malaysian Law and Common Law," *Journal of Law and Conflict Resolution* 2, no.3 (2010): 048, <http://www.academicjournals.org/ILCR> (Last accessed May14, 2017); See also, Ajadi M. O, "Abortion in Islamic

Perspective" *Islamic City* (2015). www.islamiccity.org (Last assessed May 19, 2017).

⁶⁴Quran 60:12.

⁶⁵Sec14, Shariah Court of Appeal Law 1963; Sec 2, Zamfara State Shariah Court Law 1999; Sec 2, Kano State Shariah Court Law 2000.

⁶⁶Taiwo Makinde, "Motherhood as a source of Empowerment of Women in Yoruba Culture," *Nordic Journal of African Studies*13, no.2 (2004): 167. <http://www.njas.helsinki.fi/pdf-files/vol13num2/makinde.pdf> (Last accessed May 14, 2017); See also, Henry A. A and Evarista A. F, "The Emergence and History of the 'Gentlewomen of the Bar' into the Legal Profession in the South West Geopolitical Zone of Nigeria" *Arts Social Science Journal* 8, no.242 (2017). <https://www.omicsonline.co> (Last assessed May 19, 2017).

Under the Nigerian customary law, women are regarded as near property or chattel of her husband. The husband owns everything. Women are often, if not always reduced to the status of property-less dependents who always have to submit to the will of their husbands in order to survive.⁶⁷ From time immemorial, Nigerian society has been a patriarchy society. Patriarchy denies women access to and control over decision making.⁶⁸ Hence, decision as to the number and spacing of children should be left to the husband, or at best, both of them.⁶⁹

This stand of culture on the right to choose of women has negated it being used as the basis for the legalization of abortion in Nigeria. Using culture as the basis also, right to choose cannot extend to abortion right for women in Nigeria. This being the case, the key informants (those who use culture as their basis) still went ahead to express their views on the legalization of abortion in Nigeria which to them, does not accord with the Yoruba culture. This is because, human personhood for the Yoruba begins at pre-conception and the act of abortion is ethically condemnable in Yoruba ethics.⁷⁰

Arguably, the Yoruba from all indications will want to say that life begins from pre-conception, and that the fetus is a potential human being. The Yoruba will not want to consider abortion as a right because of their attitude towards child bearing, marriage, care and love for children,⁷¹ as well as their

attitude towards the pregnant woman at the various stages of pregnancy.

They believe that children are the survival of the race and family. This explains the reason why, under the Yoruba culture, no child is unwanted or unplanned. Even children born out of wedlock had no negative stigma attached to them. A new child is always welcome. The death of a fetus however, is viewed as a bad sign and calamity. The Yoruba strongly believe that one does not know the child that will take care of the parents at old age, so discrimination against any child even those unborn is always discouraged.⁷² This shows that, children are like social security in the Yoruba culture.⁷³

Child care under Yoruba culture sometimes appears like ritual. Culturally, child health protection is viewed as a form of investment. The care of children under Yoruba culture is reciprocal in the sense that investment in children would bring about social security for parents at old age. This is expressed in a Yoruba adage, 'bi okete ba dagba tan omu omo re nii mu', which literally means, 'a rabbit sucks from its offspring at old age'. This is a metaphor indicating parents' dependence on children at old age.

Culturally, therefore, abortion cannot be legalized in Nigeria on the basis of the right to choose for women because, women don't have such a right, and more importantly because it is a taboo.

F. Murder

Under the common law, murder was usually viewed as the unlawful killing of human being with malice aforethought. Hence, when a child dies in circumstance of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed him.⁷⁴

It is on this basis that, some of the participants (key informants) in this study viewed that; the right to choose within CEDAW does not extend to abortion, and at the same time cannot justify the legalization of abortion in Nigeria.

To these participants (key informants), murder is murder no matter how it is being carried out. It is murder whether you kill a 10 year old, a 65 year old and even a baby in the womb, and it does not matter how you kill. It is again murder if you kill with a bow and arrow, a gun, or even causing the abortion of a baby in the womb. They therefore linked abortion with *boko haram*. They felt that, the killings done by the *boko haram* sect in Nigeria is the same as the killings done by abortionists, and felt that, under no circumstances should the government give anybody the license to kill.⁷⁵

⁶⁷Eghosa O. E, "Women and the Law in Nigeria: A Reappraisal" *Journal of International Women's Studies* 16, no.2 (2015); 285.

⁶⁸Rabia A, Farhan A and Saira B. "Examining Empowerment: Narratives of 'Homemakers' from Rural Pakistan" *International Journal of Gender and Women's Studies* 4, no.1 (2016); 48-49; See also, Titilayo Cordelia Orisaremi and Ogoh Alubo, "Gender and Reproductive Rights of Tarok Women in Central Nigeria," *African Journal of Reproductive Health* 16, no.1 (2012): 84.

<http://www.ajol.info/index.php/ajrh/article/viewFile/75952/66444>

⁶⁹Okonkwo U. T and Ezumah N. N, "Socio-Cultural Factors Affecting the Autonomy of Reproductive Decisions of Married Women in Nsukka L.G.A. of Enugu State, Nigeria" *International Journal of Sociology and Anthropology Research* 3, no.2 (2017); 1-3; See also, Olatokun G. M. and Ahmad R, "African Traditional Values and the Right to Choose for Women: A Conflict Resolved" *International Journal of Business, Management & Social Sciences* III, Issue I(III): 1-4.

⁷⁰Olanrewaju A. S, "The Humanity of the Foetus: A Yoruba Perspective" *African Journal of History and Culture* 7, no.2 (2015); 52-54.

⁷¹Ademola K. F, "Family Responsibilities and Genetic Disorders in Yoruba Culture: The Example of Sickle Cell Anaemia" in *Parental Responsibility in the Context of Neuroscience and Genetics* eds. Kristien Hens, Daniela Cutas and Dorothee Horstkotter (Sitzlerland: Springer, 2016). 207-212.

⁷²Olanrewaju A. S, "The Humanity of the Foetus: A Yoruba Perspective"

⁷³Ibid

⁷⁴Sec 309 Criminal Code Act.

⁷⁵Olatokun G, *Women's Right to Reproduce in Nigeria: CEDAW in Perspective* (Germany: Lambert Academic Publishing 2015), 173.

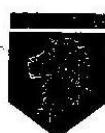
V. CONCLUSION AND RECOMMENDATIONS

The holistic interpretation that can be given to the views as expressed by majority of the participants (key informants) is that, since the right to choose under CEDAW cannot be extended to the right to abort, it cannot therefore, justify legalization of abortion in Nigeria.

Based on the above, the following recommendations are proffered;

1. Complete abrogation of CEDAW Recommendation 24. This Recommendation has misled the whole world into believing that the right to choose provisions as contained within CEDAW meant the right women have to abort.
2. Nigeria as a country should revert back to the Constitution of the Federal Republic of Nigeria and follow the provisions strictly as far as prohibition of abortion is concerned.
3. Nigerians as a whole should adhere strictly to their 'religion' and 'culture', for within these two most cherished practices lies the true guidance to the right path.
4. Nigerian Legislative Houses should sponsor a Bill that will address holistically the reproductive right of women in Nigeria.

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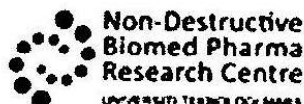
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