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The Socio-Legal and Medical Problem of Abortion in Nigeria: A Case for non Legislation

Ganiat Mobolaji Olatokun*

Abstract

Despite the fact that abortion is a criminal act in Nigeria carrying varying punishments, women in Nigeria still result to abortion in clandestine places leading to astronomical increase in abortion-related maternal morbidity and mortality. Of the 6.8 million pregnancies that occur in Nigeria annually, 11% ended in abortion. Nigeria has the second highest maternal mortality rate in the whole world. Of all maternal deaths, 50% occurs as a result of criminal abortions. Consequently, abortion, though a legal issue in Nigeria, has assumed the status of a social and medical problem. This research gave an insight into the legal, social and medical problems abortion has created in Nigeria, by the use of a doctrinal analysis. At the end, the research reveals that a lot of problems can be associated with abortion in Nigeria. Consequently, a workable recommendation was proposed in order to curtail the problems discussed.

Introduction

The Supreme Court of the United States of America in the case of *Roe v Wade*,¹ recognizes the right of a woman to have an abortion under the 14th Amendment to the American Constitution. The court ruled that, it is only when the state interests are compelling that the state can promulgate regulations limiting a woman's fundamental right to privacy.² 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.³ Since this decision, most nations of the world began to have a more liberal view towards abortion. In fact, 61% of the world population now lives in

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¹ 410 US 113 (1973).

² 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 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* (2006) 2,2; 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 on 3rd February 2011.

³ 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. see *Lawrence v. Texas* 539 U.S. 558 (2003).

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.⁴

Nigeria is one of those countries with restrictive abortion laws. Termination of pregnancy is highly restricted in Nigeria under both the Penal Code Act (applicable in the North) and Criminal Code Act (applicable in the South) they all 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.⁵ 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, and attempts to stop women from exercising this right is seen as a discrimination which the Convention on the Elimination of all Forms of Discrimination Against Women⁶ has eliminated through the reproductive rights granted by it. The right to choose as defined by radical

⁴ 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.

⁵ See sections 232,235 Penal Code Act and sections 228, 229 and 230 Criminal Code Act 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 20th November 2011; See also, Stanley K. Henshaw et al, 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* <www.guttmacher.org/pubs/journals/2415698.html> Accessed on 20th November 2011; See further, Okagbue I, 'Pregnancy Termination and the Law in Nigeria' (1990) 21(4) *Studies in Family Planing* 197,197. <www.ncbi.nlm.nih.gov/pubmed/2219225> Accessed on 20th November 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](https://litigation-essentials.lexisnexis.com/webcd/app?action=essentials.lexisnexis.com/webcd/app?action)> Accessed on 20th November 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 20th November 2011; See also, Jean Garland and Dr. Patrick Idoko, *Every Abortion Stops a Beating Heart* (2010) 21. See also, Boniface A. Oye-Adeniran, Carolyn M. Long and Isaac F. Adewole, 'Advocacy for Reform of the Abortion Law in Nigeria' (2004) 12(24 Supplement) *Reproductive Health Matters* 209, 210 <www.rhmjournal.org.uk> Accessed on February 12th 2011; see also, Akinrinola Bankole, Boniface A. Oye-Adeniran, Susheela Singh, Isaac F. Adewole, Deirdre Wulf, Gilda Sedgh and Rubina Hussain, 'Unwanted Pregnancy and Induced Abortion in Nigeria, Causes and Consequences' (2006) *Guttmacher Institute Publications* <<http://www.guttmacher.org/pubs/2006/07/13/FB-Nigeria.pdf>> Accessed on February 12th 2011.

⁶ (Hereinafter referred to as CEDAW)

feminists of the 1960s is thus, implored and brought in to interpret the right to choose under CEDAW.

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

Based on this, abortion is presently regarded as a legal problem as well as a major cause of social and clinical problem in Nigeria.⁸

Abortion as a Medical Problem

Complications that arise as a result of abortion, whether carried out by a qualified doctor, or unqualified doctor,⁹ are serious and pathetic. There is nothing without risk. Even with qualified doctors, complications can arise.

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 on 22nd March 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 on 22nd March, 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/eabt/abrtmorbmortnigeria.pdf> Accessed on 26th November 2011; See also, Singh Susheela, 'Hospital Admissions Resulting from Unsafe Abortion: Estimates from 13 Developing Countries' (2006) 368 (9550) *Lancet* 1887,1887-1889; See also, Nwogu-Ikojo, E E Ezegwui, H U, 'Abortion Related Mortality in a Tertiary Medical Centre in Enugu, Nigeria' (2007) 27(8) *Journal of Obstetrics and Gynaecology* 835,835-836.

⁹ In admitting that by the use of certain substances and procedures, incidences of abortion complication might be reduced; doctors seems to attest to the fact that, even with qualified doctors, complications

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 1973.¹⁰ 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 pathetic as mortality rate would be substantially higher, whether abortion is legalized or not.¹¹

Aside this, the Chief Executive Officer of Hope Worldwide, Nigeria a partner with the United States Agency for International Development (USAID), at a media briefing sometime 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 this cannot make meaningful difference in the nation's health care drive. Moreover, the poor state of Primary Health Care in Nigeria contributes to the nation's maternal mortality rate.¹²

The National Executive Council (NEC) of Medical and Health Workers Union of Nigeria, at Owerri, Imo State, Nigeria during its 36th National Executive Meeting, also declared 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.¹³

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, medicine staffs are

abounds in abortion. Olav Meirik *et al*, "Complications of First-Trimester Abortion by Vacuum Aspiration after Cervical Preparation with and without Misoprostol: A Multi Centre Randomized Trial," *The Lancet* 39, no.9828 (2012): 1817, [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(11\)61937-5/abstract](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)61937-5/abstract) (accessed June 28, 2012). That every abortion stops a breathing hearth, whether the mother or the child, shows that there are always complications arising out of any abortion, whether it is done by a qualified doctor or unqualified doctor. Garland and Idoko, *Stops a Breathing Heart*.

¹⁰Head Jeanne E. and Hussey Laura, "Does Abortion Access Protect Women's Health," *World and I* 19, No.6 (2004), <http://www.epuc.org.uk/resources/abortionandhealth> (accessed May 15, 2012).

¹¹G. O. Igberase, "Exploring the Pattern of Complications of Induced Abortion in Rural Mission Tertiary Hospital in the Niger Delta, Nigeria," *Tropical Doctor* 38, no.3 (2008): 146, <http://td.rsmjournals.com/content/38/3/146.abstract> (accessed May 28, 2012).

¹²"Nigeria May miss MDGs Due to Poor State of PHC," *NBF News* Last Updated March 15, 2012. <http://www.thenigerianvoice.com/news/85256/1/nigeria-may-miss-mdgs-due-to-poor-state-of-phc-say.html> (accessed June 27, 2012).

¹³Victor Ahiuma-Young, "Labour Bemoans Poor Public Healthcare Delivery in Nigeria," *Vanguard News Nigeria* December 29, 2011. <http://www.vanguardngr.com/2011/12/labour-bemoans-poor-public-healthcare-delivery-in-nigeria/> (accessed June 27, 2012).

demoralized by inadequate and irregular remuneration. In fact, a 2003 study revealed that only 42% of public facilities in Nigeria met internationally accepted standards for obstetrics care.¹⁴ The health sector as a whole is in a dismal state.¹⁵

In the just concluded conference of the Society for 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".¹⁶

In view of the facts above, this researcher doubt whether with the present condition and availability of health facilities in Nigeria, the country will be able to cope with the large turnout of patients if abortion is eventually legalized on the basis of the right to choose canvassed by the CEDAW.

Nigeria has the second highest maternal death rate in the whole world.¹⁷ Of all maternal deaths, 50% occurs as a result of criminal abortions.¹⁸ Because the Criminal laws of the country

¹⁴ Bolatito 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.equityhealthj.com/content/7/1/11> (accessed June 27, 2012). See also, Esther I. Oladejo, Obinna L. Umeh and Charles C. Egolum, "The Challenges of the health Care Facilities Maintenance in Tertiary Hospitals in South-East Nigeria" *International Journal of Civil Engineering Construction and Estate Management* 3, no 2 (2015) 2-5.

¹⁵ Lanre-Abbas, "Poverty, Maternal Mortality in Nigeria", 3. Dr Obielumani Ideh, an obstetrician and researcher at the just concluded conference of the Society for the Protection of the Unborn Children, said the problem of maternal mortality arises mainly because government failed to provide the appropriate resources and infrastructures. Society for the Protection of the Unborn Children Conference on "African Mothers wants Health Care not Abortion," held in London, March 22, 2012, <http://www.spuc.org.uk/news/releases/2012/march21> (accessed June 27, 2012). The World Economic Forum in its global competitive index ranks Nigeria 127 of 142 countries in all stages of development including health. "The Global Competitive Index 2011-2012 Rankings," http://www3.weforum.org/docs/WEF_GCR_CompetitivenessIndexRanking_2011-12.pdf (accessed June 27, 2012).

¹⁶ Professor Robert Walley's message to the Society for the Protection of the Unborn Children Conference, held on "African Mothers wants Health Care not Abortion,"

¹⁷ 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 Millennium Development goals. Ogunjimi Lucas Olusegun, Ibe Rosemary Thomas and Ikorok Maria Michael, "Curbing Maternal and Child Mortality: The Nigerian Experience," *International Journal of Nursing and Midwifery* 4, no.2 (2012): 34, <http://www.academicjournals.org/ijnm/PDF/pdf2012/April/Ogunjimi%20et%20al.pdf> (accessed June 28, 2012).

forbid abortion,¹⁹ women resorted to abortion in clandestine places²⁰ leading to increase in abortion-related maternal morbidity and death.²¹ Abortion is also responsible for long term morbidity in women including infertility, chronic pelvic pain, recurrent and spontaneous abortion and ectopic pregnancies.²² Women experiencing these complications require immediate treatment, and according to the description of the current health facilities in Nigeria,²³ it is doubtful if such treatment can be given accordingly. These women might ease on, or suffer long term morbidity.²⁴

Abortion as a Social Problem

Consequently, abortion, though a legal issue in Nigeria, has assumed the status of a social problem.²⁵ 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.

The four criteria listed above have been met as far as abortion issue is concerned in Nigeria. In a strongly worded letter by a group, named African Anti-Abortion Coalition (AAAC),

¹⁸Maternal Health and Safe Motherhood Programme, "Abortion: A Tabulation of Available Data on the Frequency and Mortality of Unsafe Abortion," (Geneva: World Health Organization, (1994); V. O. Awusi and V. Okeleke, "Post-Induced Abortion Morbidity and Mortality in Oshodi, Lagos, Nigeria," *Benin Journal of Post Graduate Medicine* 12, no.1 (2010): 21-23. <http://www.ajol.info/index.php/bjpm/article/viewFile/63501/51344> (accessed June 28, 2012)

¹⁹ Sections 232, 235 Penal Code Act of Northern Nigeria and Sections 228, 229 and 230 Criminal Code Act of Southern Nigeria..

²⁰Ordinioha B. and Brisibe S., "Clandestine Abortion in Port Harcourt: Providers' Motivations and Experiences," *Nigerian Journal of Medicine* 17, no.3 (2008): 291. <http://www.ncbi.nlm.nih.gov/pubmed/18788255> (accessed June 28, 2012).

²¹F. E. Okonofua, "That She May Multiply without Tears," (2006):25, being the Inaugural Lecture delivered by him at the University of Benin, Nigeria, December 7, 2006..

²²Several complications have been linked to abortion. Abasiattai Anieken M. and Umoiyoho, Aniefiok J., "A 6-Year Review of Maternal Deaths in a Teaching Hospital in South-South Nigeria," *International Journal of Gynaecology and Obstetrics* 11, no.1 (2009): 5; Buowari Debota Yvonne, "Pattern of Gynaecological Admission at a Rural Hospital in Nigeria," *The Internet Journal of Tropical Medicine* 7, no.1 (2010): 5.

²³Lanre-Abass, "Poverty, Maternal Mortality in Nigeria,"

²⁴Abasiattai and Umoiyoho, "A 6 -Year Review of Maternal deaths," 5. See also, Buowari, "Pattern of Gynecological Admission," 5.

²⁵See Defining Social Problems. <www.people.vcu.edu/~mahoney/define.htm> Accessed on 23rd November 2011 . The four steps are classified as agitation for mobilization, policy formation, policy implementation and policy modification. See, Peck, Dennis I Dolch and Norman A, *Extraordinary Behavior: A Case Study Approach to Understanding Social Problems* (2000) 1; See also, Donileen R Loseke, *Thinking About Social Problems: An Introduction to Constructionist Perspective* (2003) 6.

to the late president of Nigeria, Musa Yar'Adua, the group informed the president that, some pro-abortion groups have shifted their fight against the Nigerian unborn children to the States' Houses of Assembly, after their crushing defeat at the National Assembly. The group wants the president to act on the issue.²⁶

The social problem of abortion has degenerated into a problem of moral decadence.²⁷ Moral decadence is the decline, decay and profligate in the moral values of individuals and society at large. It is the decay in the ethical values and norms that govern an individual and the society. A society where there is decline in moral values, what is wrong becomes right, what the society should abhor becomes what they uphold. (Just like abortion, which is supposed to be abhorred in the society, is what some people insists on upholding).²⁸ It must be stated that much of the problems associated with women's health in Nigeria begin at the time of adolescence, leading to adverse consequences and miseries in later life. Nigerian adolescents are increasingly sexually active and due to lack of adequate information, they are at risk of unwanted pregnancy and criminal abortion.²⁹ Of all maternal deaths, 50% occurs as a result of criminal abortions; particularly in teenage and young women.³⁰

²⁶ See, African Anti-Abortion Coalition, Chidicon Medical Center, <www.chidicon.com/AAAC.html> Accessed on February 5th 2011.

²⁷ Prohibitions of abortion are necessary to protect human life, defend human right and uphold the moral and family values. A society cannot live without morals. Morals of the society are those standards of conduct which the reasonable man approves. Hence, the society requires the use of instruments without which morality cannot be maintained. The two instruments are those of teaching, which is doctrine, and enforcement, which is law. See, Ganiat Mobolaji Olatokun, 'Legislating Morality of Abortion in Nigeria', (2015) 1(2) *Al-Hikmah University Law Journal*, 20-21.

²⁸ See, 'Curbing Moral Decadence in the Educational Sector: Youths Involvement', (2011) <www.articlesbase.com/college-and-university-articles/curbing-moral-decadence-in-our-educational-sector-4692398.html> Accessed on 8th December 2011. Here, teenage pregnancy and prostitution amongst students have been identified as a form of moral decadence, which can lead to abortion; Moral decadence has been identified as a major cause of abortion. See Wahab Elias Olukorede, Ajadi Abibat Oluwaseun, 'Causes and Consequences of Induced Abortion Among University Undergraduates in Nigeria' (2009) A paper prepared for the 26th International Population Conference of the International Union for the Scientific Study of Population, Marrakech, Morocco, September 26th –October 2nd, (2009) 12; See also, S O Adeniyi, M Oyewumi, O A Fakolade, 'An Assessment of the Level of Influence of Family Life and HIV/AIDS Education on HIV/AIDS Related Knowledge, Attitude and Decision Making Among Adolescents in Nigeria' (2010) 60(2) *African Symposium: An Online Journal of the African Educational Research Network* 60, 61.

²⁹ It must be stressed here that, abortion is only permitted in Nigeria, only when the life of the woman is at stake. Most adolescents in Nigeria do not fall within those permitted to have an abortion except if their lives are in danger. Whenever an adolescent gets an unwanted pregnancy, she resorts to unqualified doctors, who performs an unsafe abortion, which leads to criminal abortion. An unsafe abortion is the termination of an unintended pregnancy by persons lacking the skills, or in an environment lacking minimal medical standards, or both. Unsafe abortions are often the result of unwanted pregnancies. This trend is profoundly demonstrated among adolescents. In Nigeria, up to 80% of patients with abortion-related complications are adolescents. See, Dr E D Nakpodia, 'The Relevance of Sex Education in Secondary School Curricular in Abraka Metropolis, Delta State, Nigeria' (2012) 22 *Scholarly Journal of Business Administration* 38. <<http://scholarly-journals.com/jba/Nakpodia%20PDF.pdf>> Accessed 12th May

Social problem of abortion cannot be dissected from promiscuous. Adultery and fornication will be the order of the day, and once there is a law to back the people up, abortion will be used to get rid of any resultant pregnancy, which in itself is harm to others (killing the fetuses), as well as harm to oneself (being promiscuous result in harm to one because of sexually transmitted diseases).³¹ It is the contention of this study that, in the face of the high level of moral decadence in Nigeria, abortion is a real social problem.

Abortion as a Legal Problem

It is important to state that the controversy, whether or not, to legalize abortion in Nigeria dates as far back as 1982. In 1982, an attempt to liberalize abortion law in Nigeria was defeated. This was based on termination of pregnancy bill, sponsored by the society of Gynecologists' and Obstetricians of Nigeria, which was presented to the National Assembly. This bill was strongly opposed by religious leaders and by the National Council of Women Societies of Nigeria who feared that its passage would promote sexual promiscuity.³²

2012. Valentine O Otoide, Frank Orosanye and Friday E Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraceptives: Evidence from Focus-Group Discussions' (2001) 72(2) *International Family Planning Perspective* 77. Numerous studies in Nigeria have identified adolescents as at an increased risk of developing complications of induced abortion. See, Friday E Okonofua et al, 'Women's Experiences of Unwanted Pregnancy and Induced Abortion in Nigeria' (1996) *Summary Report*, published by The Population Council, The Robert H Ebert Program on Critical Issues in Reproductive Health 1,23. In order to prevent adolescent mothers, adolescents require information including comprehensive sex education. See, World Health Organization, 'Making Pregnancy safer, Adolescent Pregnancy' (2011) <www.who.int/making-pregnancy-safer/topics/adolescent-pregnancy/en/index.html> Accessed on 9th December 2011.

³⁰See, Airede LR, Ekele B A, 'Adolescent Maternal Mortality in Sokoto Nigeria' (2003) 23 *Journal of Obstetrics and Gynecology* 163. <www.ncbi.nlm.nih.gov/pubmed/12745561> Accessed on 9th December 2011; See also, Kathryn Graczyk, 'Adolescent Maternal Mortality: An Overlooked Crisis' (2007) *Advocate for Youth Right, Respect, Responsibility* <www.advocatesforyouth.org/storage/advfy/documents/fsmaternal.pdf> Accessed on 9th December 2011; See also, Statement made by a one-time minister for health in Nigeria, late Professor Olikoye Ransome Kuti at a seminar on Critical Issues in Reproductive Health organized by the Department of Obstetrics, Gynecology and Perinatology, Obafemi Awolowo University, Ile-Ife, Nigeria, (December 4-6, 1991) 9.

³¹The environment can have effect on sexual-decision making. Legalizing abortion might affect social conditions and behavioural decisions. It was hypothesized that legalizing abortion lowered the cost of sexual activity leading individuals to engage in more risky sex, causing an increase of gonorrhoea and syphilis incidences. Individuals consider the costs and benefits of sexual activity before engaging in sexual intercourse. Costs include an unplanned pregnancy. The availability of abortion lowers the expected cost of sexual intercourse, because the pregnancy can be aborted in the event of undesired conception. Jonathan Klick and Thomas Stratmann, "The Effects of Abortion Legalization on the Incidences of Sexually Transmitted Diseases," *Journals of Legal Studies* 32 (2008): 407-409.

³²See 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 on 7th November 2011.

There is a strong claim now that, abortion can be legalized in Nigeria using the right to choose; an aspect of reproductive rights within CEDAW as its basis. However, the provisions of CEDAW do not give abortion right.

Article 12(1) of the CEDAW provides;

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.

Reading the Convention further, *Article 16(1) (e)* provides;

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.

These being the original contents of the Convention, the CEDAW general recommendation No. 24 embodying the key elements of *Article 12* provide among others;³³

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

³³General recommendations of CEDAW Committees are interpretations of an accord to assist state parties in implementing their obligations. Hanna Beate Schopp-Schilling, "The Role of the Convention on the Elimination of all forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation" being a paper presented at the International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference. The Implementation of Quotas: European Experiences, Budapest, Hungary, 22-23 October, (2004), 3 http://www.quotaproject.org/CS/CS_Cedawbudapest04BSS.pdf (accessed April 3, 2012). The Committee on the Elimination of Discrimination Against Women was established to monitor state parties' compliance with the obligations under the convention. It also gives general recommendations on issues affecting women that deserves more attention by state parties. "CEDAW and the Reporting Process to the Committee on the Elimination of Discrimination against Women: A Guide for UNICEF field Staff" (2009): 7 <http://www.crin.org/docs/CEDAW.pdf> (accessed April 16, 2012).

include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.³⁴

Recommendation 24 of the CEDAW Committee has pointed out that neglect of health services that only women require is discrimination and a deficit that government must remedy. The committee further noted that criminalization of abortion is a barrier that states should improve. It must be pointed out quickly that, CEDAW Committee is a body set up to monitor compliance of state parties with CEDAW rules. This being the case, it is not expected of that body to make recommendations contrary to what is contained in the body of the rules it is expected to monitor its compliance. There is nothing within the CEDAW rules to show the intents of recommendation 24. Consequently, many researchers in Nigeria tend to blame the restrictive penal laws for the high rate of maternal mortality, which to them is a discrimination against women. CEDAW is now being used as a means of 'legalizing abortion through the back door'.³⁵

The CEDAW Committee recommendation has succeeded in misleading many to believe that CEDAW gives women abortion right. In Nigeria, after the passage of the so-called *Women's Reproductive Rights Law*, in Anambra State, one of the Eastern States of Nigeria, there was an immediate worldwide condemnation from national and international pro-life groups alleging a constitutional violation³⁶, and a call for the outright striking out of the law. In another related development, in Imo State, another Eastern State of Nigeria, the State's House of Assembly has been commended for rejecting the Imo State Women's Right Bill (2009). The Legislators voted 13-1 against a bill that would have made abortion legal in the pro-life state.³⁷

³⁴key element No.14 under recommendation No.24 of the CEDAW committee. www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm (accessed April 3, 2012).

³⁵See the article by Sonnie Ekwuowusi, 'Why Obasanjo Must Not Sign CEDAW', *This Day Newspapers* (Nigeria) May 16th 2007,16. The following researchers in Nigeria has persistently linked the restrictive abortion laws as the cause of maternal mortality: Lawrence Adedokun, 'Systematizing Determinants of Abortion: A Frame work for abortion Research in Nigeria' (4-6, December 1991) in *Critical Issues in Reproductive Health. Prevention of Morbidity and Mortality from Induced Abortion in Nigeria, 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, 97-110,104, Nimi Briggs, 'Epidemiology of Unsafe Abortion' in *Critical Issues in Reproductive Health, Prevention of Morbidity and Mortality From Induced and Unsafe Abortion in Nigeria, being a paper delivered at the proceedings of a seminar organized by the Department of Obstetrics Gynaecology and perinatology*, Obafemi Awolowo University, Ile- Ife, Nigeria(4-6 December 1991) 17,17: See also, F E Okonofua et al, 'Perception of Policy Makers in Nigeria Toward Unsafe Abortion and Maternal Mortality' (2009) 35(4) *International Perspective on sex and Reproductive Health*, 194.

³⁶This is because; the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is yet to be domesticated in Nigeria. Domestication of International Law is compulsory before any state of the Federation can pass their own laws on matters in International Conventions.

³⁷ See, Orji Kalu, 'Legalization of Abortion?, No Way'

<<http://www.sunnewsonline.com/webpages/columnists/kalu/kalu/20-june-htm>> Accessed on 22nd March 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 on 22nd March, 2011. See Population Policy Data Bank maintained by the Population Division of the Department

It is the believe of the researcher that, right to choose, which is one aspect of reproductive right cannot be interpreted to mean abortion.³⁸ This believes has its justifications from the consistent nature of all international human rights instruments, in their respect for the right to life of the unborn.³⁹ If all international human rights instruments are consistent in their respect for the sanctity of human life, whether born or unborn, then right to choose, an aspect of reproductive rights under CEDAW cannot be interpreted differently. Right to choose within CEDAW ought to respect the sanctity of life of the unborn. The right to choose within CEDAW should, and ought to mean the right women have to reproduce, and not the right they have to abort.⁴⁰

Conclusion and Recommendation

A doctrinal analysis had gone underway to achieve the objectives of this study. The combined effect of this research has further buttressed the fact that, abortion in Nigeria can manifest into a socio-legal-medical problem. The following recommendations, when adhered to strictly, will solve most of the problems posed by abortion in Nigeria.

for Economics and Social Affairs of the United Nations Secretariat. See www.un.org/esa/population/publications/abortion/doc/nigeria.doc > Accessed on 7th November 2011.

³⁸ See, Ganiat Olatokun, *Women's Right to Reproduce in Nigeria: CEDAW in Perspective* (2015) 51.

³⁹ All International Human Rights Treaties are consistent in their right to life provisions of all citizens of the world generally, and in particular, the right to life of the unborn. Abortion is frowned at by all international human right instruments, by their provisions as regards the right to life of the unborn. For example, Art. 3 of the *Universal Declaration of Human Rights*, *Universal Declaration of Human Right*, GA. Res. 217A, art 3, UN, GAR, 3rd Sess, 1st Plen. Mtg. UN Doc A/8 (Dec, 12, 1948), which states that, "everyone has the right to life, liberty, and security of person", the Preamble to the *Declaration of the Rights of the Child*, (1959), Stating that, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth", the *Geneva Declaration of the Rights of the Child* (1924), which states that, "the need for such special safeguard including legal protection for the child before as well as after birth", UN Doc. E. CN. 4/21. Art 1 of the *Draft International Covenant on Human Rights*, (1947), which states that, "it shall be unlawful to deprive a person, from the moment of conception, of his life and bodily integrity", *Convention on the Prevention and Punishment of the Crime of Genocide*, (1948)-This Convention was approved by the United Nations General Assembly on the 9th December, the day before the Universal Declaration of Human Right was approved and it states that, "the concern for the child before as well as after birth is here confirmed". Other international human rights instruments with right to life provisions for the unborn are, *International Covenant on Civil and Political Right*, (1966), Art. 6(5), *American Convention on Human Right*, (1969), Art. 1(2). If all these international human rights instruments are consistent in their provisions for the right to life of the unborn, it is submitted that the Protocol to the African Charter on Human and People's Right of Women in Africa, authorizing medical abortion in a bid to protect the reproductive right of women, is inconsistent with all international human right instruments. The Protocol to the African Charter on Human and People's Right of Women in Africa is the only international human right document providing for abortion.

⁴⁰ Olatokun, *Women's Right to Reproduce in Nigeria*, (2015). 51.

1. In order to curtail the incidences of criminal abortions in Nigeria, Government of Nigeria should embark on a massive campaign against abortion. Hemorrhage, sepsis, toxemia and complications from abortion account for 62% of maternal deaths in Nigeria.⁴¹ On the other hand, Nigeria alone accounts for nearly 25% of the total malaria burden within Africa.⁴² Malaria is endemic in this country with year-round transmission and as much as 90% of population is at risk of malaria. In Nigeria, malaria accounts for approximately 60% of outpatient visits, 30% of all hospitalization and up to 11% of all maternal mortality, 25% of all infant mortality and 30 % of under-five mortality.⁴³

In the last two years, Nigeria has made dramatic progress in the scale-up for impact (SUFI) of malaria prevention and control activities. In 2009, the Nigeria Ministry of Health, committed to an ambitious goal of reducing the national malaria burden by 50% by using a combination of proven malaria control and prevention strategies: increasing the availability and appropriate use of accurate diagnostic technologies, improving the quality of malaria case management with ACTs (Artemisinin-based Combination Therapy), distributing long-lasting insecticide-treated bed nets and providing consistent delivery of intermittent preventive treatment to pregnant women.⁴⁴ The current malaria control effort in Nigeria will be the largest public health intervention ever to be launched by a country against a single disease.⁴⁵

If such an effort can be taken by the Nigerian government against malaria, which is as deadly as abortion, then nothing stops the federal ministry of health in Nigeria to launch

⁴¹Ogunjimi Lucas Olusegun, Ibe Rosemary Thomas and Ikorok Maria Michael, 'Curbing Maternal and Child Mortality: The Nigerian Experience,' (2012) 4(3)33-35. <http://www.academicjournals.org/ijnm/PDF/pdf2012/April/Ogunjimi%20et%20al.pdf> (accessed December 18, 2012).

⁴²WHO, World Malaria Report 2009 World Health Organization: Geneva. http://whqlibdoc.who.int/publications/2009/9789241563901_eng.pdf (accessed December, 18 2012); Summary Proceedings, 2nd Annual Malaria Control Programme Review Ethiopia and Nigeria held at Carter Centre, Atlanta Georgia on February 25th 2011, 26. http://www.cartercenter.org/resources/pdfs/news/health_publications/malaria/2011-summary-proceedings.pdf (accessed December 18, 2012).

⁴³National Population Commission (NPC) and ICF Macro: Abuja, Nigeria, 'Nigeria Demographic and Health Survey 2008,' <http://www.measuredhs.com/pubs/pdf/FR222/FR222.pdf> (accessed December 18, 2012); Summary Proceedings, 2nd Annual Malaria Control Programme Review Ethiopia and Nigeria held at Carter Centre, Atlanta Georgia on February 25th 2011, 26. http://www.cartercenter.org/resources/pdfs/news/health_publications/malaria/2011-summary-proceedings.pdf (accessed December 18, 2012); There are an estimated 100 million malaria cases with over 300,000 deaths per year in Nigeria; Nigeria Malaria Fact Sheet, United States Embassy in Nigeria, December 2011 <http://photos.state.gov/libraries/nigeria/231771/Public/December-MalariaFactSheet2.pdf> (accessed December 18, 2012).

⁴⁴The Nigerian Federal Ministry of Health, 'NMCP Strategic Plan for Malaria in Nigeria, 2009-2013 Abuja, Nigeria,' http://www.pmi.gov/countries/mops/fy12/nigeria_mop_fy12.pdf (accessed December 18, 2012). 13,653,238 LLINs (Long-lasting Insecticide treated nets) were distributed in 9 states in 2009. In 2010, Nigeria distributed an additional 15,293,417 LLINs in the context of mass campaigns conducted in 10 states; "2nd Annual Malaria Control Programme Review Ethiopia and Nigeria"

⁴⁵*Ibid.*

the same massive campaign against abortion. This action by the government will discourage women from making abortion a choice.

2. The immediate domestication of CEDAW, and its subsequent implementation in Nigeria on the ground of health will go a long way in curbing the incidences of women resorting to abortion. Affording women in Nigeria the advantages of the right to choose to reproduce under CEDAW meant deciding freely and responsibly on the number and spacing of their children. This amounts to health for the women and consequently, health for the children. Once women are healthy, they will produce healthy children, which also presuppose that the right to life be accorded to the unborn children in Nigeria.

Nigeria is currently being operated on a National Health Policy with a central goal to bring about the most comprehensive health care system, based on Primary Health Care⁴⁶ that is promotive, protective, preventive, relative and rehabilitative, to every citizen of the country within the available resources so that every individual and communities are assured of productivity, social well-being and enjoyment of living.⁴⁷

3. In order to ensure that youth are equipped with the information, motivation or personal insight and skills to protect their sexual and reproductive health, it is imperative that schools, in cooperation with parents, the community, counselors in schools and also healthcare professionals, play a major role in sexual health education and promotion.⁴⁸ The most important prevention of unwanted pregnancy is to educate oneself about unwanted pregnancy and be able to device methods of preventing the occurrence. In order to help prevent girls from becoming pregnant, introduction and teaching of sex education in school by teachers, health educators or health workers and at homes by parents, is very important.⁴⁹ Study has revealed the need for increased roles of parents and

⁴⁶Primary Health Care as defined by the World Health Organisation in 1978 as, essential health care based on practical, scientifically sound and socially acceptable method and technology, universally accessible to all in the community through their full participation at an affordable cost, and geared towards self-reliance and self-determination. World Health Organization, Alma-Ata Declaration of 1978, adopted by the International Conference on Primary Health Care, jointly sponsored by WHO and UNICEF, 1978, Principle VII. <http://www.righttohealthcare.org/Docs/DocumentsC.htm> (accessed Jun 10, 2012); Menizibeya Welcome Osain, 'The Nigerian Health Care System: Need for Integrating Adequate Medical Intelligence and Surveillance Systems,' (2011) 3(4) *Journal of Pharmacy and BioAllied Sciences*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3249694/> (accessed January 5, 2013).

⁴⁷Ganiat Mobolaji Olatokun, Rusniah Ahmad and Harlida Abdul Wahab, 'Making a Case for the Domestication of CEDAW in Nigeria: Empirically and Conceptually Justified,' (2014) *Journal of Law, Policy and Globalization*.

⁴⁸Sex education programmes should be held for young people in secondary schools to help their self-worth, sense of responsibility, understanding and acceptance of diversity and sexual health. Nakpodia, 'The Relevance of Sex Education,' 36-37; Ijioma B. C, Ngumah M. O and Egeruoh A. S, 'The Integration of Sexuality Education in Secondary School Biology Curriculum for Sustainable Development: Teachers Perception,' (2011) 2(4) *International Journal of Science and Technology Education Research*, 66.

⁴⁹Olaitan O. Lanre, 'Perception of University Students on Unwanted Pregnancy in South West Nigeria,' (2010) 1(2) *American Journal of Social and Management Sciences*, 196-197.

- teachers in early sexuality education of adolescent girls. This can be done by increasing the capacity of parents to discuss sexuality issues with their children.⁵⁰
4. Complete abrogation of Recommendation 24 of CEDAW Committee is very necessary in order to disabuse the minds of all that abortion is guaranteed by an International Human Rights Instrument, like CEDAW. Since the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a creation of the United Nations,⁵¹ the only way to abrogate the CEDAW recommendation 24 is a declaration by the United Nations specifying that the language, 'reproductive rights' under CEDAW exclude abortion.⁵² By this single act, the CEDAW recommendation 24 becomes irrelevant.

⁵⁰Ugochukwu U Onyeonono, Daniel C. Oshi, Eugene C. Ndimele, Nneoma C. Chukwu, Ifuanya L. Onyemuchara, Sandra C. Ezekwere, Sarah N Oshi and Obiageli F Emelumadu, 'Sources of Sex Information and its Effect on Sexual Practices Among In-School Female Adolescent in Osisioma Ngwa LGA South East Nigeria,' (2011) 24(5) *Journal of Paediatric and Adolescent Gynaecology*, 294. There is the need to introduce sex education in school before Junior Secondary School level and at home, sex education may have greater impact if provided before the age of 14/years. Ochiogu I. N, Miettola J, Ilika AL and Vaskilampi T, 'Impact of Timing of Sex Education on Teenage Pregnancy in Nigeria: Cross-Sectional Survey of Secondary School Students,' (2011) 36(3) *Journal of Community Health*, 375-380. <http://www.ncbi.nlm.nih.gov/pubmed/20924781> (accessed December 18, 2012).

⁵¹United Nations General Assembly adopted the Convention on the Elimination of all forms of Discrimination against Women, (CEDAW) on the 18th December 1979.

⁵²Susan Yoshihara, 'Lost in Translation: Failure of the International Reproductive Right Norm,' (2013) 11(2) *Ave Maria Law Review*, 406.