

**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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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)

Hak untuk memilih peruntukan yang terkandung di bawah Perkara 16 (1) (e) *Konvensyen Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita* (CEDAW) telah ditafsirkan sebagai hak pengguguran bagi semua wanita di seluruh dunia melalui Syor 24 Jawatankuasa CEDAW. Walaupun Konvensyen ini masih belum diguna pakai di Nigeria, terdapat Rang Undang-Undang Hak Reproduktif, yang diluluskan pada tahun 2005 oleh Dewan Perhimpunan Negeri, yang bertujuan membenarkan pengguguran di sisi undang-undang negeri. Perdebatan dalam kajian ini ialah tentang tafsiran hak pengguguran terhadap tafsiran hak untuk memilih di bawah CEDAW tidak boleh dikekalkan di Nigeria memandangkan negara ini mencatat kadar kematian ibu kedua tertinggi di seluruh dunia akibat pengguguran. Selain itu, tafsiran tentang hak pengguguran terhadap tafsiran hak untuk memilih di bawah CEDAW tidak konsisten dengan Instrumen Hak Asasi Manusia Antarabangsa yang lain, dengan peruntukan yang mengiktiraf hak untuk janin terus hidup. Tafsirannya juga meremehkan dan memperkecilkan undang-undang jenayah Nigeria. Walaupun Nigeria amat memerlukan CEDAW, terdapat keraguan bagi kerajaan Nigeria untuk mengguna pakai CEDAW jika tafsiran tentang hak pengguguran ditegakkan. Dalam usaha untuk menyelesaikan masalah-masalah ini, satu kajian undang-undang dan sosial telah dijalankan. Kajian ini mempamerkan hakikat bahawa hak untuk memilih di bawah CEDAW mewakili keperluan hak wanita untuk melahirkan dan bukannya hak untuk menggugurkan. Kepercayaan ini didapati mempunyai asas yang konkret dalam Perlembagaan Republik Persekutuan Nigeria dan Instrumen Hak Asasi Manusia Antarabangsa. Dalam usaha menyokong analisis konsep ini, satu kajian kes telah dijalankan di lapan (8) buah negeri dalam Persekutuan Nigeria. Keputusan yang dipengaruhi oleh faktor budaya, kesihatan dan agama, mendedahkan bahawa kesucian hidup manusia, sama ada yang lahir atau yang belum lahir, adalah sangat penting. Oleh itu, kepentingan keputusan ini terletak pada hakikat bahawa tafsiran hak untuk melahirkan terhadap tafsiran hak untuk melahirkan terhadap tafsiran hak untuk memilih di bawah CEDAW menjadi sebahagian daripada dasar hak reproduktif di Nigeria pada masa hadapan.

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.

DEDICATION

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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Protocol to the African Charter on Human and People's Right of Women in Africa (2003)
Women Reproductive Right Law Anambra State (2005)
Universal Declaration of Human Rights (1948)
Vienna Convention of the Law of Treaties (1969)

LIST OF ABBREVIATIONS

AAAC	African Anti Abortion Coalition
ACTs	Artemisinin-based Combination Therapy
AMA	American Medical Association
APBN	Association of Professional Bodies in Nigeria
BMA	British Medical Association
CAN	Christian Association of Nigeria
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
ECHR	European Court of Human Right
ECOSOC	Economic and Social Council
FGS	Focus Group Session
FIDA	Federacion Internacional de Abogadas, (International Federation of Women Lawyers)
FOMWAN	Federation of Moslem Women Association of Nigeria
FRK	Funmilayo Ransome Kuti
GGR	Global Gag Rule
HMO	Health Maintenance Organization
ICPD	International Conference on Population and Development
IFS	Ideal Family Size
KI	Key Informant
LLINs	Long Lasting Insecticide Nets
MDGs	Millennium Development Goals
NCJW	National Council of Jewish Women
NCWS	National Council of Woman Society
NEC	National Executive Council
NGO	Non Governmental Organization
NMCP	Nigerian Malaria Control Plan
NWLR	Nigerian Weekly Law Report
PCCA	President Customary Court of Appeal
RUD	Reservations, Understandings and Declarations
SFRC	Senate Committee on Foreign Relations
STIWA	Social Transformation Including Women in Africa
SUFI	Scale Up for Impact
UDHR	Universal Declaration of Human Right
UK	United Kingdom
UNESCO	United Nations Education, Scientific and Cultural Organization
USA	United States of America
USAID	United States Agency for International Development
VVF	Vesico-Vaginal Fistulae
WHARC	Women Health and Research Centre
WHO	World Health Organization

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.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

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.³ To radical

¹Article 2 of the *Universal Declaration of Human Rights* (1948); Devaki Jain, *Women, Development and UN: A Sixty-Year Quest for Equality and Justice*, (Bloomington USA: Indiana University Press, 2005), 11-12; Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19, no. 4 (2008): 655. <http://www.ejil.org/pdfs/19/4/1658.pdf> (accessed November 25, 2011).

²Other 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).

³According 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. 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; The Administrator of the United Nations Development Programme,

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