AN ANALYSIS OF THE CONCEPT OF THE RIGHT TO CHOOSE IN RELATION TO ABORTION IN NIGERIA: A CASE STUDY OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

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OCTOBER, 2014
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ABSTRACT

The right to choose provision under Article 16(1) (e) of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) has been interpreted to mean an abortion right for all women all over the world by Recommendation 24 of CEDAW Committee. Although this Convention is yet to be domesticated in Nigeria, there is a Reproductive Right Bill, passed in 2005 by a State’s House of Assembly, purporting to make abortion legal in the state. It is the contention of this study that abortion right interpretation of the right to choose under CEDAW cannot be sustained in Nigeria bearing in mind that Nigeria has the second highest maternal death rate in the whole world as a result of abortion. Aside from this, the abortion right interpretation of the right to choose under CEDAW is inconsistent with other International Human Rights Instruments with provisions recognizing the right to life of the foetus. The interpretation is also capable of undermining and under-estimating the criminal laws of Nigeria. Despite the fact that Nigerians are in dire need of CEDAW, it is doubtful if the Government of Nigeria will domesticate CEDAW if the abortion right interpretation is upheld. In order to solve these problems, a socio-legal research went underway consisting of a conceptual analysis showcasing the fact that the right to choose under CEDAW represents the right women have to reproduce and not the right to abort. This belief has been found to have a concrete foundation in the Constitution of the Federal Republic of Nigeria and the International Human Rights Instruments. In order to support this conceptual analysis, a case study was carried out within eight (8) states of the Federation of Nigeria. The results, which were influenced by culture, health and religion, reveal that the sanctity of human life, whether born or unborn, is very paramount. Hence, the significance of these results lies in the fact that the right to reproduce interpretation of the right to choose under CEDAW becomes an integral part of future reproductive right policy in Nigeria.

Keywords: Abortion, CEDAW, Nigeria, Right to choose, Right to Reproduce.
ABSTRAK (BAHASA)


Kata kunci: Pengguguran, CEDAW, Nigeria, Hak untuk memilih, Hak untuk melahirkan.
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DECLARATION
I hereby declare that this thesis is based on my original work except for quotations and citations which have been acknowledged. I also declare that it has not been previously or concurrently submitted for any other degrees at Universiti Utara Malaysia or other institution.
To Olatokunbo,

For many years of love,
devotion and tolerance, and
for being willing to entertain the possibility
that for every dark tunnel, light shall come one
day, for every hardship, relief shall surely come.
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Draft American Declaration of the International Rights and Duties of Man (1948)
Draft International Covenant on Human Rights (1947)
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Human Fertilization and Embryology Act (1990)
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<td>AAAC</td>
<td>African Anti Abortion Coalition</td>
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<tr>
<td>ACTs</td>
<td>Artemisinin-based Combination Therapy</td>
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<td>AMA</td>
<td>American Medical Association</td>
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<tr>
<td>APBN</td>
<td>Association of Professional Bodies in Nigeria</td>
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<td>BMA</td>
<td>British Medical Association</td>
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<td>CAN</td>
<td>Christian Association of Nigeria</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All forms of Discrimination against Women</td>
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<td>ECHR</td>
<td>European Court of Human Right</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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<td>FGS</td>
<td>Focus Group Session</td>
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<td>FIDA</td>
<td>Federacion Internacional de Abogadas, (International Federation of Women Lawyers)</td>
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<td>FOMWAN</td>
<td>Federation of Moslem Women Association of Nigeria</td>
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<td>FRK</td>
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<td>GGR</td>
<td>Global Gag Rule</td>
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<td>HMO</td>
<td>Health Maintenance Organization</td>
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<td>ICPD</td>
<td>International Conference on Population and Development</td>
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<td>IFS</td>
<td>Ideal Family Size</td>
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<td>National Council of Jewish Women</td>
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<td>NCWS</td>
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<td>National Executive Council</td>
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<td>NMCP</td>
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<td>USA</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>VVF</td>
<td>Vesico-Vaginal Fistulae</td>
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<td>WHARC</td>
<td>Women Health and Research Centre</td>
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<td>World Health Organization</td>
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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

One area that has captured the interest of the United Nations is the equality in the rights of men and women. 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.

Conversely, the right to choose according to the radical feminists of the 1960s means, the right women have to determine what happens to their bodies. To radical

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2 Other aspects of reproductive rights includes, fully shared responsibility for child rearing by both sexes, right to maternity and family planning. Reproductive rights under CEDAW are contained in Article 12 dealing with health and Article 16 dealing with marriage and family. The combined effect of these articles is that, in order for the good health of women; women should be able to decide freely and responsibly as regards the number and spacing of their children. The World Health Organization has described birth spacing as a procedure which save lives of mothers and babies, reduces abortion and unwanted pregnancies and improves children’s health and mother’s health. The World Health Organization, *Birth Spacing Cluster Representatives and Health Volunteers Guide* (2008) 2-3 www.emro.who.int/mps/pdf (accessed November 26, 2011).

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