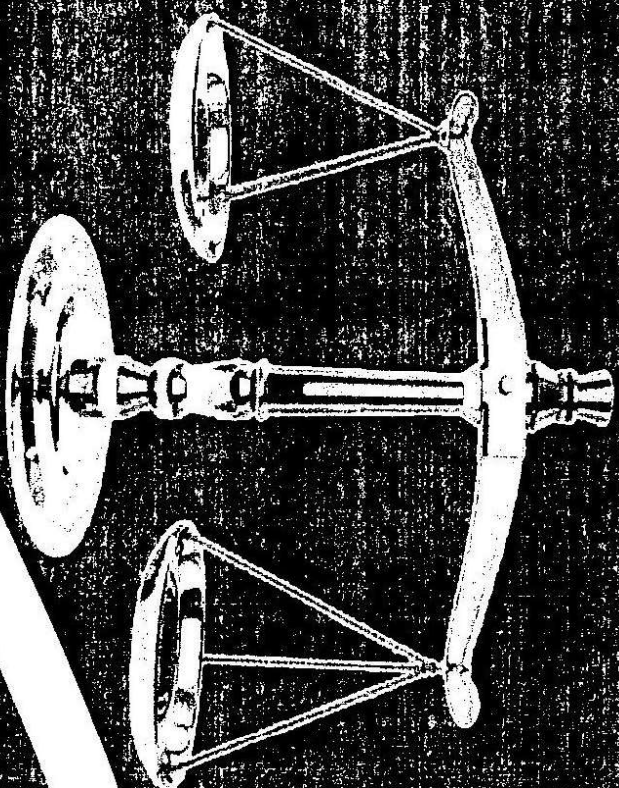


Topical Issues In The Nigerian Law:

A Book of Readings



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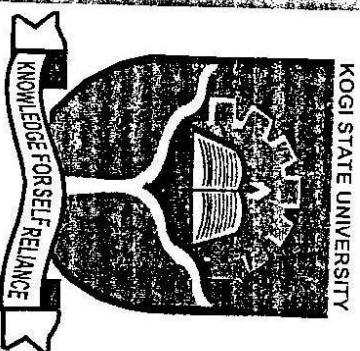
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TABLE OF CONTENTS

List of Contributors.....	i
Table of Contents.....	xi
Foreword.....	xvii
List of Cases.....	xviii
List of Statutes.....	xxxiv
Bibliography.....	935

PART A

CONVENTIONAL LAW ISSUES

1. Vicarious Liability Principle Of Law In Nigeria: A Review Of Extant Judicial Parameters and The Need for Paradigm Shift on Public Policy by Prof. Toriola Oyewo.....	1
2. The Law and The Efficacy of Anti – Corruption Agencies in Nigeria by Prof JAM Agbonika.....	18
3. Terrorism, Sabotage and Climate Change: Unbundle The Tripartite Global Problems and Panacea by Dr. Bibobra Bello Orubebe.....	47
4. Exploring the Roles of Courts and Tribunals in Litigating Environmental Disputes by Hakeem Ijaia & Alatise Taofeeg Nasir.....	68
5. Collective Bargaining and Enforcement of Collective Agreements in Nigerian Labour Relations: An Overview by Jimmy O. Chijioke & John A. Oyibo.....	97

6. The Nexus Between Cooperative Societies and Corporate Social Responsibility in Nigeria by Olufemi Abifarin & E.M. Akinseye.....	119
7. Theoretical, Socio-economic, Policy and Legal Frameworks for University Research-industry Linkages (ril): An Appraisal by Kassim Salihu Agbonika.....	135
8. Baby Factories: A New Dimension to Sexual Exploitation of Women by Ibraheem, Ojo Tajudeen.....	158
9. Women's Rights Under The Nigerian Tripartite Legal System by Mahmud Kayode Adebayo Ph.D.&Abdulrazag Daibu.....	173
10. The Land use Act of and Ownership of Land Under Customary Law: What has Changed? by Oyagiri, Buduka Isaac.....	199
11. Non- Compliance of Political Parties with Internal Democracy under the Statutes: A Threat to Democracy in Nigeria by Amaramiro A.S & Nwocha M.E.....	216
12. Jurisdictional Basis and Status of International Court of Justice (icj) Appraised by Ismail Adua Mustapha, Ph.D. & Ahmed Olatunji Isau.....	240
13. The Proposed New Issues and the Relevance of African Membership of the World Trade Organisation (wto) Examined by Shola Animashaun, Olokooba S.M. Ph.D. & Olatoke J.O Ph.D.....	263
14. Nigerian Democracy in the Face of Corruption, Impunity and Lawlessness: Case of a Weeping Child by Josephine A.A. Agbonika Ph.D.....	279
15. A Critical Appraisal of the Underpinnings of International Environmental Law by Muhammad Mustapha Sulaiman.....	308

16. The Nigerian Courts and Insurance Claims: The Imperative of Adr Mechanism Examined by Ayinla, L. A. & Olusola, G. H.....	327
17. Tripartite Rules of Distribution of Estate of Deceased Person in Nigeria: A Discourse. by Ademola, A. Taiwo Esq & Marian O. Ujah.....	341
18. Stemming the Persistent Waves of Human Trafficking in Nigeria: The Legal Responses by Adekunbi Imosemi.....	358
19. Analysing the Importance of Treaty: A Revisit on Nigerian-cameroon (bakassi) Imbroglio by Badr, Mohammed Bashir & Owode A.A Ph.D.....	383
20. An Advocacy for Reform of the Law of Abortion in Nigeria by Ayobami Joshua.....	400
21. Right of Access to Clean Water: A Topical but Unaddressed Human Right Issue in Nigeria by Maryam Bayero-Jimoh.....	408
22. Subjugation of Customary Law to the Mercy of Repugnancy Theory and Validity Test: A Revisit by Ademola A. Taiwo.....	429
23. Feminism, Law and Traditional African Society: Any Dignify Role for Nigerian Women? by Foluke Dada Ph.D.....	442
24. The Indefeasibility or Defeasibility of Certificate of Occupancy (c Of O) as proof of Title to land under the 1978 land Tenure Regime by S.M. Abdulmalik Esq...	461

25. Privatisation, Deregulation and Functional Taxing System: The Alchemy of Public Corporations in Nigeria by Olokooba S.M. & Bala Mohammed U..... 487
26. The Role of Financial Institutions in Combating Money Laundering in Nigeria by Ibrahim Abdu Abubaka..... 504
27. Alternative Interpretation to 'right to Choose' Within Cedaw- A Critique by Ganiat Mobolaji Olatokun Ph.D. 524
28. Conceptual Foundaton of the Criminal Law by Alili Ngozi..... 550
29. An Examination of the Concepts of Ownership and Possession Under the Nigerian Law by Ijaiya, Bashir Loke, Yusuf Abdulrasheed Musa & Fatimoh Funsho Abdulrazag..... 583
30. Psycho-social Analysis of Elements of Provocation in Nigerian Criminal Justice by Lateef A. Adeleke Ph.D..... 596
31. Human Rights Violation: A Catalyst to Poverty by Bashir Leke Ijaiya & Fatimah Funsho Abdulrazag..... 617
32. Law, Peace and National Integration: A Jurisprudential Analysis of their Application to National Security in Nigeria by Benjamin Ogwo Ph.D..... 632
33. Preliminary Clarifications in Law of Torts in Contemporary Justice System in Nigeria by Professor Timothy F. Yerima, Ph.D..... 654
34. Problems with Nigeria's Republican Status and her Democracy by Prof. Rasheed Jimoh Ijaodola..... 671
35. Domestication of Treaties: Juristic and Case Law Perspectives by D.F Atidoga 686

36. Exploring the Boundaries of Ultra Vires Doctrine and the Discretionary Powers of Administration by Obaje Enemaku Ph.D..... 703
37. The 1999 Constitution and the Law Making Organ of the Government in Nigeria by S.M. Abdulmalik Esq,.... 715
38. Regulatory Intervention against Telecommunications Installations Hazards in Nigeria and India by Ariyoosu, D. A. & Alajo Y. A..... 730

PART B

ISLAMIC LAW ISSUES

39. Islamic Law Position On Culture by Hafsat Iyabo Sa'adu & Prof. Abdul-Qadir Zubair..... 745
40. The Notion 'charity begins at Home' in English and Islamic Laws: A Comparative Evaluation by Abdulfatai O. Sambo & Abdulkadir B. Abdulkadir & Abdurazak O. Abdulkadir & Mwinji T. Haji..... 758
41. Separation of Powers under the Islamic Constitutional Law by Ijaiya N.O.A..... 777
42. The Fight against Economic and Financial Crimes in Nigeria: Lessons from the Islamic Law by Abdulraheem Abdulwahid Yusuph..... 795

43. Historical Development of Shariah in Kogi State from 1900 to Date by Adann A.A..... 813
44. Depth and Effectiveness of the Anti-economic and Financial Crime Measures: A Comparative Analysis between Conventional and Islamic Law by Olagunju, Ridwan Ibrahim Olawale..... 822
45. Health Benefit of Circumcision: A Lesson From Islamic Law point of View by Alimi Usman Tunde..... 851
46. Legal Consequence of on Plurality of Wife under the Shariah Vis-à-vis Sections 38 and 40 of Nigerian 1999 Constitution. by Dr. J.O. Olatoke, (SAN) & Abubakar, Shehu Ahmad Tijani..... 868
47. Is Jihad A “holy War”? An Expository Argument Via Islamic International Law by A. A. Owoade Ph.D. & Barr. M.B. Badr..... 878
48. Islamic Law Perspectives on Child Adoption in Nigeria by Adewara, Tajudeen Zubair..... 898
49. Using the Nigerian Conventional Tax Law in Taxing Murabahah: Issues and Implications by Olokooba S.M..... 919

CHAPTER TWENTY-SEVEN

ALTERNATIVE INTERPRETATION TO 'RIGHT TO CHOOSE' WITHIN CEDAW- A CRITIQUE

Ganiat Mobolaji Olatokun Ph.D.

Summary of the Chapter

Feminism is the bedrock of the campaign for the guarantee of women's right to choose abortion. Consequently, the 'right to choose' within CEDAW has been interpreted to mean right to choose abortion. It is the argument of this paper that, by virtue of the Vienna Convention of the Law of Treaties, the 'right to choose' within CEDAW cannot stand for an abortion right regime for women worldwide. For this the chapter highlights the disparity between the true notion of 'right to choose' for women and women's freedom to abort. In the final analysis, the paper posits that by virtue of the rules of interpretation of treaties, the 'right to choose' within CEDAW cannot represent the right to abort.

Introduction

The Universal Declaration of Human Rights has shown considerable interests in equal rights of men and women specifically under the minority and group rights. Women, being classified as a minority group therefore, enjoy special considerations, and rights affecting them are given high priority. Consequently, the General Assembly of the United Nations, on the 18th December 1979, adopted the Convention on the Elimination of all forms of Discrimination against Women, CEDAW.

¹ Article 2 of the *Universal Declaration of Human Rights* states: "Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex." See Devaki Jain, *Women, Development and UN: A Sixty-Year Quest for Equality and Justice*, (Bloomington USA: Indiana University Press, 2005), 11-12. See also, Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" *European Journal of International Law* 19, no. 4 (2008): 655. (accessed November 25, 2011)

The Convention is a human right document which promotes the principle of non-discrimination and equality between men and women. The Convention focuses on three key issues of which reproductive right is one. The right to choose is one aspect of reproductive right.²

Within the whole body of CEDAW, reference was being made to the right which women have to decide freely and responsibly on the number and spacing of their children. There was never a reference to right to abort for women. Conversely, 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 feminists⁴, this right extends to the decision whether or not to carry a pregnancy to term. This decision should be left absolutely with the women.

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. See the WHO, *Birth Spacing Cluster Representatives and Health Volunteers Guide* (2008) 2-3 www.cmo.who.int/misinfo/ (accessed November 26, 2011). Here, birth spacing has been described as a procedure which save lives of mothers and babies, reduces abortion and unwanted pregnancies and improves children's health and mother's health. Furthermore, longer birth intervals have been identified as bettering the health of mothers. See, USAID ISSUE BRIEF, *Healthier Mothers and Children through Birth Spacing*, www.usaid.gov/pressroom/issuebriefs/2011/01/11/20110111_01.html (accessed November 26, 2011). See also, POPULATION INFORMATION PROGRAMME, *Birth Spacing: Three to Five Saves Lives*, *Population Report Volume xxx, Number 3* (John Hopkins University: Bloomberg-School of Public Health, 2002), 4.

³ According 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 *Feminist Jurisprudence* ed. Patricia Smith, (Madison NY: Oxford University Press, 1993), 505-506. See also, Martha C. Nussbaum, "R. west, Jurisprudence and Gender: Defending Radical Feminism," *University of Chicago Law Review* 75, no. 3 (2008): 985. <http://www.jstor.org/stable/201411934> (accessed 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'. Mc Elvaine, Robert S., *Eve Seed: Biology, the Sexes and the Course of Human History*, (New York NY: McGraw-Hill Company, 2000), 1.

This view was boosted in 1973, by the Supreme Court of the United States of America in the case of *Roe v. Wade*⁵. 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 privacy⁶.

Hence, 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.⁸

⁵ 410 US 113 (1973).

⁶ 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" *Human Rights Quarterly* 25, no. 1 (2003): 22-25. <http://www.jstor.org/eserv/ajph.ajph.edu.myl/stable/pdfplus/2003.pdf> (accessed February 3, 2011).

⁸ 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). The court has also employ the right of privacy clause in *Griswold v. Connecticut* (1965), 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.

Since this decision, most nations of the world began to have a more liberal view towards abortion. In fact, 60% of the world's 1.55 billion women of reproductive age (15-44) live in countries where abortion is broadly legal. The remaining 40% live in countries where abortion is highly restricted.⁷

It can therefore be said that, the radical feminists' view of the 60s and 70s, as well as the decision in the case of *Roe v. Wade* of 1973, has played a prominent role in the attribution of abortion right interpretation to the 'right to choose' within CEDAW. This study therefore, stands to refute this so called interpretation.

The 'Right To Choose' Within Cedaw

The ultimate challenge of the 21st Century is that of giving greater substance to existing norms of human rights. The lack of specific content of the 'right to choose' and 'family planning' within CEDAW has given rise to some concerns like those envisaged in this study. The lack of specific content of the term 'family planning' in international documents, like CEDAW seems to have given rise to some skepticism.

There exist considerable difficulties in reaching consensus worldwide on the exact meaning of the notion.⁸ Article 12(1) of the Convention on the Elimination of All forms of Discrimination against Women 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 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;⁹

⁷ See, Susan Cohen, "Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide" *Guttmacher Policy Review* 12, no.4 (2009), <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html> (accessed June 15, 2012). Previously, 25% of the world population lives in countries where abortion is restricted, and 61% of the world population live in countries where abortion is allowed. See, Siegrid Tautz, "(un) safe Abortion, A Review and Discussion Paper" *Federal Ministry for Economic Cooperation and Development. Health and Population, Supraregional Project: Promotion of Reproductive Health*, 4320 (2004): 7, [http://www.giz.de/Themen/de/dokumente/de-disk-ssad\(1\).pdf](http://www.giz.de/Themen/de/dokumente/de-disk-ssad(1).pdf) (accessed November 20, 2011). See also, Anika Rahman, Laura Katzive and Stanley k. Henshaw, "A Global Review of Laws on Induced Abortion, 1985-1997" *International Family Planning Perspectives* 24, no.2 (1998):57, <http://www.guttmacher.org/pubs/journals/i2405698.html> (accessed November 20, 2011).

⁸ See, Majia Kirilova Erickson, *Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law* (Netherlands: Kluwer La International, 2000), 184. CEDAW not only defines equality, it discusses a wide range of topics such as sexual right, reproductive right and right to health care. The Convention is very careful in addressing these issues and refers only to a woman's right to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable these rights. See, Cheshmak Farhounand-Sims, "CEDAW and Afghanistan" *Journal of International Women's Studies* 11, No. #1 (2009): 138, <http://www.bodleylib.ox.ac.uk/journals/jiws/vol11/issue1/cheshmak.pdf> (accessed April 16, 2012).

⁹ General recommendations of CEDAW Committees are interpretations of an accord to assist state parties in implementing their obligations. See, Hama 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 deserve more attention by state parties. See, "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.unhcr.org/docs/CEDAW.pdf> (accessed April 16, 2012)

The obligation to respect rights requires state parties to refrain from obstructing action taken by women in pursuit of their health goals. State parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, state parties should not restrict women's access to health services or to the clinics that provide those services on the grounds that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.^{10a}

Recommendation No. 24 of the CEDAW committee, contrary to the provisions of the Articles 12 and 16 of CEDAW, can therefore, be interpreted to include abortion¹¹, because by its wordings, state parties should not criminalize any medical procedure needed by only women. The only medical procedure needed by women as far as reproductive right is concerned is abortion.¹²

^{10a} See, key element No.14 under recommendation No.24 of the CEDAW committee, www.un.org/womenwatch/daw/cescr/recommendations.htm (accessed April 3, 2012).

¹¹ Within the UN, the issue of women's access to legal abortion and counseling as well as to services has been of major concern of expert members of CEDAW. See Erickson, *Reproductive Freedom*, 301.

¹² Abortion continued to be the most commonly privately funded medical procedure. See, Emily Jackson, *Regulating Reproductive Law, Technology and Autonomy* (Oxford: Hart, 2001), 85. Abortion is a legal medical procedure and women, regardless of whether their hospitals or HMO provides abortion services have a right to information about their medical options. See, *Congressional Record* 1: 148, pt 13, September 20, 2002 to October 1, (USA: Government Printing Press, 2002). 17954. Abortion has also been referred to as 'life threatening medical procedure' in Nancy Ehrenreich, *The Reproductive Rights Reader: Law, Medicine and the Construction of Abortion* (New York: New York University Press, 2008), 157. The American Medical Women's Association has also referred to abortion as a medical procedure. See, *Congressional Record* 1: 145 pt 18, October 14, 1999 to October 25, 1999 26023.

In order therefore, to refute the provisions contained in Recommendation No. 24 CEDAW Committee, the Vienna Convention on the Law of Treaties will be used in interpreting the 'right to choose' within CEDAW.

Alternative Interpretation of "Right To Choose" Within CEDAW

Despite the fact that the legal status of the general recommendations of CEDAW committee is that of a soft law¹³, it has become imperative for this study to suggest alternative interpretation that reveals alternative perspective that highlights the disparity between the true notion of women's 'right to choose' and women's freedom to abort. In order to accomplish this aim, recourse must be had to the Vienna Convention of the Law of Treaties 1969¹⁴. According to Article 31, paragraph 1 of the Convention,

¹³ This is because, some state parties do not accept general recommendations as legally binding, although the UN treaty bodies, including CEDAW committee, expect state parties to act on them in good faith. See, Schopp-Schilling, "The Role of CEDAW", 3. Several writers in the legal domain do not consider them binding on state parties to the convention. See, A. Byrnes, "The 'Other' Human Right Treaty Body: The Work of the Committee on the Elimination of All Forms of Discrimination against Women" *Yale Journal of International Law* 14, (1989). As at present, the committee has no formal power to interpret the women's convention authoritatively, except in the course of its work implicitly. Recommendations of CEDAW have the status of 'soft law'. See, "The Optional Protocol to CEDAW: Mitigating violations of Women's Human Rights" International Training Seminar for NGOs and Women's Rights Activists in Berlin, Germany 13-15 March (2003), http://www.institut-fuer-menschenrechte.de/uploads/tx_ecommerce/documentation_the_optional_protocol_to_cedaw.pdf (accessed April 16, 2012).

¹⁴ Despite the fact that a special principle of treaty interpretation has been advocated in international human right law based on the debate about the extent to which the Vienna Convention on the Law of Treaties principles are still adequate to deal with the multiplication and sophistication of international law, critiques of the VCTL have commonly fail to appreciate how non-codified principles have been interpreted and applied, and neglected to actually formulate new principles. It is one thing to say that the VCTL principles of interpretation are unsatisfactory and it is another thing to construct new and more acceptable principles. See, Isabella Van Damme, *Treaty Interpretation by the WTO Appellate Body* (Oxford, NY: Oxford University Press, 2009), 60. The frequent use of the VCTL, which has come to be acknowledged as customary international law principle, in the interpretation of international treaties demonstrates that, the VCTL is still relevant. See, R. K. Gardiner, *Treaty Interpretation* (Oxford: Oxford University Press, 2008), 142. The VCTL depicts generally accepted principles of law on the interpretation of treaties. See, Erickson, *Reproductive Freedom*, 304.

A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose.¹⁵ Thus, as the principal provision on treaty interpretation, Article 31(1) VCLT lists the most frequently utilized interpretative methods; good faith, ordinary (literal) and contextual interpretation and interpretation in light of a treaty's objective and purpose—here, is a combination of several of the theoretical approaches that were and still are prevalent in international legal theory. In order to determine the actual meaning of a particular treaty provision, scholars and courts may refer to and combine several elements of Article 31 VCLT.¹⁶ The approaches to interpretation of treaties are hereunder elaborated:

a. Ordinary (Literal) Interpretation

This rule is usually the first point of reference for treaty bodies, as it takes the actual wordings and text of the treaty as a starting point.¹⁶ The general rule of interpretation of treaties requires that the interpreters must give words, which are clear, plain and unambiguous, their normal meaning.¹⁷

¹⁵ See Gardiner, *Treaty Interpretation*, 142. See also, M. Villiger, *Commentary on the 1969 VCLT* (Leiden, Boston: Martinus Nijhoff Publishers, 2009), 422. See also, Anthony Aust, *Handbook of International Law* (Cambridge, UK: New York: Cambridge University Press, 2010), 83. See also, Daniel H. Joyner, *Interpreting the Nuclear Non-Proliferation Treaty* (Oxford, New York: Oxford University Press, 2011), 157.

¹⁶ It is the general principle of interpretation of legal instruments that the text is the primary source of interpretation; other sources are subordinate to it. See the lead speech by Lord Steyn, while commenting on sec 3 Human Rights Act 1998 in the case of *R v A* (No 2) (2002) 1 AC 45, (2001) 3 All ER 1. See, Michael Zander, *The Law-Making Process* (Cambridge: Cambridge University Press, 2004), 185.

¹⁷ See, William Schabas, *War Crimes and Human Rights: Essays on the Death Penalty, Justice and Accountability* (London: Cameron May, 2008), 437. The court has described the plain meaning as the normal meaning of the words used. See, *Denmark v Commission* (C-233/96) [1998] ECR I-5759 at [38]; see also, *Germany v Commission* (C-245/97) [2000] ECR I-11261 at [72].

disregarding the literal meaning only in very exceptional circumstances.¹⁸

In every legal system, whether common law or civil law, where the meaning of the words in the statute is clearly defined, the obligation of the judge is to give the words their clearly defined meaning and apply them strictly. This is the literal rule of interpretation.¹⁹ If only one construction is possible, to which the clear, plain or unambiguous word is unequivocally susceptible, the word must be so construed.

¹⁸ If the literal meaning does not accord with the overall scheme of the treaty under consideration, the court will disregard the plain wordings in order to achieve an interpretation that promotes the main objective of the treaty. See, Gabriel Moens and John Trone, *Commercial Law of the European Union* (Dordrecht, New York: Springer, 2010), 342. This was also the contention of Lord Steyn while commenting on Article 3 of the *Human Rights Act* 1998, that the court can depart from the language of the statute to avoid absurd consequences. Articles 3 of the *Human Rights Act*, like Article 31 of the VCLT were most concerned about an interpretation compatible with the treaty or convention under consideration. See Zander, *The Law Making Process*, 185. See also, Hilaire Barnett and Robert Jago, *Constitutional and Administrative Law* (Oxon, USA, Canada: Routledge, 2011), 216. If the ordinary meaning of a provision is ambiguous, a strong case can be made in favor of the stricter interpretation using other data of interpretation such as, context, object and purpose of the treaty and preparatory work. See, Ulf Lindertalk, "Who are 'The Parties'? Article 31, Paragraph 3(c) of the 1969 Vienna Convention and the Principle of Systematic Integration Revisited" *Netherlands International Law Review* 55, No. 3 (2008): 343-364.

¹⁹ See, Gary N. Heilbrunn, *Introducing The Law* (Sydney: CCH Australia Limited, 2008), 150. See also, Gary Slapper and David Kelly, *The English Legal System 2009-2010* (Oxon, USA, Canada: Routledge Cavendish, 2009), 87. See also, Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws, with a Chapter on the Interpretation of Judicial Decisions and the Doctrine of Precedents* (Clark, NJ: Lawbook Exchange Limited, 2011), 392.

Doing this, will be in line with the linguistic approach to the interpretation of words. Thus, it can be said that, the use of 'ordinary meaning' in the VCLT, refers to the meaning that can possibly be ascribed to the terms by applying the principles of etymology, that is, that part of grammar that shows the origin of words, for better distinguishing and establishing of their true significance.²⁰ To be able to interpret the ordinary meaning to be given to the terms of the treaty, the interpreter need to be familiar with the vocabulary and the rule system of the language used²¹.

Literal rule can therefore be said to mean that, if a treaty provision contains an expression whose form corresponds to an expression of ordinary language, then it should be understood in accordance with the rules of the language.

Hence, in applying the literal rule of interpretation of treaties as provided by the VCLT, Article 31(1), recourse will have to be had to the combine effect of Articles 12(1) and 16(1) CEDAW in order to ascertain the interpretation of the 'right to choose'. By so doing, the ordinary meaning of the 'right to choose' (legally and linguistically), will be revealed to include, the right a woman has to choose to reproduce by means of the availability of the right to decide freely and responsibly as to the number and spacing of her children, through the use of information and services relating to family planning.

²⁰ See, Steve McCaffery, *Prior Meaning: The Pre-semantic and Poetics* (Evanston: Northwestern University Press, 2001), 82.

²¹ The rule system of a language can be divided into 3 categories: morphological, syntactical and pragmatic. Morphological rule describe how the words are inflected and word forms are constructed, syntactical rules describe how phrases and sentences are put together, and pragmatic rules describe how linguistic expressions are used in certain kind of situations. See, Linderfalk Ulf, *On the Interpretation of Treaties-The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Dordrecht: Springer, 2007), 61-62. See also, Anja Inagabire, *Unveiled: A Judicial Assessment of France's Concealment Act 2010-1192 with the International Covenant on Civil and Political Rights Article 18 and the Convention on the Elimination of All forms of Discrimination Against Women Article 5(a)*, being a doctoral thesis submitted to the Faculty of Law, Lund University, Raoul Wallenberg Institute of Human Right and Humanitarian Law (2011), 16.

It can thus be justified to say that, the only construction that could be given to the 'right to choose' within CEDAW is as stated here. This is the literal rule of interpretation- the ordinary and conventional meaning of the term as used within the treaty.

The ordinary meaning of the 'right to choose' as envisaged in Articles 12 and 16 CEDAW, appears clear, plain and unambiguous, and did not in any respect lead to absurd result. Hence, on this note, no effort should be made to interpret the term further²². However, reference must be had to Recommendation 24 of the CEDAW Committee, which provides an interpretation contrary to the ordinary meaning and content of the 'right to choose' with respect to the term, family planning.

a. Contextual Interpretation

To clarify the contrary interpretation provided by the Recommendation 24 of the CEDAW committee, a contextual interpretation²³ of 'right to choose' is hereby proposed. It must be noted from the onset that, the context is always used in relation to the ordinary meaning.

²² The reference to other methods of interpretation different from the literal or ordinary one could be employed only in case the interpretation leads absurd results. See, Mouns and Trone, *Commercial Law*, 342. See also, Zander, *The Law Making Process*, 185.

²³ Contextual interpretation, at least in common law, is also sometimes called the 'logical method' or the 'golden rule' of statutory construction expressed in Latin maxim, '*nemo cum aliquam partem recte intelligere potest antequam totum verbum atque verum perlegerit*'. Lord Coke stated, more than four hundred years ago that, '... the office of a good expositor of an Act of Parliament is to make construction on all the parts together and not of one part only by itself'. Following the criticism of the mischief rule, the parliament's attention to detail grew, the judge gradually assumed his present role of textual interpreter, and according to Lord Blackburn, '... the golden rule is right, viz that we are to take the whole statute together and construct it all together giving the words their ordinary specification...'. See, *River Wear Commissioners v. Adamson* (1877) 2 App Cas 743, 761. Under the golden rule, the court must read the whole statute together and interpret it so as to give the words their ordinary meaning. See, Paul Latimer, *Illustration Business Law 31* edition (Australia CCH Australia Limited, 2012), 74. See also, Madhuku Lovemore, *Introduction to Zimbabwean Law* (Harare: Weaver Press, 2010), 150. Hence, the golden rule has been defended by rejecting interpretations that are logically narrow. See, Jeffrey Walters, *The Golden Rule* (New York: Oxford University Press, 1996), 126. See also, *Lincoln College Case* (1595) 3 Co. Rep. 58b, 59b, 76 ER 764, 767. See also, Schnabas, *War Crimes and Human Rights*, 438.

In order to interpret the 'right to choose' contextually, reference will be made to the actual text of CEDAW²⁴, the elements set out in Articles 31(2) and 31(3) of VCLT.

The phrase, 'context of a treaty' according to Article 31(2) means, any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty, any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by other parties as an instrument related to the treaty. Particular importance is also attached to other means of interpretation stated in Article 31 (3), especially with reference to any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision²⁵.

A detailed understanding of the preamble (text) to CEDAW reveals that, due regard and recognition is given to the following; the dignity of human person, equality between men and women, sovereignty of nations, as well as the natural role of women in the area of procreation and upbringing of children. While recognizing these important elements, CEDAW emphasizes that, under no circumstances should women be discriminated at. It is on this basis that all state parties agreed to be part of CEDAW.²⁶

²⁴ The context of a treaty can be deduced from its preamble and annexes. See M. Fitzmaurice, O. A. Elias and P. M. Merkouris, *Treaty Interpretation and the Vienna Convention on the Law of Treaty: 30 Years On* (Leiden Boston: Martinus Nijhoff Publishers, 2010), 157. See also, Ibrahim F. I. Shihada, *The World Bank Legal Papers* (The Hague: Nijhoff, 2000), 1. See also, Dr Michael Lang, *Tax Treaty Interpretation* (Wien: Linde, 2001), 209.

²⁵ See, Michael Lang and Florian Bineger, "The Role of the OECD Commentary in Tax Treaty Interpretation" *Australian Tax Forum* 23, (2008): 97, http://www.w2.witten.at/axlaw/publicationen/1_angebruegt_austrianntaxforum_95ff.pdf (accessed April 20, 2012).

²⁶ See the Preamble to the CEDAW rules. In its preamble, the Convention explicitly acknowledges that, 'extensive discrimination against women continued to exist and emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. See, Hasna Cheema, *Benchmarking National Legislation for Gender Equality: Findings from five Asian Countries* (Thailand: UNDP Asia-Pacific Regional Centre, 2010), 5, http://www4.unescobk.org/unesco/sites/default/files/benchmarkingnationallegislationforgender_equality.pdf (accessed April 16, 2012).

Of all the important elements of the preamble to CEDAW, the dignity of human person as well as the natural role of women in the area of procreation and upbringing of children, has direct bearing with the ordinary and literal interpretation of the 'right to choose'. The dignity and worth of human person is the founding premise of the Universal Declaration (the universally accepted authoritative elaboration of the human rights provisions of the United Nation Charter)²⁷. Constant reference was made to the fact that, the premise, basis and foundation of the Declaration lies in the respect for the dignity, sanctity and worth of human person²⁸. It is also the first principle of natural law, that is, the moral importance to do good and avoid evil, and emanating from this, is the precept that affirms preservation of 'human life'²⁹.

The natural role of women as the means of procreation and the nurturer of children, is therefore rooted in natural law, and consequently, has found expression in human right laws, notably CEDAW. Hence, a contextual interpretation of CEDAW's 'right to choose', bearing in mind the contents of the preamble in consonant with the ordinary meaning, will be interpreted to mean, the right to choose to reproduce with the use of family planning information and services that promote the preservation of life, and not those that destroys life or have the tendencies to destroy life.

²⁷ Nabile and Frelon, *Business Education and Training*, 208.

²⁸ Most people that took part in the drafting of the Declaration made reference to this fact. See, McIntire and Burns, *Speeches in World History*, 387-391. See also, Johannes, "Preamble of UNDHHR". See also, Joseph, *Unborn Child*, 39. See also, Malik, "International Bill of Human Rights".

²⁹ Natural law principle such as these, found concrete expression in the Declaration and were declared to be universal. See, Finnis, *Natural Law and Natural Rights*, 398-402. See also, May, *Introduction to Moral Theology*, 83.

With reference to Article 31(2) (a) and (b) VCLT, to interpret a treaty contextually, the rule is that, where there exist a conflict between two possible ordinary meanings of a provision, then the later meaning as expressed in the instrument created by two or more parties, but accepted by other parties as an instrument related to the treaty must be adopted.³⁹

Although, as far as Nigeria is concerned, no such agreement or instrument was made in respect of CEDAW,⁴⁰ reference will be made to the negotiating history of CEDAW to show that the ordinary meaning of 'right to choose' was intended by the parties to CEDAW, Nigeria inclusive. According to account of CEDAW's negotiating history, some countries were opposed to the mention of 'family planning services'. Since this (family planning services) did not exist everywhere, it could result in the refusal to ratify the convention, so the supporters of CEDAW emphasize that, the Convention calls on State Parties to take 'all appropriate measures', thereby, leaving it to State governments to determine what constitutes access to 'family planning'.⁴¹

³⁹ See Inagbire, *A Judicial Assessment of France's Concealment Act*, 18.

⁴⁰ This is because, Nigeria ratify CEDAW in 1985 without any reservation. See, Women Aid Collective (WACOL) for Nigeria NGO Coalition on CEDAW Report (2008): 1, http://www.1.org/eng/press/press_releases/cedaw.htm#figos-NigeriaNGOCoalition4.pdf (accessed April 7, 2012).

⁴¹ See, Lars Adam Rethof, *Guides to the Treaties Preparatory of the United Nation Convention on the Elimination of All forms of Discrimination against Women* (Dordrecht: Nijhoff, 1993), 143.

In support of this, they point out to the negotiating history of the Convention that indicates that the text ('all appropriate measures') was left intentionally ambiguous to allow State Parties to ratify CEDAW.⁴²

To address the concerns of some Convention opponents, in 1994, the Clinton administration proposed an understanding to CEDAW that said the United States understand that, Article 12 permits state parties to determine which health care services are appropriate in connection with 'family planning', pregnancy, confinement and post-natal periods as well as when the provision of free services is necessary and does not mandate the provision of particular services on cost free basis. In June 2002, under the chairmanship of former senator Joseph Biden, the SFRC (Senate Committee on Foreign Relations) held hearings on CEDAW ratification in the USA.

⁴² Ibid. Furthermore, still on the issue of allowance given to state parties to device their own method and approach of 'family planning', Maria Isabel Plata, as far back as 1991, concerned about her country, Columbia where women's group in the country used the women's convention to promote equality and reproductive health. The Columbian Women Movement lobbied for the incorporation of the principles of women's convention into the 1991 constitution. In particular, the provision of the women's convention on the right to decide freely and responsibly the number of one's children is now part of the constitution. The women in Columbia has devised their own meaning of 'family planning' to include, the availability of a full range of reproductive health services, including infertility services, safe and effective contraception, integrated treatment of incomplete abortion and the treatment of menopausal women. Plata had urged CEDAW, as far back as 1991 to issue a general recommendation clarifying the terms, women's health and 'family planning' programs. Such a recommendation would explain that, in order to comply with the convention, states need to develop comprehensive reproductive health services that 'empower women and not use women as a means to limit population growth, save the environment and speed development. See, Rebecca J. Cook, *Human Rights of Women: National and International Perspective* (Philadelphia: University of Pennsylvania Press, 1994), 19.

On July 30, 2002, the committee reported the Convention favorably by a vote of 12 to 7, subject to several RUDs. One of the understandings was a proposal from ranking member senator Jesse Helms that stated: 'nothing in this convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of 'family planning'. This Helms's understanding was included as a compromise to alleviate the concerns of pro-life advocates who were concerned that CEDAW ratification could affect US abortion laws³⁴

The reference to the negotiating history in context, also lend weight to the ordinary meaning of the 'right to choose' within CEDAW, for it shows that, right from the onset, there were inhibitions expressed by state parties in respect of 'family planning' mentioned within the 'right to choose' to be taken to mean abortion. It showed that, these inhibitions was respected and acknowledged by the leverage given to state parties to adopt the meaning that best suit their countries as far as 'family planning' is concerned, showing in the main, the respect for national sovereignty as expressed in the preamble to CEDAW³⁵. This accounted for reservations made by some state parties.

Thus, using the provisions of Article 31(2) VCLT to interpret the 'right to choose' contextually, bearing in mind the ordinary meaning of the term, will mean nothing more than the right to choose to reproduce for women using the best approach of 'family planning' thought best by individual country.

³⁴ See, Luisa Blanchfield, *United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Issues in the US Ratification Debate* (Congressional Research Service, 2010), 16-18

³⁵ This, perhaps, shows why Nigerian government did not thought it necessary to show any reservations to the CEDAW Treaty in 1985.

Subsequent practices as well as relevant rule of international law³⁶, as provided by Article 31(3) VCLT, can also be used to interpret the 'right to choose' contextually. The non-domestication of CEDAW till date as well as the continued criminalization of abortion³⁷ by Nigeria has shown the necessary subsequent practice required to interpret the 'right to choose'.

International law³⁸ has recognized the global problem which appears particularly significant in regions where 'clashes of culture' are imminent³⁹. In such countries with marked cultural diversity⁴⁰

This approach upholds the treaty-based human right as such (or at least the core of it), but allows consideration of particular cultural aspects when interpreting the often vague formulated human right, when filling up a margin of appreciation,⁴¹

³⁶ The application of a technique of interpretation that permits reference to other rules of international law, as provided for under Article 31(3) VCLT, offers the enticing prospect of averting conflict of norms, by enabling the harmonization of rules rather than the application of one norm to the exclusion of all others. See, Campbell McLachlan, "The Principle of Systematic Integration and Article 31(3)(c) of the Vienna Convention", *International and Comparative Law Quarterly* 54, No. 2 (2005): 286.

³⁷ http://www.bjicel.org/files/2140_campbell_mclachlan_the_principle_of_systemic_integration.pdf (accessed April 8, 2012).

³⁸ See Secs 232, 235 *Penal Code* (applicable in the Northern Nigeria) and secs 228, 229 and 230 *Criminal Code* (applicable in the Southern Nigeria). In the Southern States, physical and mental health reasons are also inclusive.

³⁹ Sec. L. Oppenheim, *International Law 8th Edition* (London: Longman, 1955), 26. See also, David Kennedy, "The Sources of International Law", *American University Journal of International Law Review* 2, No. 1 (1987): 4, <http://www.austlii.org/au/au/other/auil/auil/journal/2-1.pdf> (accessed April 9, 2012).

⁴⁰ See, Karen B. Brown and David Snyder, *General Report of the XVIII Congress of the International Academy of Comparative Law: Rapports Generaux Du XIII Congress de L'Academie Internationale De Droit Compare* (Dordrecht, London: Springer, 2012), 583. Article 31(3)(c) VCLT also acknowledges that the complex and entangled relationship between custom and treaties must be taken into account when interpreting the latter (irrelevant and applicable See, Leena Grover, "A Call to Arms: Fundamental Dilemmas Confronting Interpretation of Times *European Journal of International Law* 21, No. 3 (2010) 543.

⁴¹ <http://www.lexisnexis.com/esteryum.edu/au/auil/auil/journal/2-1.pdf> (accessed April 19, 2012). Nigeria has a population of 140 million (National Population Commission (Nigeria), making it the most populous country in Africa. See, Aiyunwon Grace et al., "Assessment of Scholarly Publications", 90. It is a nation with ethnic, religious and economic diversity. Nigeria is said to be characterized by several socio-economic inequalities among their regions, ethnic groups and religions. Nigeria is fragmented with 374 ethnic groups. See, J. Ager and Ukiwo, "Ethnicity, Religion and the State", 3-4.

and distinct political decentralization, culture-related divergences in interpreting human right texts are visible⁴¹. Hence, in a bid to interpret the 'right to choose' within CEDAW in Nigeria, the relative (limited or moderate) universalism approach⁴² is opted for.

This approach upholds the treaty-based human right as such (or at least the core of it), but allows consideration of particular cultural aspects when interpreting the often vague formulated-human right, when filling up a margin of appreciation,⁴³ or particularly significant, when weighting human rights and public interests. This approach shows that, any interpretation of normative texts in any country is interdependent with local and regional culture.⁴⁴ Nigeria, as a country, in recognizing these facts, have interpreted 'right to choose' to exclude abortion. Hence, the literal and contextual interpretation of the 'right to choose' within CEDAW is taken to mean, the right to choose to reproduce and not the right to choose to abort.

c. Objective and Purposive Interpretation

As said earlier, the 'right to choose' as used within CEDAW is clear and unambiguous, which has necessitated the ordinary meaning interpretation. However, the interpretation posed by Recommendation 24 of the CEDAW Committee has created a conflict that needs rectification.

¹¹ The process of interpretation is also an integral part of the legal system in which the text is situated. Legal texts only make sense within the legal context of the system that gives them meaning. See M. J. Cohen "The Principle of Systematic Integration," 286.

⁹ Other approaches are, (i) absolute relativism, which totally denies, for whatever conflicting cultural reasons, the universal or at least, quasi-universal normative effect which result from the cultural texts; and (ii) universality through culture, which creates an inner link, not a human right treaties; and (iii) universally through culture, which creates contrast between both dimensions saying that cultural adaptation increases or even creates sociological acceptance of the normative prescription and therefore, gives real efficacy to human rights. These two approaches are seldom in nature, and cannot be upheld. See, Brown and Snyder, (*Tenential Report*, 583).

"Sov. Baku: 1958, "Margin of Appreciation", 713.

⁴⁴ What is decisive is the readiness of the interpreter to objectivize his/her culture-shaped mindset and to duly respect the international obligations. Thus, the need for universality is satisfied and cultural particularity is observed to the extent that the universal document explicitly or implicitly allows it. See Brown and Snyder, *General Report*, 583.

This is the reason why a contextual interpretation has been proffered earlier, and the same reason why an object and purposive interpretation is hereby presented.

The object and purpose of human rights treaties plays a crucial role in their interpretation, and in the light of Article 31(1) VCLT, the object and purpose of a treaty is not construed independently of the other means of interpretation.⁴⁵ It is rather, always used in relation to the ordinary meaning. It is meant that, where the ordinary meaning is unclear, the object and purpose shall assist in more precisely, to determine the meaning of the provision.⁴⁶

Object and purpose of a treaty as provided in Article 31(1) VCLT has been subjected to many controversies, because the term 'object and purpose' is considered as vague and ill-defined. Vague, because it is considered wide and can accommodate a lot of issues. However, the most difficult and controversial is the reconciliation of the objective and the subjective approach in treaty interpretation, a task that is almost impossible.

* The object and purpose of a treaty constitutes a key concept. See: Daniel Rietiker, "The Principle of 'Effectiveness' in the recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and its Consistency with Public International Law—No Need for the Concept of Treaty 'Sui Generis'?" *North Journal of International Law* 79, (2010): 235. The expression, "teleological" refers to an interpretation of treaty upon the intention and purpose of the provision under consideration. It goes beyond other methods of interpretation because, it is not restricted by the wordings, background or context of the provision in issue. Rather, it is dynamic in that, it is purposeful in its application, seeking to give effect to the spirit or the overall scheme and objectives of the specific provision under consideration. See: Meens and Trom, *Commercial Law*, 344. The court's interpretive method is generally described as purposive or teleological, meaning that, when interpreting a rule, account is taken of the purpose, aim and objective that the rule pursues. See: Nicole Busby, *A Right to Care? Unpaid Care Work in European Employment Law* (Oxford New York: Oxford University Press, 2011), 135. The Inter-American has proposed that instruments should be given a pro-homine interpretation in accordance with the purpose of the treaty—interpretation should be directly serving the teleology of the instrument. See: Lucas Lixinski, "Treaty Interpretation by the Inter-America Court of Human Rights: Expansionism at the Service of the Unity of International Law" *European Journal of International Law* 21, No.3 (2010), 585. <http://www.ejil.org/ejil/article.aspx?id=1444> (accessed April 19, 2012).

⁴⁶ Article 31(1) VCLT states: 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objective and purpose'. See, Moens and Trone, *Commercial Law*, 342.

However, Koskeniemi has observed that, according to the subjective approach, treaties bind because they express consent. According to the objective approach, treaties bind due to the requirements of consideration of teleology, utility, reciprocity, good faith or justice.⁴⁷

According to some writers, recourse to preparatory work (travaux préparatoires) helps to distinguish the proponents of the objective approach from the proponents of the subjective approach. This is so in the sense that, the former would be more reluctant, whereas, the latter would be more liberal in permitting recourse to preparatory work in order to determine the true meaning of the treaty.⁴⁸

Article 32 VCLT refers to travaux préparatoires⁴⁹, which it characterizes as supplementary means of interpretation. Article 32 makes it clear that, recourse to 'travaux préparatoires' is acceptable in order to aid interpretation governed by the principle established in Article 31, and they (supplementary means of interpretation) are neither autonomous nor alternative means of interpretation.⁵¹ Resort to travaux préparatoires is strictly regulated and permitted only on two occasions: (i) in order to confirm the meaning resulting from the application of Article 31 or, (ii) when such application produces ambiguous,

obscure or manifestly absurd results.⁵²

It must be pointed out that, travaux préparatoires of a treaty can be very ambiguous and confusing⁵³. Because travaux préparatoires may include obsolete negotiation position, they may mislead the interpreter as to the intentions of the signatories at the time of signing the treaty. Primarily for such reasons, commentators have been reluctant to endorse the frequent recourse to travaux préparatoires.⁵⁴

Despite these controversies, it must be emphasized that the VCLT does not rule out the application of either the subjective or teleological methods of interpretation of treaties. The objective and the subjective approach in the discovery of the object and purpose of a treaty are reflected in the text of the treaty.⁵⁵

⁴⁷ See, L. Oppenheim, R. Y. Jennings and A. Watts, *Oppenheim's International Law* Vol. 1 (Harlow Longman, 1992), 1277-1282.

⁴⁸ This is because, during treaty negotiations, many views may be advanced by drafters. Some of these views might be abandoned before adoption of the final version of the treaty. Also, certain provisions are absent in the travaux préparatoires. Crucial debates, for example often occur in private, and thus, never appear in the negotiation record.

⁴⁹ See, Martin Rix, "Treaty Interpretation and the ICJ Recourse to 'Travaux Préparatoires': Towards a proposed Amendment of Articles 31 and 32 of the Vienna Convention on the Law of Treaty" *Boston College International and Comparative Law Review* 14, No 1 Article 6 (1991): 112-113. These commentators that are reluctant to make recourse to travaux préparatoires are those that believe that the objective approach is best to view the object and purpose of a treaty. See, Art 31(1) VCLT. See also, Moens and Trone, *Commercial Law*, 342.

⁵⁰ The consent of the parties is fixed in the text of the agreement. The object and purpose of the teleology of a treaty is equally expressed in its text. See, Isabelle Van Damme, *Treaty Interpretation by the WTO* (Oxford: Oxford University Press, 2009), 36. See also, Isabelle Van Damme, "Treaty Interpretation by the WTO Appellate Body" *European Journal of International Law* 21, No 3 (2010): 605-648, <http://ejil.oxfordjournals.org/content/21/3/605.full> (accessed April 13, 2012). The VCLT, in favoring the textual approach to treaty interpretation realize that the text of a treaty is very important in its interpretation. The presumptions observed through the recourse to the object and purpose of a treaty is confirmed by a general terminological analysis of the text concerned. Hence, the provisions contained in Article 31 VCLT can be achieved by giving effect to the intention of the parties as expressed in the words by them in the text of the treaty. See, Sinclair, *The Vienna Convention on the Law of Treaties*, 115. What constitute the object and purpose of interpretation process today is the elucidation of the intentions of the parties as reflected in the terms of the treaty. See, F. A. Engelen, *Interpretation of Tax Treaties under International Law: A Study of Articles 31, 32 and 33 of the Vienna Convention of the Law of Treaties and their application to Tax Treaties* (Amsterdam: International Bureau of Fiscal Documentation, 2004), 109.

⁴⁹ See, Marti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Helsinki: Finnish Lawyers' Publishing Company, 1989), 291-294, 298-299. He was also of the view that the principal goal of interpretation (to give an expression to the subjective party interpretation) cannot be achieved since it is impossible to ascertain real subjective party intent. See also, Sir I. Sinclair, *The Vienna Convention and the Law of Treaties* (Manchester: Manchester University Press, 1984), 116. See also, Fumagalli, Elias and Merkouris, *Treaty Interpretation*, 156.

⁵⁰ See Article 32 VCLT.

⁵¹ See, Koskeniemi, *From Apology to Utopia*, 291-294, 298-299. Travaux préparatoires consist of written records, negotiations preceding the conclusion of a treaty. It includes all documents and memoranda, minutes of conferences and draft of treaty under negotiation. It also includes all materials which document the negotiations and other circumstances that culminated in the former conclusion of a treaty.

⁵² See, "Report of the International Law Commission on the work of its 18th Session" *Yearbook of International Law Commission* Vol II, (1966): 223, UN Doc A/CN.4/1191.

The subjective and objective interpretation of a treaty cannot be done in isolation of the text of the treaty. The object and purpose of a treaty can therefore be said to refer to the intention of the treaty-the reason for which the treaty exists, as well as the intention of the parties.⁵⁶

The issue revolving around the object and purpose can arise both with regard to the object of interpretation (the individual provision or the treaty as a whole) and to its object, i.e. their respective contents. Regarding the object of interpretation, it is now common practice both in international law and human rights law to refer either to the object and purpose of the treaty as a whole, or to the object and purpose of the individual provision in question, even though the VCLT itself speaks only of the treaty's object and purpose.⁵⁷

Consensus may legitimate certain human rights interpretations in connection with the object and purpose of the human right treaty either as a whole or with regards to individual treaty provision.⁵⁸ For the whole of the treaty, the object and purpose is possibly expressed in the preamble,⁵⁹ which informs us about the general scope of the state consensus. As every human right is limited to a particular set of rights, any interpretation which goes beyond that scope is questionable, and likely to be illegitimate.

⁵⁶ All in reference to the text or body of the treaty. *Ibid.*

⁵⁷ See Article 31(1) VCLT. See also, Gardiner, *Treaty Interpretation*, 200.

⁵⁸ See, F. Vanneste, *General International Law before Human Right Courts: Assessing the Specificity Claims of International Human Right Laws* (Atwerp, Portland: Intersentia, 2010), 263-294. The court in *East African Law Society v AG of the Republic of Kenya* (2008) 1 East Afr. L.R. 93, was of the view that, account will have to be taken of the object of the treaty as a whole, without losing sight of the object and purpose of a particular provision. See, Richard Frimpong Oppong, *Legal Aspects of Economic Integration in Africa* (Cambridge, New York: Cambridge University Press, 2011), 196.

⁵⁹ The European court of human rights elaborated on the object and purpose of the Convention by turning to the preamble to the Convention as provided in Article 31(2) VCLT. See, George Letsas, "Strasbourg's Interpretative Ethic: Lessons for the International Lawyer" *European Journal of International Law* 21, No.3 (2010): 509-541 <http://ejil.oxfordsjournals.org/advance-article/doi/10.1017/S0922172410000111> (accessed April 9, 2012).

Concerning individual treaty provisions, it is the consensus and practice of the state members to the treaty, which may legitimate a subsequent interpretation.⁶⁰

If the majority of state parties to the treaty consents to, and practices a certain interpretation of a particular human right provision, also at the national level, there is a strong indication that this interpretation is legitimate. It must be noted however, that although the consent of state is stressed, it is agreed that, there may also be other actors or affected parties whose consent may count in the determination of the interpretative scope of an individual provision.⁶¹

Thus, in interpreting the 'right to choose' according to its object and purpose in Nigeria, the main reason behind the promulgation of CEDAW as a whole will have to be looked into, and this lies in the fact that, discrimination against women will be prohibited. Elements that will lead to the realization of this objective are found in the preamble to CEDAW.⁶² The interpretation of the 'right to choose' given by Recommendation 24 of the CEDAW Committee goes beyond the scope of the preamble to CEDAW and is therefore, questionable.

⁶⁰ F. Vanneste has illustrated that the ECHR has referred to various actors to determine the object and purpose of individual human ECHR provisions; the existing and emerging consensus of the contracting parties, or of a regional group of contracting parties. Nonetheless, the ECHR has also referred to public opinion or social acceptance of a particular opinion. See Vanneste, *General International Law*, 263-294.

⁶¹ *Ibid.*

⁶² See the Preamble to the CEDAW rules. In its preamble, the Convention explicitly acknowledges that, 'extensive discrimination against women continued to exist and emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. See, Cheema, *Benchmarking National Legislation for Gender Equality*, 5.

With regards to the object and purpose of the 'right to choose' within CEDAW, the subsequent practice in Nigeria, consensus of group⁶⁴, public opinion as well as social acceptance of right to life for the unborn⁶⁵ can legitimize the subsequent interpretation of the 'right to choose' within CEDAW. The ECHR has also relied on these principles to determine the object and purpose of individual ECHR provisions⁶⁶.

The object and purpose of CEDAW, therefore lies in the text of CEDAW itself reflecting both the subjective and objective views of interpretation of the object and purpose, thereby going in line with the VCLT. The object and purpose of CEDAW is reflected in its preamble, which also represents the intention of the parties to CEDAW.

d. *Good Faith Interpretation*

The ordinary meaning of the 'right to choose' as envisaged in Articles 12 and 16 CEDAW, appears clear, plain and unambiguous, and did not in any respect lead to absurd result. However, reference must be had to Recommendation 24 of the CEDAW Committee, which provides an interpretation contrary to the ordinary meaning and content of the 'right to choose' with respect to the term, family planning. It is in an attempt to give the correct and proper interpretation to the right to choose within CEDAW, that the good faith interpretation is hereby proposed.

The notion of good faith fulfilment of treaty obligations has existed from the earliest formulations of international law. Good faith in this most basic sense is merely a reflection of the proposition that sovereign states must adhere to their international obligations.

⁶⁴ See Secs 232, 235 *Penal Code* (applicable in the Northern Nigeria) and secs 228, 229 and 230 *Criminal Code* (applicable in the Southern Nigeria).

⁶⁵ The empirical analysis carried out in this study reveals that, groups (religion and non-religious) acknowledges that the 'right to choose' is not synonymous with abortion. Detail of this has been presented in the preceding chapter.

⁶⁶ This was also evidenced in the empirical analysis. See the preceding chapter.

⁶⁷ See, Vanmeeste, *General International Law*, 263-294.

It is nonetheless also a well established principle of international law that the very interpretation of treaty obligations is subject to the premise of good faith. Stated generally, this interpretive norm mandates that sovereign actors construe their treaty obligations on a premise of equality and a mutual intent of faithful performance.

The principle of good faith requires parties to a transaction to deal honestly and fairly with each other, to represent their motives and purposes truthfully. The reference to context and purpose demonstrate that the substance of the principle of good faith is the negation of the unintended and literal interpretation of words that might result in one party gaining and unfair or an unjust advantage over another party. The reference to good faith interpretation therefore, calls on parties to treaties to fulfil their part of the obligation by adhering to the object and purpose of the treaty itself. By adhering to the object and purpose of CEDAW, the parties to CEDAW will be said to have interpreted the terms and contents of CEDAW in good faith.

Furthermore, it can also be said that, the principle of good faith is rooted in a natural law concept of customary international law. The earliest systematic writers on international law, including Grotius, Pufendorf, and Suarez, conceived of international law as founded in natural law, by which they meant the dictates of right reason. Natural law thus conceives of a constraint upon nations to act in a manner that takes into account of reasonable expectations and needs of other nations in the international community. Under this view, a treaty should be implemented in a way that fulfils the purposes of the joint undertaking, including the exchange of reciprocal obligations.

Allowing abortion right interpretation of CEDAW's right to choose, will mean allowing some powerful countries of the world to take advantage of other nations, by imposing their own views and ways on other less powerful nations. If this is allowed, then CEDAW, being an international treaty will not be interpreted in good faith as most, if not all its purposes would have gone down the drain.

The above have given an interpretation of CEDAW's right to choose according to the VCLT. It is the contention of this work that, even when given an interpretation of CEDAW's right to choose based on rules of interpretation of statutes, the same conclusion will be arrived at. This is basically so because, the principles of textualism is the first point of reference when it comes to statute interpretation (the same applies to treaty interpretation) and judges are reminded that, treaty interpretation should be no different from the construction of other legal writings, and the schools or techniques of treaty interpretation largely replicate those of statutes, contracts, wills and constitution.

Conclusion

Since it the general believe of majority of people that 'right to choose' within CEDAW is synonymous to abortion right for women, an in depth conceptual analysis was undertaken in search of an alternative interpretation to 'right to choose' within CEDAW. In the course of doing this, the rules of interpretation was studied carefully and the combined effect of the rules point out to an interpretation suggestive of 'right to choose to reproduce' and not 'right to choose to abort'.

Recommendation

- There should be a legal as well as interpretative clarity on the principle of Right to choose with regard to abortion. This is necessary because the combined effect of the rules on right to choose actually and literarily point to 'right to choose to reproduce' and not 'right to choose to abort'.