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HUMAN RIGHTS AND SECURITY IMPACTS OF CLIMATE CHANGE AND THE AFRICAN CLIMATE ACTION STRATEGY

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REGULATING TAKAFUL INSURANCE IN NIGERIA: CHALLENGES AND THE WAY FORWARD

THE QUEST FOR ACCOUNTABLE GOVERNANCE IN NIGERIA

CRITICAL ANALYSIS OF THE LEGAL REGIME FOR THE CONTROL OF GAS FLARING IN NIGERIA

THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015: AN OVERVIEW

THE TWO SIDED EDGE TO ABORTION ISSUE IN NIGERIA: REVIEWING LITERATURES

AN EXAMINATION OF THE JURISDICTION OF THE NIGERIAN INVESTMENT AND SECURITIES TRIBUNAL

THE LEGAL IMPLICATIONS OF THE PROPOSED BAN OF THE HIJAB: PERSPECTIVES FROM FUNDAMENTAL RIGHTS

APPLICATION OF THE DOCTRINE OF NATURAL JUSTICE IN ADMINISTRATIVE TRIBUNAL'S PROCEEDINGS IN NIGERIA

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THE INVESTOR'S PROTECTION LAWS IN NIGERIA: AN APPRAISAL

PUBLIC DECLARATION OF ASSETS BY THE PUBLIC OFFICE HOLDERS: A CASE OF SUPERIOR TRANSPARENCY, ACCOUNTABILITY, INTEGRITY, CREDIBILITY AND MORALITY OR A CONSTITUTIONAL BREACH?

OIL THEFT AND MILITANCY IN THE NIGER DELTA REGION OF NIGERIA: ANALYSIS OF THE LEGAL ISSUES

MULTINATIONAL CORPORATIONS IN NIGERIA AND THEIR IMPLICATIONS ON THE RIGHT TO WATER

THE ENFORCEMENT OF THE CHILD'S RIGHT ACT 2003 IN NIGERIA: AN EXAMINATION

THE RIGHT TO FREEDOM OF INFORMATION IN NIGERIA: A CALL FOR CONSTITUTIONAL RECOGNITION

THE PROTECTION OF THE RIGHTS OF WOMEN UNDER THE ISLAMIC LEGAL SYSTEM

AN EVALUATION OF THE CONTENDING JURISTIC VIEWS REGARDING THE INHERITANCE OF DHAWIL ARHAM (COGNATES) IN COMPETITION WITH BAIT-AL-MAL (PUBLIC TREASURY)

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TABLE OF CONTENT

HUMAN RIGHTS AND SECURITY IMPACTS OF CLIMATE CHANGE AND THE AFRICAN CLIMATE ACTION STRATEGY <i>PROFESSOR MUHAMMED TAWFIQ LADAN...</i>	...	...	...	...	...	...	...	...	1
FATWĀ VERSUS MODERNITY WITHIN THE PHILOSOPHICAL EPISTEMOLOGY OF SHARI'AH: STRIKING A BALANCE BETWEEN THE TWO <i>MAGAJI CHIROMA, MAHAMAD BIN ARIFIN, MOHAMMAD ASMADI ABDULLAH & ABDUL HASEEB ANSARI</i>	...	...	...	...	...	...	...	...	27
THE LEGAL IMPLICATION OF DEATH OF A CANDIDATE IN AN INCONCLUSIVE ELECTION: UNDERSTANDING THE POSITION OF I.N.E.C IN THE 2015 KOGI STATE GUBERNATORIAL ELECTION <i>HAMZA ABDULAZEEZ OKENE, EMMANUEL OLUWASEGUN SAWYERR & ABUBAKAR SALISU BAFFA...</i>	...	...	...	...	...	...	...	...	42
REFLECTING ON MILITARY MYTH AND JUDICIAL INTERVENTIONISM IN NIGERIA: JUDICIAL ACTIVISM OR PASSIVITY IN CONSTRUING MILITARY DECREES <i>IBRAHIM IMAM...</i>	...	...	...	...	...	...	...	...	53
AN APPRAISAL OF WOMEN'S PROPRIETARY RIGHTS UNDER ISLAMIC LAW OF TRANSACTIONS (FIQH AL-MU'AMALAAT) <i>DR. ABDUL-RAZZAQ A. ALARO</i>	...	...	...	...	...	...	...	...	70
THE POSITION OF ISLAMIC LAW ON HIRABAH AND AL-BAGHY <i>ISMAEL FUNSHO YUSUPH</i>	...	...	...	...	...	...	...	...	81
THE PARTICIPATION OF POLITICAL PARTIES IN THE ELECTION OF PRINCIPAL OFFICERS FOR LEGISLATIVE HOUSES IN NIGERIA: AN APPRAISAL <i>AISHA HARUNA & AMANA MOHAMMED YUSUF</i>	...	...	...	...	...	...	...	...	96
ISLAMIC FINANCIAL INSTITUTIONS' (IFIs) REGULATION: THE CHANGE OF NOMENCLATURE FROM SHARI'AH ADVISORY TO FINANCIAL EXPERTS A MEANS OF FINANCIAL INCLUSION IN NIGERIA <i>IBRAHIM MUHAMMAD AHMAD & AUDI MUSA MUHAMMAD...</i>	...	...	...	...	...	...	...	...	106
REGULATING TAKAFUL INSURANCE IN NIGERIA: CHALLENGES AND THE WAY FORWARD <i>MOHAMMED BABAKANO ALIYU AND BABALISA SANDA BENISHEIKH...</i>	...	...	...	...	...	...	...	...	115
THE QUEST FOR ACCOUNTABLE GOVERNANCE IN NIGERIA <i>ADEDOKUN OGUNFOLU AND OLUDAMILOLA ADEJUMO...</i>	...	...	...	...	...	...	...	...	126

CRITICAL ANALYSIS OF THE LEGAL REGIME FOR THE CONTROL OF GAS FLARING IN NIGERIA	
<i>ABDULMUMINI SHUAIBU ABDULLAH!</i> ...	141
THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015:	
AN OVERVIEW	
<i>AGABA, J. A. & SALMANU M. RILWANU</i> ...	156
THE TWO SIDED EDGE TO ABORTION ISSUE IN NIGERIA:	
REVIEWING LITERATURES	
<i>GANIAT MOBOLAJI OLATOKUN (PHD)</i> ...	176
AN EXAMINATION OF THE JURISDICTION OF THE NIGERIAN INVESTMENT AND SECURITIES TRIBUNAL	
<i>OGHOMWEN RITA IGBINEDION (MISS) & EDOGHOGHO EBOIGBE (MRS)</i> ...	193
THE LEGAL IMPLICATIONS OF THE PROPOSED BAN OF THE HIJAB: PERSPECTIVES FROM FUNDAMENTAL RIGHTS	
<i>OWOADE, ABDUL-LATEEF. A. & APALANDO, ISHAQ. O.</i> ...	205
APPLICATION OF THE DOCTRINE OF NATURAL JUSTICE IN ADMINISTRATIVE TRIBUNAL'S PROCEEDINGS IN NIGERIA	
<i>HAMZA ABDULAZEEZ OKENE, ABUBAKAR SALISU BAFFA & EMMANUEL OLUWASEGUN SAWYERR</i> ...	215
THE BINDING FORCE OF INTERNATIONAL HUMANITARIAN LAW FOR INSURGENTS IN NON-INTERNATIONAL ARMED CONFLICTS:	
AN APPRAISAL	
<i>AWHEFEADA, UFUOMA VERONICA</i> ,...	234
ADDRESSING ROOT CAUSES OF HUMAN TRAFFICKING IN NIGERIA: A PRACTICAL APPROACH	
<i>DR. SALOME KONKAT KIGBU</i> ...	241
THE INVESTOR'S PROTECTION LAWS IN NIGERIA:	
AN APPRAISAL	
<i>PROF. ROWLAND ALABA AKANDE & CHIOMA VIVIAN ITESHI</i> ...	257
PUBLIC DECLARATION OF ASSETS BY THE PUBLIC OFFICE HOLDERS: A CASE OF SUPERIOR, TRANSPARENCY, ACCOUNTABILITY, INTEGRITY, CREDIBILITY AND MORALITY OR A CONSTITUTIONAL BREACH?	
<i>K. O. OLANIYAN</i> ...	266
OIL THEFT AND MILITANCY IN THE NIGER DELTA REGION OF NIGERIA: ANALYSIS OF THE LEGAL ISSUES	
<i>KABIRU ADAMU</i> ...	276

MULTINATIONAL CORPORATIONS IN NIGERIA AND THEIR IMPLICATIONS ON THE RIGHT TO WATER	
<i>OLUWATOSIN BUSAYO IGBAYILOYE, & OLUBUNMI LUCY NIYI-GAFAR</i> ...	300
THE ENFORCEMENT OF THE CHILD'S RIGHT ACT 2003 IN NIGERIA: AN EXAMINATION	
<i>IYAMU-OJO ELIZABETH AIWEKHAE (MRS.)...</i>	315
THE RIGHT TO FREEDOM OF INFORMATION IN NIGERIA: A CALL FOR CONSTITUTIONAL RECOGNITION	
<i>MUHAMMAD NURUDDEEN</i>	328
THE PROTECTION OF THE RIGHTS OF WOMEN UNDER THE ISLAMIC LEGAL SYSTEM	
<i>KAZEEM O. OLANIYAN</i>	345
AN EVALUATION OF THE CONTENDING JURISTIC VIEWS REGARDING THE INHERITANCE OF DHAWIL ARHAM (COGNATES) IN COMPETITION WITH BAIT-AL-MAL (PUBLIC TREASURY)	
<i>DAHIRU JAFARU USMAN AND SALISU MALAMI</i>	364

THE TWO SIDED EDGE TO ABORTION ISSUE IN NIGERIA: REVIEWING LITERATURES

By

Ganiat Mobolaji Olatokun (PhD)*

Abstract

Since the decision in *Roe v. Wade*, most nations of the world now have a liberal view about abortion. In fact, as we stand today, 61% of the world population is now living in countries where abortion is permitted on demand, while only 25% of the world's population live in countries where abortion is illegal or severely restricted. Nigeria is one of those countries with restrictive abortion laws. Termination of pregnancy is highly restricted in Nigeria under both the Penal Code (applicable in the North) and Criminal Code (applicable in the South) and carries heavy jail term of up to 14/years for the provider and 7/years for the woman, unless it is performed to save the life of the woman. The world over is now divided into two; one side supporting abortion, and the other side opposing abortion. Along this line, we now have the pro-life and the pro-choice group both hanging on the right to choose provided for under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). This work is set out to review literatures on both side of the coin, while the researcher constantly chips in her own view about all the literatures reviewed. It is the belief of this work that at the end of the review, the stand of the Nigerian government on the continued criminalization of abortion in Nigeria will be appreciated.

KEY WORDS: Abortion, Women, Crime, CEDAW, Nigeria.

Introduction

The right to choose according to the radical feminists of the 1960s means, the right women have to determine what happens to their bodies.¹ To radical feminists, this right extends to the decision whether or not to carry a pregnancy to term. This decision should be left absolutely with the women. This view was boosted in 1973, by the Supreme Court of the United States of America in the case of *Roe v Wade*.² By this decision, the court recognizes the right of a woman to have an abortion under the 14th Amendment to the American Constitution. The court ruled that, only when the state interests are compelling may the state promulgate regulations limiting the woman's fundamental right to privacy.³

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¹According to Firestone, a radical feminist, the connection which women usually have with men is an invasion of the women's body, and the resultant effect of that connection, which is pregnancy, should be left at the mercy of the women. See, R. west, 'Jurisprudence and Gender' in Patricia Smith (ed), *Feminist Jurisprudence* (Madison NY: Oxford University Press 1993) 505,506; see also, Martha C. Nassbaum, "R. west, Jurisprudence and Gender, Defending Radical Feminism" (2008) 75(3) *University of Chicago Law Review* 985,985 <<http://www.jstor.org/stable/201411934>> (Accessed on February 15,2011); see also, the declaration by the Administrator of the United Nations Development Programme, when speaking of a 1995 worldwide survey of the status of women, that 'life is dramatically unfair to women', in Mc Elvaine, Robert S, *Eve Seed: Biology, the Sexes and the Course of Human History*, (New York NY: McGraw-Hill Company 2000) 1.

² [1973] 410 US 113.

³ The court found two compelling state interests as a woman approaches full term, (i) preserving and protecting the health of the pregnant woman, and (ii) protecting the potentiality of human life. The whole process of pregnancy was divided into three trimesters and the court explained how these interests came into effect with regard to the decision whether or not to terminate the course of pregnancy. The court held that, during the first trimester, which starts from conception till around the 12th week, the woman and her physician are free to determine whether or not to terminate the

In the United States of America, the 14th Amendment guarantees a woman's right to privacy, a right which extends even to a woman's right to choose abortion.⁴

Since this decision, most nations of the world began to have a more liberal view towards abortion. In fact, 61% of the world population is now living in countries where abortion is permitted on demand, while only 25% of the world's population continues to live in countries where abortion is illegal or severely restricted.⁵

Nigeria is one of those countries with restrictive abortion laws. Termination of pregnancy is highly restricted in Nigeria under both the Penal Code (applicable in the North) and Criminal Code (applicable in the South) and carries heavy jail term of up to 14 years for the provider and 7 years for the woman, unless it is performed to save the life of the woman.⁶ Based on this, some quarters of the Nigerian population believes that this is a form of discrimination against women. They felt that, since both men and women are equal before the law, there should be no restriction to deprive women from doing whatever they want to do with their bodies. Any attempt to stop women from exercising this right is seen as a discrimination which CEDAW (Convention on the Elimination of all forms of Discrimination against Women) has eliminated through the reproductive rights granted by it. The right to choose as defined by radical feminists of the 1960s is thus, implored and brought in to interpret the right to choose under CEDAW.

course of pregnancy without regulation by the state. During the second trimester, which elapsed at the 28th week, the compelling interest of the state in maternal health allows the state to adopt regulations seeking to promote safe abortion. When the fetus reaches the point of viability at the third trimester, the state may prohibit abortions except when necessary to protect the health of the mother. See, D. Sperling, *Management of Post-Mortem Pregnancy. Legal Philosophical Aspect* (England: Ashgate Publishing Company 2006) 2; see also, R. J. Cook and B. M. Dickens, 'Human Right Dynamics of Abortion Law Reform' (2003) 25(1) *Human Rights Quarterly* 1,22-25. <<http://www.jstor.org.eserv.uum.edu.my/stable/pdfplus/2003.pub>> (Accessed February 3, 2011).

⁴ Right to privacy has been held to mean the right an individual, married or single, has to be free from unwanted government intrusion in matters so fundamentally affecting a person as decision whether to bear or beget a child. This was the statement made by the court in the case of *Eisenstadt v. Baird* [1972] 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349. The court has also employ the right of privacy clause in *Griswold v. Connecticut* [1965] 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510, where law banning the use of contraceptive by married couples was declared unconstitutional on the grounds of intruding into the privacy of persons. *Lawrence v. Texas*, 539 U.S. 558 (2003), where the sodomy law of Texas was held unconstitutional on privacy grounds has overruled the earlier case of *Bowers v. Hardwick* (1986), where the ban on same sex activities was upheld on the ground that the court find no constitutional protection on sexual privacy.

⁵ Siegrid Tautz, "(un) safe Abortion, A Review and Discussion Paper" [2004] *Federal Ministry for Economic Cooperation and Development. 4320. Health and Population, Supraregional Project: Promotion of Reproductive Health*. 7,7; See also, Anika Rahman, Laura Katzive and Stanley k. Henshaw, "A Global Review of Laws on Induced Abortion, 1985-1997" (1998) 24(2) *International Family Perspectives* 56,57; A recent study (2007) by Allan Guttmacher Institute (AGI), categorized abortion laws around the world and came out with the conclusion that, 25% of the world population live in countries where abortion is restricted, and 61% of the world population live in countries where abortion is allowed.

⁶ Secs 232,235 Penal Code and secs 228, 229 and 230 Criminal Code In the Southern States, physical and mental health reasons is also inclusive.. See also, Valentine O. Otoide, Frank Oronsaye and Friday E. Okonofua, "Why Nigerian Adolescents Seeks Abortion Rather than Contraception: Evidence from Focus Group Discussion" (2001) 27(2) *International Family Planning Perspective* <www.guttmacher.org/pubs/journals/2707701> (Accessed on November 20, 2011); See further, Okagbue I, "Pregnancy Termination and the Law in Nigeria" (1990) 21(4) *Studies in Family Planning* 197,197. <www.ncbi.nlm.nih.gov/pubmed/2219225> (Accessed November 20, 2011); See, Victor Nnamdi Opara, "Re: Characterizing Abortion in Nigeria: An Appraisal of the Necessity Test" (2004) 11 ILSA 143 *International and Comparative Law Journal*, <<https://litigation-essentials.lexisnexis.com/webcd/app?action>> (Accessed November 20, 2011); See further, Obiajulu, Nnamuchi, 'The Right to Health in Nigeria, Right to Health in the Middle East Project' (Law School, University of Aberdeen 2007) 11. <www.abdn.ac.uk/law/documents/Nigeria-%20210808.pdf> (Accessed on November 20, 2011).

However, another segment of the Nigerian population, believes that the virtues of African tradition, particularly, Nigerian culture, which is interwoven in their religions and practices will be subverted, and more problems will emerge if the radical definition of right to choose is imported into the Nigerian laws.⁷

Abortion is presently regarded as a major cause of social and clinical problem in Nigeria.⁸ Because the Criminal laws of the country are against abortion, women resort to abortion in clandestine places⁹ leading to astronomical increase in abortion-related maternal morbidity and mortality.¹⁰ Abortion is also thought to be responsible for long term morbidity in women including infertility, chronic pelvic pain, recurrent and spontaneous abortion and ectopic pregnancies.¹¹

Consequently, abortion, though a legal issue in Nigeria, has assumed the status of a social problem¹² with arguments centring on whether or not to legalize abortion.¹³ The literature

⁷ In Imo state of Nigeria, a state in the East of Nigeria, the State's House of Assembly has been commended for rejecting the Imo State Women's Right Bill (2009). The legislature voted 13-1 against a bill that would have made abortion legal in the pro-life State. A former governor of the State had expressed shock on the wave to legalize abortion in Nigeria in the 21st century. The defeat of the bill has demonstrated that Nigeria, as a whole has deep respect for cultural norms and religious tenets. In Owerri, Nigeria, the rejection of the bill was tagged, a 'victory of the superior Imo cultural values over the new global western cultural revolution'. See, Orji Kalu, 'Legalization of Abortion?, No Way' <<http://www.sunnewsonline.com/webpages/columnists/kalu/kalu/20-june-htm>> (Accessed March 22, 2011); see also, Patrick B Craine, 'Nigerian State Rejects Abortion-Legalizing Bills Pushed by American Group' <<http://www.lifesitenews.com/news/archive/1dn/2009/jun/09061909.html>> (Accessed March 22, 2011). It is important to state here that, Nigeria is a circular country with the presence of three diverse religions, Islam, Christianity and African Traditional Religion.

⁸ See. *The Background to the Seminar on Critical Issues in Reproductive Health. Prevention of Morbidity and Mortality from Induced and Unsafe Abortion in Nigeria*. Proceedings of a Seminar Organized by the Department of Obstetrics, Gynecology and Perinatology, Obafemi Awolowo University, Ile-Ife, Nigeria (4-9 December 1991) 8,8; See also, F E Okonofua, 'Clinical Consequences of Unsafe Abortion and their Management in Nigeria' (1991) in *Clinical Issues in Reproductive Health. Prevention of Morbidity and Mortality from Induced and Unsafe Abortion in Nigeria* 19, 19-20 being a paper delivered at the proceedings of a seminar Organized by the Department of Obstetrics, Gynecology and Perinatology, Obafemi Awolowo University, Ile-Ife. Nigeria. 4-9 December 1991. <www.popcouncil.org/pdfs/ebert/abrtmorbmortnigeria.pdf> (Accessed November 26, 2011).

⁹ Boniface A Oye-Adeniran, Carolyn M Long, Isaac F. Adewole, "Advocacy for Reform of the Abortion Law in Nigeria" (2004) 12(24 Supplement) *Reproductive Health Matters* 209-216,210; see also, Boniface A. Oye- Adeniran et al, "Induced Abortion in Nigeria: Findings from Focus Group Discussion" (2005) 9(1) *African Journal on Reproductive Health* 133,134 <<http://www.ingentaconnect.com/content/wharc/ajrh/2005/00000009/00000001/00016>> accessed 2 March 2011).

¹⁰ F. E. Okonofua, *That She May Multiply Without Tears* (2006) being the inaugural lecture delivered by him on 7th December, 2006 at the University of Benin, Nigeria 12, 25; See also, Patrick I Okonta, Peter N Ebeigbe, Ileogben Sunday- Adeoye, "Liberalization of Abortion and Reduction of Abortion Related morbidity and Mortality in Nigeria" (2010) 89(8) *Acta Obstetrica et Gynecologica Scandinavica*, 1087,1087. These literatures provide evidence regarding the high rate of abortion-related maternal morbidity and mortality.

¹¹ Several complications have been linked to abortion. See, Abasiattai, Anieken M, Umoiyoho, Aniefiok J, "A 6-Year Review of Maternal Deaths in A Teaching Hospital in South-South Nigeria", (2009) 11(1) *International Journal of Gynecology and Obstetrics* 5,5. See also, Buowari, Debota, Yvonne, "Pattern of Gynecological Admission at a Rural Hospital in Nigeria" (2010) 7(1) 5,5; See also, Boniface A Oye-Adeniran, Augustine V Umoh and Steve N N Nnatu, "Complications of Unsafe Abortion: A Case Study and the need for Abortion Law Reform" (2002) 10(19) *Reproductive Health Matters* 18,18.

¹² For a condition to be termed social problem, four conditions must be met. They are; (i) there must be some political outcry, people must become involved in discussing the problem, public attention becomes directed towards that condition; (ii) the condition must involve a gap between social ideals and social reality i.e, the condition must run counter to the values of larger society, (iii) a significant proportion of the population must be involved in defining the problem and, (iv) the condition must be capable of solution through collective action by the people. See *Defining Social Problems*. <www.people.vcu.edu/~mahoney/define.htm> accessed 23 November 2011.

¹³ A 1982 attempt to liberalize abortion law in Nigeria was defeated. A termination of pregnancy bill, sponsored by the society of Gynecologists' and Obstetricians of Nigeria, was presented to the National assembly. This bill was strongly

review provided hereunder, will create the required state of mind in addressing the two sided edge to abortion in Nigeria.

A Quick Analysis of the Foundation of the Abortion Debate

The decision by the Supreme Court of the United States in the case of *Roe v. Wade*,¹⁴ brought to prominence the issue of the right to choose abortion by a woman. The decision in effect, recognizes a woman's right to choose and this right, at least in the early months of pregnancy, was ruled to prevail over the fetus's right to life. This is because, there is little reason for extending legal protection to human life until a person comes into existence. In other words, by this decision, fetus is not a person and therefore, there is no reason to accord it a right to life.

With due respect to the justices of the Supreme Court of America, this decision leaves more to be desired because, going in line with all the international human rights instruments, life begins at conception.¹⁵ Also, traditional Roman Catholics maintained that human person come into existence at the moment of the ovum being fertilized.¹⁶ Even at this opinion by the Catholic Church, some theologians, like Thomas Aquinas, try to extend the time when fetus can be termed a person by claiming that, there are several stages a fetus needed to pass through before it can be concluded that, a fetus is a person. The likes of Thomas, argues that the fetus cannot assume the stage of a person at conception as postulated by the Catholic Church, because the fetus is not conscious of happenings in its surroundings. If this argument holds true, it can then be said that, killing a new born baby is normal since the baby too is not conscious of the happenings around it. Happily, the view expounded by the Catholic Church is the widely accepted view.

John Robertson,¹⁷ in one of his ambitious, but flawed writings, has defined reproductive freedom in two ways. To him, the first way is to avoid reproduction, which means abortion, and the second way is the freedom to reproduce which means carrying the pregnancy to term. He is of the opinion that the position the woman takes depends on her interest and justification for taking such a stand. He went further to say that, the denial of one type of reproductive liberty necessarily implicates the other. Robert's writing is still in line with the famous contention on the right to choose abortion. He sees nothing wrong in a pregnant woman choosing between right to reproduce and right not to reproduce, abortion. Whichever the woman chooses, to him, is best judged by the woman's interests and justifications.

opposed by religious leaders and by the Nigerian Council of Women Societies of Nigeria who feared that its passage would promote sexual promiscuity. See Population Policy Data Bank maintained by the Population Division of the Department for Economics and Social Affairs of the United Nations Secretariat. See www.un.org/esa/population/publications/abortion/doc/nigeria.doc accessed 7 November 2011.

¹⁴In *Roe v Wade* 410 US (1973), the Supreme Court of the United States declared that the fetus is not a person within the language and meaning of the fourteenth Amendment to the United States Constitution and so, does not deserve a right to life. It is only when the fetus reaches the point of viability that the State may prohibit abortion, except when necessary to protect the health of the mother.

¹⁵ *Draft American Declaration of the International Rights and Duties of Man* (1948); 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" (2014) *SUUM Journal of Legal Studies* 151.

¹⁶ Marcstauch, Kay Wheat and John Tingle, *Source Book on Medical Law*, (Great Britain: Cavendish Publishing Limited 1998) 407; See also, Pope John Paul II in the *Evangelium Vitae* (1995) 104.

¹⁷ Robertson J, *Children of Choice: Freedom and the new Reproductive Technologies* (United Kingdom: Princeton University Press 1994) 26.

This liberty to choose as portrayed by Robertson cannot be maintained by this research. This researcher maintains that since right to choose, an aspect of reproductive right' has found its way into CEDAW, which happens to be an international human right instrument most concern about the preservation and protection of human life there can only be one interpretation to 'right to choose' and that is the right of any pregnant woman to reproduce in order to give her fetus the right to life. It is hereby affirmed that, an international human right instrument like CEDAW cannot be a license to destroy life, it must as a matter of exigency, promote and preserve life.

Early work on abortion and the status of the fetus¹⁸ has the same characteristics with Thomas Aquinas, arguing in the main that fetuses are not persons. This was the view by H. T. Engelhardt Jr. at the closing remark in a symposium held sometimes in October 1980, on the concept of persons and its implications for the use of the fetus in biomedicine. He was hopeful that, as time goes on, people will shift from their primitive traditional and cultural attitude, and will accept abortion with time.

Literatures supporting abortion

Having presenting the genesis, basis as well as the foundation surrounding the issue of abortion, it is imperative to note that literatures in support of abortion abounds. In Nigeria, these types of literatures are found all around supporting as well as canvassing that the right to choose for women wholly relates to abortion right and that abortion should be legalized.

While drawing a frame work for abortion research in Nigeria, professor Lawrence A Adedokun,¹⁹ was of the view that abortion under unsafe condition²⁰ carry unacceptable social and economic circumstances. He therefore said that the first step curb the problem of unsafe abortion is to legalize abortion. By legalizing abortion as suggested by the professor, means going against the right to choose provision as granted by CEDAW,²¹

¹⁸ Williams B. Bondeson et al, (eds) *Abortion and the Status of the Fetus* (USA; Kluwer Boston, 1984), 335.

¹⁹ Lawrence Adedokun, 'Systematizing Determinants of Abortion : A Frame work for abortion Research in Nigeria' (1991) *Critical Issues in Reproductive Health. Prevention of Morbidity and Mortality from Induced Abortion in Nigeria* 97, 110. Being a paper delivered at the proceedings of a seminar organized by the Department of Obstetrics, Gynecology and Perinatology, Obafemi Awolowo University, Ile-Ife, Nigeria, 4-6, December 1991.

²⁰ An unsafe abortion is a procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking the minimal standards or both. This definition was contained in the in the WHO, *The Prevention and Management of Unsafe Abortion, Report of a Technical Working Group Geneva* (1992); See, Siegrid Tautz, "(Un) Safe Abortion, A Review and Discussion Paper" (2004) *Federal Ministry for Economic Cooperation and Development. 4320. Health and Population, Supraregional Project: Promotion of Reproductive Health*, 2. In Nigeria, it is very common for women to resort to this type of abortion because, under the Penal Laws, legal and safe abortion can only be granted when the life of a woman is at stake.

²¹ In all provisions in the body of CEDAW, the interest of children is the paramount consideration in all cases. Consequently, Art 5 (b) has provided that, family education should include proper understanding of pregnancy as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. With this laudable provision which already had in contemplation, the right of children both born and unborn, legalization of abortion has no basis within Nigeria. The same argument can be posed with respect to the provision of Art 12 which provides that pregnant women should be entitled to family planning services. Abortion cannot be contemplated if there is the provision for adequate family planning. The provision regarding a woman's right to decide freely and responsibly as to the number and spacing of her children, can further be hinged on the access to family planning. If all these are within the main body of CEDAW, it is appropriate to restate it that, abortion has no basis. See, Ganiat Olatokun, *Women's Right to Reproduce in Nigeria: CEDAW in Perspective* (Germany: Lambert Academic Publishing 2015) 59.

going against the Constitution of the Federal Republic of Nigeria²² as well as going against the Penal laws of the country,²³ all of which guarantees the right to preserve and protect life and not the right to destroy life.

In a follow up development, still suggestive of the fact that abortion should be legalized in Nigeria, Ogiemien²⁴ compared Nigeria with the UK and the USA, and came to a conclusion that, Nigeria should imitate these countries in which abortion has been legalized. There is a misplaced misconception, which is so grave, by the slight reference to the UK and USA. With reference to the UK, the author seems to be confused by the mentioning of the case in *R v. Bourne*²⁵ as being the case which legalized abortion in the UK.

The decision in the above case did not legalize abortion in the UK, but rather, gave prominence, while being guided by the Offence against Person's Act of 1861, to the good intention of Dr Bourne, who was a highly respected and eminent obstetrician and gynaecologist at that time. The Dr explained to the jury that lawful abortion could be performed in circumstances when the mother's life was at risk and also, when the likely consequences of continued pregnancy would make the mother a physical or mental wreck. The acquittal of the doctor theoretically paved the way for doctors to perform abortion lawfully, if they could justify the circumstances as falling within the criteria used in Bourne. Even at this, the doctors were wary to carry out abortion because, they don't know whether their criteria (which was restricted), will fall within those used in Bourne.²⁶

This was the situation in the UK until when the Home Office of the Ministry of Health Department Committee forwarded a recommendation that the law should specify by formal amendment, to the effect that, the doctors who act in good faith to perform an abortion when he is satisfied that the continuance of the pregnancy is likely to endanger the woman's life or seriously to impair her health does not act unlawfully.²⁷ If the effect of Bourne is to make lawful a 'therapeutic abortion', the question then arises as to the limits at common law of this notion.

Even with the Bourne's case, what was lawful still remained uncertain, the consequence served as a spring board for the 1967 Abortion Act. The Act and its subsequent amendment by the Human Fertilization and Embryology Act 1990, provide for greater formal opportunities for women to obtain abortion, but not without exception.²⁸ The UK

²² Sec 33 of the Constitution of the Federal Republic of Nigeria grants the right to life to everybody.

²³ By criminalizing abortion except when necessary to save the life of the mother, the Penal and Criminal Codes are upholding the right to life of the unborn.

²⁴ T. B. E Ogiemien "A legal Frame Work to Legalize Abortion in Nigeria" (1991) *Critical Issues in Reproductive Health. Prevention of Morbidity and Mortality from Induced Abortion in Nigeria* 81, 84-89. Being a paper delivered at the Proceedings of a Seminar Organized by the Department of Obstetrics, Gynecology and Perinatology, Obafemi Awolowo University, Ile-Ife, Nigeria. 4-6 December 1991.

²⁵ [1939] 1 KB 687.

²⁶ Keown J, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England form 1803-1952* (United Kingdom: Cambridge University Press 1988) 78-79.

²⁷ See the Report of the International Committee on Abortion, HMSO, London, 1939.

²⁸ Under the 1967 Act as amended, four grounds of performing abortion lawfully exists;- I, where the pregnancy has not exceeded its 24th week, and the continuance of the pregnancy would involve risks greater than if the pregnancy were terminated or of injury to the physical or mental health of the pregnant woman or existing children of her family, ii, Where the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant

law officially handed the power of decision making on abortion to the medical profession. The UK laws made no effort to offer right to anyone involved in abortion issues except the doctors who have legal authority to decide whether or not a particular case of a woman fits within the legally defined defences to a charge of criminal abortion. In other words, except on four grounds specified, abortion is still a criminal offence in the UK.

Be that as it may, the British Medical Association (BMA) played a very prominent role in the design of today's abortion laws in the UK. In the wake of this design, the BMA was much concerned about the right to life of the fetus²⁹ as well as the right of autonomy of the medical profession.³⁰ The BMA guarded against a situation when abortion will be obtained on demand without just cause, or to be obtained from people who are not medical practitioners. An abortion law of the UK was properly designed to guard against misuse of the law.

On a careful digestion of the process leading to the present state of abortion law in the UK, it will be seen that Nigeria, being compared to the UK is a mismatch.³¹ There is nothing to show in Nigeria that respect should be accorded to the unborn in all the millions of demand for the legalization of abortion. The only comparison which can be identified, and which Ogiemien is blinded to, is the fact that, the penal laws in Nigeria are also trying to do what has been done by the abortion laws in the UK, by guarding against abortion on demand by insisting on the right to life of the fetus, except in cases where the life of the mother is at stake.

If the Penal laws are not expanded and abortion is not legalized in Nigeria, the only reason that can be given for such a stand is the necessity to preserve the life of the unborn, which incidentally, is the message being passed by the right to choose granted by CEDAW.

With Ogiemien's reference to the USA, it is the contention of this work that, as a matter of fact, there is a graver misplaced conception, than the one he had by referring to the UK. This is because, despite the constitution of the USA, granting as it were, the right to choose abortion, the abortion issue is far from being settled even as at today. It must please everyone who cares to know that, the decision reached in *Roe v. Wade*, was as a result of the non-challant attitude of the American Medical Association (AMA), who refused in their duties to advise the judiciary of that time properly on the matter.³² In

woman, iii, Where the continuance of the pregnancy would involve risk of life of the pregnant woman greater than if the pregnancy were terminated, and iv, where there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

²⁹ If they were not concerned about the right to life of the fetus, abortion would have been available on demand. To show their concern, availability of abortion was restricted to the four grounds above.

³⁰ Drew Halfman, "Historical Priorities and the Response of Doctors to the Abortion Reform Proposal in Britain and the United States 1960-1973" (2003) 50(3) *Social Problems* 567, 570-574 <<http://www.jstor.org/stable/3648870>> accessed 13 February 2011.

³¹ See, Olatokun, *Women's Right to Reproduce in Nigeria*: 62.

³² See the statement made by the author of the decision in *Roe v. Wade*, Justice Blackmun, when speaking on when life begins. He said emphatically, "We need not resolve the difficult question of when life begins, when those trained in the respective discipline of medicine, philosophy and theology are unable to arrive at a consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer". See especially, James Risen and Judy L Thomas, *The Wrath of Angels: The American Abortion War* (New York NY: Basic Books, 1998), 38. Forty-two amicus curiae were received by the court in the heat of the *Roe v Wade* case. *Roe v Wade* (Supreme Court Drama). <http://www.enotes.com/roe-v-wade-reference/roe-v-wade> accessed 2 January 2013. No amicus curiae came from the American Medical Association.

contrast to the BMA, the AMA was much preoccupied about economics and organization of medical care. They were neither particular about autonomy of the profession, nor about laws regulating abortion. AMA never for once contacted policy makers about abortion issues. Despite being physicians, they were never at the forefront of any abortion legislation.

At the peak of the case of Roe, when the judiciary seems confused on the issue of determining when life actually begins, the abortion right attorneys contacted the AMA to file an amicus. It was a big shock that the AMA of that time refused to forward any amicus.³³ It is here maintained that, the refusal at that time to submit any convincing statement by those who are supposed to know all the intricacies surrounding the concept of life, influenced Justice Blackmun into thinking that, the concept of when life actually begins is not a necessary factor when considering a matter on abortion. The consequence of this assertion culminated into the dreadful decision in *Roe v. Wade*.

Had it been that the AMA, in 1973, stood on their feet like the BMA, who was particular about the right to life of the unborn, abortion would not have been legalizes in the USA. The judiciary in the USA then was deceived into handing down the decision legalizing abortion. It will however be surprising to know that the main actress of the historic case never had an abortion. Before the case could be resolved, the poor girl was delivered of her burden. It is worth asking then, why the craze for abortion? This question is important when reviewing the state of affairs regarding abortion, when thinking that the person that brought about the whole controversy did not abort her baby eventually. At this juncture, she can be said to have exercised her right to choose to reproduce as embodied in today's CEDAW.

Hence, comparing Nigeria with the USA can best be termed, a misplaced priority, because the genesis of the legalization of abortion in the USA is flawed right from the start, and up till today, the USA is still in a confused state with regards legalization of abortion.³⁴

³³ Halfman, above n30, 579.

³⁴ The Global Gag Rule, first introduced in 1984, and reintroduced by President George Bush in 2001, brought to lime light, the situation in America as regards abortion. The GGR prohibits organizations in receipt of US funding from using the US money to provide abortion information, services and care, or even discussing abortion or criticize unsafe abortion. The GGR intends to reduce the global incidence of abortion. Does this not look surprising? That a country wherein abortion is legalized can embark on such a mission as the GGR. See 'INTERNATIONAL PLANNED PARENTHOOD FEDERATION, *Death and Denial: Unsafe Abortion and Poverty* (London UK: International Planned Parenthood Federation, (2004). http://jp.ippf.org/NR/rdonlyres/8D4783F5-D516-47D3-8B34-61F6D510202A/0/Death_Denial_unsafe_abortion_poverty.pdf (Accessed January 2, 2013). By reintroducing the GGR, the former President intends to make abortion rare. To him, the only way to minimize recourse of women to abortion is to keep it illegal- he made this statement at the 28th anniversary of *Roe v. Wade* in 2001.

To further demonstrate the confused state of America, on 18th April, 2007, the Supreme Court upheld the Partial-Birth Abortion Ban Act, which was signed into law by President Bush in 2003. This Act has been held by some District courts as being unconstitutional because, the Act deviated from precedence as no consideration was given to the overall health of the mother. The justices, 5 to 4, ruled that, the law passed by congress in 2003, and signed into law by Bush was not unconstitutional. The majority said its ruling reflects government's legitimate and substantial interest in preserving and promoting fetal life. Does this not sound surprising again? This sudden compassion for the fetus never came up in the *Roe's* decision. This is to show that the composition of the court in America determines whether a fetus is entitled to right to life or not. President Obama has said once that, even if his church is against abortion, he cannot, on that basis alone, ban abortion, because, he does not know how people in other faith, or people with no faith at all, takes the issue of abortion. This assertion was made reference to by Bibi Yusuf, while writing on, "Nudity and Morality: Legalizing Women's Bodies and Dress in Nigeria" <<http://www.scribd.com/doc/18441364/nudity-and-morality-in-Nigeria-by-Bibi>

While recognizing that the strict penal laws on abortion in Nigeria is not the main cause mortality of women, Okonofua still wants policy makers to look into the workings of legalization of abortion.³⁵ One will be tempted to ask why the erudite professor wants policy makers to look into the possibility of legalizing abortion without any law in support of his claims. For there to be a legalized abortion regime in Nigeria, there must be a law to back it up. The provisions of CEDAW are in opposition to abortion(right to choose within CEDAW means right to reproduce), so also are the provisions of the penal laws, as well as the provision of the Constitution of the Federal Republic of Nigeria, all of which recognizes the right to life of the unborn. The professor, with due respect, has no basis for the request to legalize abortion, more so when he has recognized that the law is not the only reason for maternal mortality. Even if the law is the only reason, the law can be justified because; it is performing its duties (criminal laws in Nigeria are performing their basic functions in legislating morality).

Even while giving recommendation at the close of his inaugural lecture, Professor F. E. Okonofua,³⁶ suggested under recommendation 6, an adoption of the principle of reproductive health. To him, a reproductive health approach is recommended to provide an integrated and holistic frame work for improving maternal health in Nigeria. To him again, this approach is cost effective³⁷ and sustainable and would stimulate a development-oriented paradigm in addressing associated problems. He then went further to suggest the creation of a National Institute of Reproductive Health, which sought to provide an opportunity for the government to have an agency that will coordinate activities for the promotion of reproductive health in Nigeria. He however expressed disappointment because; the bill has suffered a stillborn in the National Assembly because, according to him, wrong interpretation to the true meaning of its intention was maintained by the members.

The National Assembly members were not unaware of the various moves showed in the past and present by the professor in his bid to ensure that abortion is legalized in Nigeria. Being a prominent figure within the population council in the UK, as well as the founding father of the Women's Health and Action Research Center (WHARC), which promote research and service delivery in women's health, the principle of reproductive health suggested could at best be interpreted to mean legalizing abortion. His contention has always been that, when abortion is legalized, maternal health will be improved.

Bakareyusuf. > accessed 3 March 2011. This statement by the current President of USA has further shown the confused state of the nation.

³⁵F. E Okonofua, 'Abortion and Maternal Mortality in Developing World' (2006) 28(11) *Journal of Obstetric Gynaecol Can* 974-979 <<http://www.sogc.org/jogc/abstracts/full/200611-WomensHealth-1-pdf>> accessed 3 March 2011.

³⁶ F. E Okonofua, 'That She May Multiply without Tears', (2006) 42. Being the Inaugural Lecture delivered by him at the University of Benin, Nigeria, 7th, December 2006.

³⁷ See also, Delphine Hu et al, "Cost-effectiveness Analysis of Unsafe Abortion and Alternative First-Trimester Pregnancy Termination Strategies in Nigeria and Ghana" (2010) 14(2) *African Journal of Reproductive Health* 85, 92. The authors are of the opinion that, increasing access to safe abortion, i.e, legalizing abortion is the single most important factor in saving lives and social costs <<http://www.thefreelibrary.com/costeffectiveness+of+safe+abortion+in+Nigeria+and+Ghana.-90247520218> > accessed 18 February 2011; See also, Caitlin Shanon and Beverly winikoff, "Unsafe Abortion and Strategies to reduce its Impact on Women's Life" (2010) Volume Compilation © RCOG <gynuity.org/downloads/Shannon-Winikoff-RCOG-2010.pdf> accessed 18 November 2011. These authors share the same view with the above authors on cost implications of abortion.

When David³⁸ was suggesting legalization of abortion as a necessary but insufficient step towards improving women's health, he did not avert his mind to the fact that, health and the human rights of women have a close linkage.³⁹ The health of a woman is more glaring when she expresses her right to choose to reproduce. Abortion cannot improve a woman's health. It will rather have a negative effect on women's health. The issue of health and human right has been imported into the CEDAW. David should try and have an insight into the progressive linkage of health and reproductive right. Once David is able to do this, it will be realized that, by ensuring the right to health of a woman, through her exercise of the right to choose to reproduce, the sanctity of life, for the unborn will be maintained.

Literatures opposing abortion

Literatures in opposition to abortion also abound. Most of these literatures centre on the sanctity of life. These literatures seem to be suggesting that, the life of the unborn is as important as the life of the living. While this is virtually true, this research, in order to see that, there is a continuous respect for the sanctity of life of the unborn, has tried to link this notion to the human right of women to have a right to choose to reproduce, and not to abort. Happily, this right to choose to reproduce has consequently found itself within an international human right instrument, CEDAW.

The right to choose to reproduce as comprised in CEDAW is a basic human right for women which will also guarantee for them, a right to health. When women are able to exercise their right to choose to reproduce, they become healthier, because they will be able to determine the number and spacing of their children. In trying to link reproductive right with public health as envisaged in the works of Rebecca Cook and the late Jonathan Mann, Professor Momoh Anate, in his inaugural lecture have reiterated the fact that medical practice has always been to heal, to alleviate suffering and to preserve life.⁴⁰ He is of the opinion that it is very wrong to think that the license given to physicians to practice also confers on them the right to terminate life at will. He went on, - by the Hippocratic Oath,⁴¹ the physicians should not take with impunity legally or illegally, the lives of the defenceless ones (the fetus and the unborn child).

The erudite professor is in strong opposition to abortion based on the oath taken by all physicians like him. He is very much concern about the right to life of the unborn. This should be the primary concern of all physicians. Today things have changed. One writer has expressed the view that nowadays, medical practitioners have turned themselves into

³⁸ David A. Grimes, "Unsafe Abortion: The Silent Scourge" (2003) 67 *British Medical Bulletin* 99,110. <<http://www.sph.emory.edu/student/gemma/grimmes-unsafe-ab.pdf>> accessed 30 March 2011.

³⁹ He observed that, human rights thinking and action have become much more closely allied to, and even integrated with public health work, and that the 'skills and expertise needed in public health include, epistemology, biostatistics, policy analysis, economics, sociology and other behavioral sciences', but also that, 'in modern world, public health officials havetwo fundamental responsibilities to the public: to protect and promote public health and to promote human rights. See Rebecca J. Cook, 'Abortion, Human Rights and the International Conference on Population and Development(ICPD)' in Ina K. Warriner and Iqbal H. Shah (eds.) *Preventing Unsafe Abortion and its Consequences, Priorities for Research Action* (2006) 15-33, 27; See also, Mann J. M, "Medicine and a public Health, Ethics and Human Rights" (1997) *Hastings Centre Rpt*, 6-13,6-13.

⁴⁰ Momoh Anate, 'Women Reproductive Health in Africa: A Continuing Tragedy' (2008) 11. Being his *Inaugural Lecture*, delivered at the University of Ibadan, Nigeria.

⁴¹ Worldwide Medical Code and Medical Ethics: World Medical Association Bulletin (1949)1 (3)109,111, file revised on 08/06/02.<www.cirp.org/library/ethics/intlcode/> accessed 12 February 2011; See also, Rules of Professional Conduct for Medical and Dental Practitioners.

business men and entrepreneurs, forgetting the primary purpose for which they are created, -preservation of life.⁴²

A progressive interpretation of the right to choose, an aspect of reproductive right granted by CEDAW, to mean the right to choose to reproduce (not to abort) will perform a great function of insisting on doctors to perform their primary responsibility, a duty which can only be performed when a woman with pregnancy insists on the exercise of her right to reproduce, leading in the giving of life to a new and distinct individual.

The insistence on the right to choose to reproduce by women has led Orji kalu,⁴³ to express with dismay that in the twenty first century, people could be agitating for the legalization of abortion. He is of the opinion that women resort to abortion, not because they were exercising free choice, but because they felt they had no choice. He went further to say that, if a child is born and there is nobody to take care of the child, the church should take over the care, after all, what are churches meant for. He however, suggested reintegration back into the society those women who have the misfortune of having an unwanted pregnancy which has resulted into the birth of the child.

In agreeing with Kalu's contention, the mosques in Nigeria are not also left out in the care of the less privileged children. The use of the word 'unwanted' to qualify the children is not generally acceptable in Nigeria because no child can be described as unwanted in the Nigerian set up. These and the majority of Nigerian children constitute the present population of the country which is very paramount for growth in the economy.

Peter,⁴⁴ while writing on the politics of population, explained how the United Nations International Conference on Population and Development (ICPD) held in Cairo, has the agenda to use birth control and abortion to limit population.

The growth in population is however a necessary factor in order to achieve an unprecedented economic growth. Population provides the human capacity for industrial growth, as well as sufficient distribution of talented people to make small business flourish – this is the engine that drives the economy. The interpretation of right to choose, an aspect of reproductive right within CEDAW to mean right to reproduce, apart from giving right to life to the child, will equally help in preserving that child for the future use by the country by the time that child is old enough to be productive. This will further enhance the economic capacity of the country.

It can therefore be seen that, the benefit of interpreting right to choose within CEDAW to mean right to choose to reproduce for women, and not right to choose abort has a long term benefit. A benefit that will serve generations upon generations. A benefit that will serve the nation and the world at large. It is doubtful if right to choose abortion can boast of any substantial benefit.

⁴²Edmund D. Pellegrino, 'Medical Profession as a Moral Community'(1990) 66(3) *Bull. N.Y Acad. Med.*221, 221-222 see also; Paul Sunday Omoyefa, 'Physicians and Sanctity of Life: Emerging Ethical Issues' (2010) 4(2) *Ethno Med.* 99, 99.

⁴³Kalu, 'Legalization of Abortion? No Way' n7 above.

⁴⁴ Verburg Peter, 'The Bitter Politics of Population' (1994)21(41) *Alberta Report/ Newsmagazine* (1994) 41

While the right to choose to abort will lead to population decrease, which will be bad for economic growth and development, the use of embryos for stem cell research, a closely related phenomenon to population decrease is also a very bad signal for economic growth and development. The pioneers of this research are the United States. However, in 2001, George Bush,⁴⁵ while participating in a debate relating to the controversy surrounding the stem cell research, said that, there will no more be funds for new research, because, this will mean the destruction of more embryos.

In a letter to the late Nigerian President, Musa Yar'dua by the AAAC,⁴⁶ a detailed explanation was given to the president on the use of these embryos. In the letter, it was said that, the western biotechnology companies need a constant stream of embryonic and fetal tissues, from early abortions, to be used for stem cell transplantation projected to yield over \$30 trillion dollars for Europe and America in the first five years, in the event of research breakthroughs.

As a result of this, everything in the power of well meaning Nigerians should be geared to the prevention of national collapse intended by the so-called international proabortionists seeking the welfare of western biotechnology firms at the expense of Africa's demise, and particularly, Nigerian's demise. This can be achieved by waging a war against the legalization of abortion in Nigeria.

The war against legalization of abortion is not only an African or a Nigerian affair. In fact, it cuts across nations as well as religions. It was maintained that the agenda by ICPD to use birth control as well as abortion, to limit population was flopped by Roman Catholics the world over in association with orthodox Muslims.⁴⁷

Arif Abdul Hussain,⁴⁸ in one of his elaborate writings, brought to the fore that, there is a consensus that, ensoulment occurs at four months when the spirit causes the emergence of potentiality for rational thoughts. This stage, to him, marks a significant change in status of the fetus and abortion after this stage is prohibited, except to save the life of the mother (this shows that the war against legalization of abortion is not only an African or Nigerian affair).

However, recent rulings by Shi'a Scholars⁴⁹ on abortion at earlier stages are interpreted in terms of potentiality for ensoulment. The distinction between passive and active potentiality for ensoulment clarifies the reasons why jurists hold different views on whether the prohibition of abortion applies before the stage of implantation.

Making a clearer perception of the views above, the period at which the soul comes into the fetus is four months, and any termination of pregnancy after this time is prohibited, except when necessary to save the life of the mother. This is agreed to by all Shi's

⁴⁵George W Bush, 'Stem Cell Research' in M Ruse and C Pynes (eds.) *The Stem Cell Controversy: Debating the Issues* (2003) 9-14,11.

⁴⁶African Anti-Abortion Coalition. Chidicon Medical Center, <www.chidicon.com/AAAC.html> accessed 22 March 2011.

⁴⁷Peter, 'The Bitter Politics of Population' n43 above.

⁴⁸Arif Abdul Hussain, 'Ensoulment and the Prohibition in Islam, (2005) 16(3) *Islam And Christian-Muslim Relations* 239,245.

⁴⁹Arif Abdul Hussain, "Ensoulment and the Prohibition in Islam" (2005) 16(3) *Islam And Christian-Muslim Relations* 244. The expression by the 5th Shi'a Imam, Mohd Al-Baqri, when he talked about the time of ensoulment.

Scholars,⁵⁰ The difference in opinion arises when a pregnancy not up to four months is about being terminated. Here, the principle of potentiality for the ensoulment is being imported in order to determine which fetus should be aborted. In order therefore, to be properly guided by this principle, the difference between active and passive potentiality has to be known, so that a fetus with an active potentiality will not be aborted and a fetus with a passive potentiality will be aborted.

Using this criterion, according to some scholars is not the spirit and intentions of the Muslim Ulama, because this will be tantamount to permitting abortion at the very slight excuse that the fetus has a passive potential. So there for, since a fetus with an active potential cannot be aborted because, it has the potential of living a good life outside its mother's womb, likewise, a fetus with a passive potential cannot be aborted, because, by doing so, license will be given to women to abort their babies at the slightest excuse of passive potentiality. The argument by the author brings to the summary that, abortion is not permitted under Islam.

Actual ensoulment has different connotations on the legal status of the fetus in Islam. Taking the issue of payment of blood money,⁵¹ for instance, before ensoulment, less money is being paid for causing the miscarriage of a pregnancy, but once the fetus reaches four months, full blood money is being paid. This further shows that, abortion is not allowed in Islam, from the time of conception.

The fetus, under Islam can therefore, be said to have the fundamental right to life from conception. Right to choose, an aspect of reproductive right granted by CEDAW, when interpreted to mean right to reproduce will be in all force compatible with the Islamic doctrines.

To further show that the unborn child has a right to life, the Quran have stated that, the parents are expected to make necessary preparations for the safe delivery of their child and much elaboration was made in the Quran about the stages of the pregnancy in the womb from conception to delivery.⁵²

The prophetic tradition that made reference to fetal development was elucidated in Al-Naawawis Forty Hadith thus,

*The path that made man was collected for forty days as a drop of seed, then the path became a clot of blood for forty more days, then the path became a lump of flesh for forty days, then the angel of Allah is sent to blow soul into him and....*⁵³

By this prophetic tradition, it is shown that right to life of the unborn is inherent in Islam. It shows that Allah is the maker of the child and He alone has the right to take it back at the time He alone has appointed. No one has the right to put a stop to the growing life of

⁵⁰ See for example, Sayyid Ali-Al-Husyni al-sistani of Najaf Iraq and Ayatullah Sane'i of Iran.

⁵¹ In payment of blood money, the stage of ensoulment is a demarcation point in the status of the fetus, as indicated by the requirement to pay full blood money in the case of an abortion at four months. The gradual increase of blood money penalty prior to the stage of ensoulment indicates that abortion is unlawful. There is an increase in penalty as the growing fetus approaches the stage of ensoulment.

⁵² Quran, 22:5

⁵³ Al-Nawwawis Forty Hadith. Hadith four precisely; See also, Hussein above, n48, 244.

the fetus. This explains the more reason why the right to choose granted by CEDAW has to be interpreted progressively to follow up the sequence which has been described in the prophetic tradition, which will lead to the eventual birth of a child, if that child is destined to live.

Even if that child is not destined to live, Islam has stipulated that the miscarried fetus or still born baby is to be properly buried.⁵⁴ By this single act, the importance of every life is portrayed. That even in death, Islamic law still recognizes that the fetus has a right to be buried. Islam is therefore against abortion. The right to life is therefore seen to be inherent and even in death; the personhood of the child is still recognized.

The unborn child in Islam has been shown to be entitled to inheritance according to Iyssa.⁵⁵ The author wrote extensively on the inheritance of the unborn child and came to the conclusion that, the unborn has access to inheritance of all or part of the estate of deceased relative on equal footing with its adult counterpart (if any), provided it is born alive, even for a short period. This is another significant point seeming to suggest that Islam has regard for the fundamental right to life of the fetus from the time of conception.

Right to choose, an aspect of reproductive right granted by CEDAW, when interpreted in a progressive form to mean the right to reproduce and not the right to abort, will be conforming to the tenets and teachings of Islam. Aside Islam, the Christian faith also has some basic teachings regarding the right to life of the fetus.

The giver of life according to the Christian faith is God. It thus becomes obvious that, if God creates a living being, He will be displeased at its ungrateful destruction.⁵⁶ Going by the words in the Bible, conception is seen as an act of God, whereby a person is created by God's sovereign will.

In the work of MacArthur Jr.⁵⁷ A soul is said to be breathed into the living tissue by the Holy Spirit. The soul's destiny is already known to God and determined by him before the foundation of the world. Abortion then becomes a violent anti – God act. It is not only a murder of the individual; it is an affront to the Creator.

Just like the content of the fourth Hadith in Islam, Christianity also acknowledges that an unborn is already known by its God who created him with its destiny. This has shown that both Islam and Christianity stand on the same level as far as the recognition of the right to life of the fetus (from conception) is concerned.

⁵⁴ Al-Shawkani, Muhammad Ibn Ali, 'Nayi al-awtar min a Hadith Sauid al-Akhyar, Sarh Muntaha-al-Akbar' (1973) 14 *Beirut Daral-jil* 82-4. The 6th Imam, Al-Sadiq and the 8th Imam, Al-Rida, both attest to this.

⁵⁵ Yssa Ade Bello, 'Right of the Fetus (unborn children) in Islamic Law' (2005) 2 *University of Ilorin Law Journal* 73,82. See also, Al-Muhaqqiq al-Hilli, in his *Shara'I al- Islam*. See also the text of the 6th Imam, Al-Sadiq. Al-Muhaqqiq al Hilli states in his *Shara'I al-Islam* as follows; 'A halm (pregnancy/foetus) will inherit with its live separation (i.e, living birth), thus if the foetus is still-born, then it will have no share (of inheritance). If however, it dies after birth, then its share will be for his inheritors'. The 6th Imam, Al-Sadiq said; ' My father (i.e, Al-Baqir) stated that, if a new born moves in a discernible manner (prior to dying), then it will inherit and will be inherited.

⁵⁶ Acts 17 : 28 and Psalm 86 : 9.

⁵⁷ John F. MacArthur Jr, 'The Biblical view on Abortion' (1986) pt 182, transcribed and added to the John MacArthur Collection by Tony Capoccia, Bible Bulletin Board <<http://www.biblebb.com>> accessed 7 April 2011.

However, it must be pointed out that, even within the church, opinions are divided on whether or not abortion is permitted before ensoulment.⁵⁸ A school of thought under the church has maintained that, abortion before the soul comes in is not a sin.⁵⁹ In the same vein, another school of thought, still within the church put forth the argument that, embryos acquired a soul at conception.⁶⁰

Despite this divided opinions, recently, Christian philosophers has taken this challenge farther by asserting that, they must articulate and promote philosophical position according to which morality is conceived in richer terms than the mere respecting of individual rights.⁶¹ It is important to stress that profound insight into social morality is equally concerned with obligations to others, including those who are most helpless and unable to speak for themselves. By adopting this position, the author feels that the pro-abortion movement will be confronted with a more radical philosophical approach.

The author is concerned about the pro-choice group now finding their way into the churches and he is determined to confront them with the neighbour's principle, rather than the right issue, suggesting that he has responsibility towards the defenceless, the fetus.

Patrick Lee,⁶² another Christian philosopher, is bent on indicating the truth with a rough and general sketch, thereby, following Aristotle's advice that, matters relating to morality do not proceed smoothly and one has to be determined in the cause of bringing about a solidified conclusion. The author defended the pro-life position and argued that, a zygote is a human being and must not be killed. He is of the view that human individual comes into being from the time of conception, and like the Quranic provision, he is of the view that parents has responsibility over their children, which entails that, they ought not to choose abortion. Sounding a note of caution to his fellow philosophers, he implores them to pursue this debate, and thereby, heed the teachings and exhortations of Pope John Paul II. The author, Lee, more vigorous in his approach, is all out to see that right to life is granted to the fetus from conception.

When the right to choose, an aspect of reproductive right under CEDAW, is thus interpreted to mean, the right to reproduce, this will in turn show that, its provision is

⁵⁸See 'The Church and Abortion, AND The Church on Abortion' posted on the web on 12/11/2008, by<www.presbyterianchurchofafrica.co.za/detail.php?3> accessed 7 April 2011.

⁵⁹Augustine maintains that, coming of the fetus occurred 40 days after conception for boys, and 80 days after conception for girls. To him, a human soul cannot live in an unformed body. Abortion before the soul comes in, is not a sin. St Jerome is of the opinion that, the seed gradually take shape within the uterus, and its abortion does not count as killing until the individual elements have acquired their limbs. Pope Innocent III, wrote a letter which ruled that, the monk, who had arranged for his female lover to have an abortion, could not be guilty of murder if the fetus is not animated. Thomas Aquinas, has said that, only abortion of animated fetus was to be considered murder. See<www.presbyterianchurchofafrica.co.za/detail.php?3> accessed 7 April 2011.

⁶⁰Notable among this school is the Pope John Paul II above, n44. He said that, procured abortion is the deliberate killing of a human being in the initial stage of his or her existence. From the time, the ovum is fertilized, a new life begun. From the first instance, there is established the program of what this living being will be,- a person. Hieronymus Florentinius (1658), promoted the idea that, all embryos or fetuses, at any stage of gestation, which is in danger of death must be baptized. Pope Pius IX called for the excommunication of those responsible for abortion at any stage.

⁶¹Peter Koritansky, "The Role of Philosophy in the Contemporary Abortion Debate" (2004) 10(1) *Christian Bioethics: Non-Ecumenical Studies in Medical Morality* 63-67.

⁶²Patrick Lee, 'A Christian Philosopher's View of Recent Directions in Abortion Debate' (2004) 10(1) *Christian Bioethics: Non-Ecumenical Studies in Medical Morality*, 7-10.

consistent with the teachings and tenets of Christianity, which recognizes fetus right to life from conception.

The right to life for the unborn is also recognized by the African Traditional Religion. It thus becomes important at this juncture, to include the views of African Traditional Religion as regards abortion. This is because, followers of African Traditional Religion abounds in Nigeria, and their teachings, practices as well as tenets are worth celebrating, knowing full well that our fore fathers are strict adherers to these beliefs before the coming of Islam or Christianity.

Even before the coming of Islam or Christianity, there is respect for life, children are treasured and abortion is an abomination. The sacredness of human life is guarded by taboos and rituals. There is respect for the dignity of man: each man has his own inalienable 'chi'.⁶³ The entire statements above serve as elements to be admired in African Traditional Religion.⁶⁴

All the elements above, equally fits in to both Islam and Christian religions. This explains the reason why, people that oppose abortion in Nigeria cuts across ethnic, race or religion. The pro-life group in Nigeria are united in one struggle, -right to life of the fetus, which according to this work can further be guaranteed by CEDAW'S provision of right to choose, an aspect of reproductive right.

Peter,⁶⁵ in his ambitious work, demonstrates that, a vital concept of African Traditional Religion is the respect for the sacredness of life. To give birth is on the path of men and women, the greatest thing that can happen to a human being. Life must be given, life must be lived, life is to be enjoyed, and life is to be whole, life is to be honourable, life is to be long and peaceful. Therefore, in true African setting, wilful abortion or even contraception was a rarity, if not impossible.

According to the author, the modern world plays around with life and allowed itself to be dominated by crude technocracy. A better knowledge of African Traditional Religion could bring a corrective notion to the anti-life mentality. It could provide a reminder of God's original intention in creating the human being in his image.

The above gives a summary that children were highly valued in Traditional African Religion. Children are seen as precious. In Africa, marriage without procreation is incomplete. If children could be viewed as this important, then abortion has no place. Abortion is an emotive issue, and according to a writer, cultural and religious values have always made it a taboo.⁶⁶

⁶³ "chi" means Selfhood and Destiny.

⁶⁴ See especially, 'Elements to be admired in African Traditional Religion' <www.afrikaworld.net/afrel/atr-admire.htm> accessed 2 March 2011.

⁶⁵ Peter K. Saipong, 'Can Christianity Dialogue with African Traditional Religion?' <www.afrikaworld.net/afrel/saipong.html> (Accessed March 2, 2011); see also, Fr Humphrey Tatah Mbuy, 'The Vatican Strongly Endorses African Traditional Religion' <www.leffortcamerounais.com/2007/10/the-vatican-str.html> accessed 2 March 2011.

⁶⁶ 'Elements to be admired in African Traditional Religion' n64 above.

That right to choose, an aspect of reproductive right under CEDAW, be interpreted to mean right to reproduce for women, fits perfectly into the views of the African Traditional Religion. This is because, the right to life has been accorded the unborn children even before these children are born as seen from the assertion that, a marriage without children is not complete. African Traditional Religion values the right to life of the unborn, so it can be said with all confidence that, an African instrument legalizing abortion, like the Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa, has no place within an African setting. This protocol is the only human right instrument that sanctions the right to die by its outright grant of the right to abort. All other human rights instruments, including CEDAW (despite the recommendation of their committee to allow abortion) values the right to life, because reproductive right has been taken to mean, right to reproduce and not right to abort.

Conclusion

The respect for the sanctity of life, which right to choose within CEDAW seeks to promote, is the main justification for the criminalization of abortion in Nigeria. The mere fact that abortion is a criminal offence in Nigeria does not mean women are being targeted or rather, that women are being discriminated at. Based on the literature review, it can thus, be seen that the previous thoughts that women have a right to choose abortion based on CEDAW has here by, become obsolete in the face of a preservative interpretation of the right to life for the unborn envisaged within CEDAW's right to choose, an aspect of reproductive right. The restrictive nature of the penal laws in Nigeria can no longer be tenable to justify the legalization of abortion. The Penal laws in Nigeria, as well as CEDAW are promoting both the right to life of the unborn as well as the reproductive right to choose of the woman.