Making a Case for the Domestication of CEDAW in Nigeria:
Empirically and Conceptually Justified

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Abstract
Despite the laudable provisions of the Convention on the Elimination of all forms of Discrimination Against
Women, (CEDAW), aiming to stop discrimination against women, the widely spread abortion right
interpretation given to the provisions of reproductive right under Article 16(e) of CEDAW has made it
impossible for Nigeria, a country with a restrictive abortion law to domesticate CEDAW. The authors here, have
deviated from the general interpretation, and have consequently made a case for the domestication of CEDAW in
Nigeria, using reproductive right, under a progressive interpretation, as the basis. Under a progressive
interpretation of CEDAW’s reproductive rights, Primary Health Care (PHC) will serve as an embedded principle,
whereby the right to health for women will be the determining factor. Also, the authors have strengthened their
case by conducting a case study in eight (8) different states in Nigeria. This step, according to the authors, will
serve as a basis for future policy development in the area of reproductive right in Nigeria.

Key words: Reproductive Right, Abortion right, Domestication, CEDAW, PHC.

1. Introduction
It has been said that, human rights exists in morality and in law at the national and international levels.1
Consequently, the main source of the contemporary concept of human right, the Universal Declaration of
Human Rights (1948), which happens to be an international human right instrument, sets out over two dozen
specified human rights that countries should respect and protect. One of such right is the minority and group
rights which centre on the equal rights of disadvantaged groups. One of such disadvantaged groups is the
women.2
Concern for the equal rights of the disadvantaged group is a long standing objective of the human right
movement. International human right document like the UDHR emphasizes that all people, including women
have the same basic rights and should be able to enjoy them without discrimination.3 Since 1964, the United
Nations has mainly dealt with rights of women under specialized treaties such as, CEDAW.4 The preamble to

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1Statement by HLA Hart in his famous article on Natural Rights in A Pagden, (2003) Human Rights, Natural
Rights and Europe’s Imperial Legacy, Political Theory 31(2) 172. <http://www.jstor.org/stable/3595699> (date
Nations: The Political History of Universal Justice (USA: Indiana University Press ) 1, where it was revealed
that in little more than half a century, the issue of human rights have become the preeminent signifie r of
international morality and legitimacy.

2There were just four women signatories among the 160 signatories to the UN’s founding document at its charter
conference at San Francisco in 1945. The four women established a foundation for the UN by making sure that
women issues were present in the text of the Charter. The simple act of inserting the word, ‘women’, in the text
made sure that, the principle of equality between sexes was part of the founding ideas of the new organization.
Equality and Justice (USA Indiana University Press) 12. See also, K.N. Hervener, (1986) An Analysis of Gender
Based Treaty Law: Contemporary Development in Historical Perspective Human Right Quarterly 8(1) 70-88.

3Art 1 Universal Declaration of Human Rights 1948.

4This 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. Other aspects of reproductive rights includes, fully shared
responsibility for child rearing by both sexes, right to maternity and family planning. The effect of this article is
that, in order the good health of women; women should be able to decide freely and responsibly as regards the
number and spacing of their children. The access of women to health care is justifiable so as to provide women
with basic information needed in order to be able to space their children. See the WHO Birth Spacing Cluster
CEDAW acknowledges the existence of discrimination against women and made it clear that the continued existence of such discrimination violates the principle of equality of all persons and respect for human rights and dignity. One of such right that will eliminate discrimination against women is ‘reproductive right’ for all women. Accordingly, all women are entitled to the right to decide freely and responsibly as to the number and spacing of their children. When women are given this reproductive right, it will also lead to right to health for all women (including the child they will bear). This is so because, when women give enough space between births, it makes them healthier. CEDAW, by its provision for reproductive right for women has further demonstrated a right based approach to health for all women (consequently, children). The late Jonathan Mann once said that there

November 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 on Healthier Mothers and Children Through Birth Spacing. See also, A Conde-Agudelo, A Rosas-Bermudez & AC Katufy-Goeta, (2006) Birth Spacing and Risk of Adverse Perinatal Outcomes: A Meta- analysis Journal of American Medical Research 295(15) 1822. <www.fsfb.org.co/sites/default/files/birthspacingandriskofadverse.pdf > (date accessed: 26 November 2011). It must be emphasized that CEDAW made reference to family planning, not abortion.

1 Art 1 CEDAW.
2 Art 12(1) CEDAW provide that State 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 care services, including those relating to family planning. Article 16(1)(e) CEDAW, provided further that, State parties shall take all appropriate measures to eliminate discrimination against women in all patterns relating to marriage and family relations and in particular shall ensure, on the basis of equality of men and women, the same right of deciding 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. Also, Ganiat Mobolaji Olatokun, (2014) Right to Choose within CEDAW: Its Importance to Women in Nigeria, Journal of Humanities and Social Sciences 19(1) 15. See also, Ganiat Mobolaji Olatokun and Harlida Abdul Wahab, (2013) Alternative Interpretation to ‘Right to Choose’ within CEDAW: A Suggestion, paper delivered at the 7th UUM International Conference, Malaysia. 13th November, 2013. Also, Ganiat Mobolaji Olatokun and Rusniah Ahmad, (2013) Fundamental Principle of International Human Rights Law: Basis for the Right to Life for the Unborn Child, paper delivered at the 7th UUM International Conference, Malaysia. 13th November, 2013.


4 A right based approach to health refers to the process of using human right as a framework for health development. Consequently, a right-based approach to health entails recognizing the individual characteristics of the population groups concerned. In all actions relating to children, for example, the guiding principles of the Convention on the right of the child should be applied. These include, the best interest of the child shall be the primary consideration. CEDAW, by giving women reproductive right has taken into cognizance the best interest of the child, because it is only when a woman is healthy that issues relating to right to life of the unborn can come to play). A right based approach to health further entails using a gender perspective, recognizing that both biology and socio cultural factors play a significant role in influencing the health of a woman. (Reproductive right within CEDAW has taken into consideration biology, culture as well as social factors, because CEDAW has recognize the significant place of women in their task of carrying pregnancy, and has woven into the Convention the right to health of women, both during and after pregnancy. Art 12(2) CEDAW has further recognize the fact that, there are conditions which only women experience and which have negative health impact, that only
exist a synergy between public health and human rights. This can be visualized from the above provision of CEDAW, which conveniently brought in public health within its framework. Health care is necessary in order to help women express their right to determine the number and spacing of their children by means of family planning.

The General Recommendation 24 of CEDAW which requires state parties to eliminate all forms of discrimination against women in the context of health and health care appears laudable, but when such recommendation proceeded and made it clear that, discrimination occurs against women when health systems refuse or neglect to provide health services that only women need, such as safe abortion services, the recommendation 24 has compromised the right based approach to health which reproductive right in the main body of CEDAW seeks to promote. This recommendation by the CEDAW committee have yielded result in women suffer. Some of these conditions such as, pregnancy and child birth are not in themselves diseases, but normal psychological and social process that carry health risks and require health care. This, precisely serve as the backbone for the inclusion of health of women as human right. (Emphasis mine). Women’s health, it must be stressed, are matters, not only for the women themselves, but also crucial to the health of the children they will bear. (Art 12 CEDAW). See, G Lance, (2010) Reproductive Health as Human Right, Case Western Reserve Law Review, 60(4) 957-966. See also, WHO, (2009) Women and Health: Today’s Evidence, Tomorrow’s Agenda (Apia, Geneva, Switzerland WHO Press) 3. K. SAIN’, a member of parliament in the Republic of Singapore said that, health has to be a necessary input to and goal of development. It is necessary that women are healthy in order for them to participate fully in development as workers, mothers, and family and community members. Besides being recipients of health care, women are also providers and promoters of health. See, J.R. Kitts & J H. Roberts (1996) Health Gap: beyond Pregnancy and Reproduction (Canada, International Development Research Centre) 8. Reproductive right granted by CEDAW to women, has therefore; reinforce women with vital health through right. This will further ensure health for all, since these healthy women has no choice, but to produce healthy children. See the opinion of Rebecca Plant, who holds an MPH in American Parliament. To her, women’s health is more than reproductive health. Women are primarily responsible for every one’s health. See, B Eileen, (2011) Feminist Currents, Frontiers: A journal of Women Studies, A journal of Women Studies 32(1) 200. See also, Marilyn Porter, (2007) Review: Transnational Feminism in a Globalized World: Challenges, Analysis and Resistance Feminist Studies Inc 33(1) 54. Reproductive right has also been linked to health right here.


2 This is where abortion right interpretation crept into CEDAW. The right to choose, which is one aspect of reproductive right under CEDAW, according to the radical feminists of the 1960s means, the right women have to determine what happens to their bodies. According to Firestone, a radical feminist, the connection which women usually have with men is an invasion of the woman’s body, and the resultant effect of that connection, which is pregnancy, should be left at the mercy of the women. See, R. west, (1993) Jurisprudence and Gender in P Smith ed., Feminist Jurisprudence (Oxford, Oxford University Press) 505 at506; see also, Martha C. Nassbaum, (2008) R. west, Jurisprudence and Gender, Defending Radical Feminism, University of Chicago Law Review 75(3) 985 <http://www.jstor.org/stable/201411934> (date accessed: 15 February 2011).see also, the declaration by the Administrator of the United Nations Development Programme, when speaking of a 1995 worldwide survey of the status of women, that ‘life is dramatically unfair to women’, in R.S. Mc Elvaine, (2000) Eve Seed: Biology, the Sexes and the Course of Human History, (New York, McGrawhill Company) 1. To radical feminists, this right extends to the decision whether or not to carry a pregnancy to term. This decision should be left absolutely with the women. This view was boosted in 1973, by the Supreme Court of the United States of America in the case of Roe v Wade (1973) 410 US 113.Based on this background, the right to choose to determine the number and spacing of children provided by CEDAW has been taken to mean right to abort for women.

terms of 83 nations now legalizing abortion, and expanding access to it, despite the fact that within the whole body of CEDAW, there is no part or portion suggestive of right to abortion for women. The right which is being propagated by CEDAW is reproductive right to reproduce healthy children by healthy mothers by means of family planning.

The World Health Organization (WHO) defines family planning thus; “Family planning allows individuals and couples to anticipate and attain their desired number of children and the spacing of their births. It is achieved through the use of contraceptive methods. A woman’s ability to space and limit her pregnancies has direct impact on her health and well being as well as the outcome of each pregnancy”. Family planning cannot be likened to abortion. They are completely different phenomena. While family planning basically deals with the way and manner of spacing the number of children women intend having by means of contraception, abortion is concerned with the killing of already implanted life in the womb of a woman.

It is here reaffirmed by these researchers that, the killing of an already implanted life in its mother’s womb is not within the contemplation of CEDAW as seen in the reproductive right granted by CEDAW. This can be seen from its provision of article 12 on health, whereby, the right to life of children is already being anticipated by the provision of family planning. According to this provision on health, both the mother’s right to life as well as that of the children is being defended. It is however further contended by these researchers that, in order to stay alive and healthy, women need to plan their families adequately. Adequate planning of the family is the only key that will ensure right to health for women, and not abortion.

It is trite to conclude this section, by saying that, abortion forces have seek to create an expansive legal right to abort in a document (CEDAW) that was drafted with the initial aim to promote equality between men and women, eliminate all other forms of discrimination against women and above all, to reinforce the respect for the sanctity of human life. Despite the fact that Nigeria had signed the CEDAW Treaty since 1985, domestication as well as implementation of CEDAW has since become a dream because of the abortion rights interpretation imputed into CEDAW’s reproductive rights.

2. Methodology

2.1 Conceptual Analysis

The aspiration of what the law is capable of doing, informs the use of a conceptual analysis which was carried out. This method is essentially a critical synopsis of an existing area of research writing. This is otherwise known as using documents for conceptual thoughts are said to revolve around classification and interference.

3 As agreed in 1994 by the UN Member States in Cairo, abortion is not to be recognized as a method of family planning. See, Shaw above n13.
out on certain laws in Nigeria that bears semblance with the reproductive right as provided by CEDAW. A doctrinal analysis appears necessary in order to bring to lime light the need to domesticate CEDAW in Nigeria. In this vein, the relevant provisions of these laws were analyzed as it relates to health of mother and child. By so doing, the exact importance and relevance of the reproductive right provision within CEDAW which will call for its domestication and subsequent implementation in Nigeria came to lime light. It is the believe of these researchers that, the nature and extent of the existing laws as well as the efficacious use of these laws can be used as an instrument of control, change and reform.

2.2 Empirical Analysis

The choice of sampling strategy is dependent on the type of approach being used in a study. Rather than select a large number of people, the qualitative researcher, like these researcher identifies and recruits a small number of samples that will provide in depth information about the central phenomenon. Hence, in a bid to ascertain whether or not there is the need to domesticate CEDAW in Nigeria on the grounds of health, an empirical analysis (case study) was carried out in eight (8) different cities in Nigeria between 1st March 2012 and 15th May 2012. Data was collected through structured interviews¹ and unstructured interviews² with selected samples.

Focus group discussion, as a form of participant observation³ was also employed in this study in order to elicit views from the participants. Generally, the question asked centers around how important reproductive right provision within CEDAW is to Nigerian women particularly. A non-probabilistic sampling was favoured as statistical generalization is not within the purview of this study.⁴ The non-probabilistic sampling employed in this study is the purposeful or judgment sampling, wherein the authors use their judgment as to who can provide the best information needed to justify the call for the immediate domestication of CEDAW. In a purposeful sampling, random sampling makes little sense.⁵ The researcher is not interested in ‘how much’ or ‘how often’. It is therefore, necessary to select samples from which the most can be learned. The researcher sampled for heterogeneity, where all relevant opinions and views will be included. The researchers are not concerned about representing the views proportionally, because their primary aim is getting broad spectrum of ideas, not identifying ‘average’ or ‘modal instance’. Here, what were sampled

¹ This is a formal interview with questions already written down as a guide for the researcher to follow. See Mairad, Dunne, John Pryor, Paul Yates, (2005) Becoming a Researcher: A Research Companion for the Social Sciences (England, Open University Press) 28. A formal interview conducted when the researcher knows exactly what information is needed. It is usually conducted with the help of an interview schedule or guide. See, Yaqin, above n16, 170. In a structured interview, the interviewer asks all the respondents the same series of pre-established questions with limited set of response categories. See, Fontana Andrea, Prokos, Anastasia H, (2007) Interview: From Formal to Post-Modern (California, Left Coast Press) 19; See also, Clifford Lorenza, (2006) Step to Success: Interview Others (London, A&C Black Publishers) 11.

² An interview conducted in an informal (non-guided) manner to elicit information on the experiences, opinions, attitudes, feelings or perceptions. See, Yaqin, above n16, 170. The objective of an unstructured interview is to collect information on some preliminary issues so that the researcher can formulate ideas of what variables need further in-depth investigation. See, Uma Sekaran, (1992) Research Methods for Business: A Skill Building Approach 2nd ed. (United Kingdom, John Wiley and Sons Ltd,) 190. Also for the aim of an unstructured interview, see Prokos and Anastasia, above n17, 39-40. The unstructured interview has been vigorously described as naturalistic, autobiographical, in depth, narrative or non-narrative. See, Blaxter, Hughes, and Tight above n16, 172; See also, Holland J., and Ramazonoglu, C., (1994) Coming to Conclusions: Power and Interpretation in Researching Young Women’s Sexuality in M. Maynard and J. Purvis eds., Researching Women’s Lives from a Feminist Perspective. (Uk and USA, Taylor and Francis Ltd) 125 at135.

³ See, Henrik Pulsson,(2007) Participant Observation in Logistics Research: Experiences from an RFID Implementation Study, International Journal of Physical Distribution and Logistics Management 37(2) 150. <http://www.emeraldinsight.com/journals.htm?articleid=1597751&show=html> (date accessed :8 May 2012). This paper suggests that, the comparison between interview studies and participant observation are to a large extent, also valid for focus groups.

⁴ This is a qualitative research, which is a procedure that produces findings not arrived at by means of statistical procedures or other means of quantification. See Strauss and, (1990) Basics of Qualitative Research: Grounded Theory Procedures and Techniques (Sage Publications) 17; See also, Marie Hoepfl, (1997) Choosing Qualitative Research: A Premier for Technology Education Researchers Journal of Technology Education. Electronic Journal 9(1) <http://scholar.lib.vt.edu/ejournals/JTE/v9n1/hoepfl.html> (date accessed: 23 February 2012).


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are not the people, but their ideas and opinions. It has been imagined that, there is a universe of all possible ideas relevant to the topic, and the researchers, in order to sample these ideas, have included a broad and diverse range of participants, including the ‘outliers’ or unusual ones in order to get the ideas required.

In the light of the above, ‘31’ samples were selected for the purpose of this study, ‘10’ out of which were participants from the ‘2’ focus group sessions. Ultimately, the researcher secured 21 Key informants and 2 focus group sessions (the focus group ‘1’ comprised of four participants, while the focus group ‘2’ comprise of six participants) consisting of both Christians and Moslems. They came from various backgrounds and professions, having qualifications and worked in both government as well as non-government organizations.

In order to analyze the data collected during the course of interviews, the researcher has integrated qualitative content analysis into the analysis of data in this case study research. Qualitative content analysis is an important tool to help researchers develop a comprehension of a specific research field through identifying how particular issues or topics have been interpreted. Hence, by using a qualitative content analysis in this case study, a step-by-step theory guided procedure was undertaken, wherein complexity was reduced and the main points of the analysis were filtered out in an iterative process. Hence, qualitative content analysis perfectly matches the credo of case study research, thereby helping to understand complex case study.3

Table 1. Background information of participants

<table>
<thead>
<tr>
<th>Study Area</th>
<th>Occupation</th>
<th>Education</th>
<th>Religion</th>
<th>Sex</th>
<th>Unit of Analysis</th>
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</table>

Source: Field Study 2012
KI: Key Informant

Table 2: Background information focus group session ‘1’

1 Focus group interview is an interview with a small group of people on a specific topic. Groups are typically 6 to 10 people with similar background who participate in the interview for one or two hours. See, Patton, Michael Quinn,(2002) Qualitative Research and Evaluation Methods 3rd Edition (California, Sage Publication) 385; See also, Danuta Pzepiorkowska, (2010) An Interpreted Focus Group Interview as a Type of Interpreter-Mediated Event in Omid Azadibougar, (ed.) Translation Effects, Selected papers of the CETRA Research Seminar in Translation Studies 2009 , 7 <http://www2.arts.kuleuven.be/info/bestanden-div/ Danuta%20PRZEPIOR KOWSKA,%20An%20Interpreted%20Focus%20Group%20Interview.pdf> (date accessed: 24 January 2012).


### Table 3: Background information focus group session ‘2’

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<td>Islam</td>
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<td>of Secondary school</td>
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Source: Field work 2012  
FGS: Focus Group Session

### 3. Making a case for domestication of CEDAW in Nigeria

#### 3.1 A conceptual case for Nigeria

Nigeria is operated on a National Health Policy with a central goal to bring about a comprehensive health care system, based on Primary Health Care¹ that is promotive, protective, preventive, relative and rehabilitative, to

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¹Primary Health Care as defined by the World Health Organization in 1978 as, essential health care based on practical, scientifically sound and socially acceptable method and technology, universally accessible to all in the
every citizen of the country within the available resources so that individuals and communities are assured of productivity, social well-being and enjoyment of living.

Health, as it were, in the Constitution of the Federal Republic of Nigeria 1999, can be found under the Concurrent Legislative List. The implication of this is that, the three tiers of government are vested with the responsibilities to promote health. Accordingly, the federal state and local government of Nigeria shall support, in a coordinated manner, a 3-tier system of health care. Primary health care is to be provided by the local governments, secondary health care is the responsibility of the state governments, while tertiary health care becomes the burden of the federal government.1

Within the eight (8) important elements of Primary Health Care lies, the identification and control or prevention of health challenges. Also, within the elements is, maternal and child care, including family planning. With these two issues forming an essential part of the Constitution of the Federal Republic of Nigeria 1999, reproductive right of women can be said to be guaranteed under the Constitution. The reason for this stand is not farfetched.2

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1See Federal Ministry of Health (Nigeria) National Health Policy and Strategy to achieve health for all Nigerians. (12-13, 53, Sec 5(a)-(c), Annex II (1998). The current 1999 Constitution makes reference to the division of health responsibilities among government levels. The National Health Policy 1998 further defines the division and responsibilities. The federal government, according to the policy, set health policies and guidelines and monitors states and local government’s health programs to ensure compliance, train doctors and provide tertiary and specialized health services. The state governments provide secondary health services; train nurses, midwifery and auxiliary health personnel and assist local government in managing primary health care services. The local government directly manages the primary health care services. See World Bank Working Papers: Improving Primary Health Care Delivery in Nigeria: Evidence From Four States, (World Bank Publication, 2010) 33. See also, Federal Ministry of Health (FMH), National Health Policy Strategy to achieve health for all Nigerians (Lagos, Nigeria: FMH 1998; Revised National Health Policy Abuja, Nigeria: FMH, 2004).

2Under the Concurrent Legislative List, health care in Nigeria becomes a shared responsibility amongst the three tiers of government. Specifically, Primary Health Care is the responsibility of the Local Government. Since Primary Health Care has found itself into the body of the Nigerian Constitution, right to health is thereby envisaged, and maternal and child care indicates women’s right to reproductive health.(emphasis by the authors).
Still on the constitutional guarantee of reproductive right for women, the Constitution of the Federal Republic of Nigeria 1999 has provided under Section 33(1) for the right to life of all persons. In a bid to protect the life of the citizenry of Nigeria, government is required to make provisions for adequate health facilities for all, especially women and children. Nigerian Constitution in protecting the right to life of everyone is indirectly protecting the reproductive right of women, by the provision of adequate medical facilities.  

Aside the Constitution of the Federal Republic of Nigeria 1999, Section 54 of the Labour Act 2004 (Cap L1 LFN), also has direct bearing with reproductive rights of women. It provides as follows; 

1) In any public or private industrial or commercial undertaking or in any branch thereof, a woman –
   a) Shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner that her confinement will probably take place within six weeks; 
   b) Shall not be permitted to work during the six weeks following her confinement; 
   c) If she is absent from her work in pursuance of paragraph (a) or (b) of this subsection and been continuously employed by her then employer for a period of six months or more immediately prior to her absence, shall be paid not less than fifty percent of the wages she would have earned if she had not been absent; and 
   d) Shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.

2) Subsection (1) (C) shall have effect notwithstanding any law relating to the fixing and payment of a minimum wage.

3) No employer shall be liable, in his capacity as employer, to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement.

4) Where a woman -
   a) is absent from her work in pursuance of subsection (1) (a) or (b) of this section; or
   b) remains absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render unfit for work, then until her absence has exceeded such a period (if any) as may be prescribed, no employer shall give her notice of dismissal during her absence expiring during her absence. 

The provisions above are the most explicit statements of law in any status on women’s reproductive rights. These provisions have proven to have far reaching effect in the protection of reproductive rights as understood in contemporary times, especially within the Nigerian working environment. Hence, any woman who decides to have a child during the course of her work will not be deprived of her reproductive right by her employer.

The above provisions in the Labour Act demonstrate the respect which the law has for the health of the mother and child. It shows that, while pregnant, women need not stress themselves in order for them to be healthy, as
well as the child they will bear. The Primary Health Care policies as contained in the Constitution of the Federal Republic of Nigeria 1999, is hereby maintained.

The Criminal Laws of Nigeria, which stand as a strong upholder of reproductive rights of women has provided thus:

Any person who, with intent to procure miscarriage of a woman whether she is or not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force or any kind or uses any other means whatever, is guilty of a felony, and liable to imprisonment for seven years.¹

Furthermore, Section 229 Criminal Code Act 1990 (Chapter 77 Laws of the Federation of Nigeria) provides, Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to her or causes her to take poison or other noxious thing, or uses any force of any kind or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for seven years.

Still on the provisions of Criminal Law, Section 230 provides that,

Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or not with child, is guilty of a felony, and is liable to imprisonment for three years.

The provisions of the Penal Code 2004 (Cap P3 Laws of the Federation of Nigeria) Provisional Act are substantially the same. Section 232 of the Penal Code provides that,

Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for fourteen years.

Under the Nigerian Criminal Laws, interference with pregnancy, no matter how early or how late, constitutes a crime, except such interference was done in good faith, for therapeutic purposes, to save the life of the mother.²

The Criminal Law is seen here, as a monk in working to refine a moral truth and to preserve it for use, in the hope that, a time more receptive to its message will arrive.³ The criminal law is trying to save women from complications⁴ that might arise from the procurement of an abortion. By so doing, the reproductive right of

¹See 228 Criminal Code
³The concept of criminal law theory is being described. Aside the criminal law being seen as a monk, the criminal law, is further viewed as a mathematician of fault, wherein, elegance and consistency of the entire structure is what satisfies it. The criminal law is also considered as a militant, hoping to have impact, the sooner the better. As A militant, the criminal law hopes that its work will shape contemporary debates and influence those who litigate. For a full concept of the theory of criminal law, see, S.J. Schulhofer, (2000) The Mathematician, The Monk and The Militant: Reflections on the Role of Criminal Law Theory, California Law Review 88(3) 708-710.
⁴Several complications have been linked to abortion. See, D.Y. Buowari, (2010) Pattern of Gynecological Admission at a Rural Hospital in Nigeria, The Internet Journal of Tropical Medicine 7(1) 5; See also, B.A. Oye-Adeniran, A.V. Umoh and S.N.N. Nnatu, (2002) Complications of Unsafe Abortion: A Case Study and the need
women in Nigeria is further recognized.

By criminalizing abortion by the Criminal Laws of Nigeria, the Criminal Laws can be said to be interested in maternal and child health, which means that, the Criminal Laws also, upholds the key elements within the Primary Health Care Policy of Nigeria. In order to give reproductive rights to Nigerian women, Criminal Laws must prohibit abortion, and set the minimum for, and extent of liability for those found guilty under the law. This will be performed by adjudication process.

3.2 An Empirical Case for Nigeria

The manual thematic analysis used in this study reveals that all the participants view that reproductive right provision within CEDAW is important to Nigerian women on the ground of health (mother and child’s health). Women should not be seen giving birth every year. It is said to be risky and a period of at least 2 years should be given between births. This will enhance health for both the mother and child.

The benefits of pregnancy planning and child spacing (reproductive right) on maternal, infant and child health has been well documented. Researchers have shown that family planning can reduce about 25% to 40% maternal deaths by preventing unplanned and unwanted pregnancies and about 10% of child deaths by eliminating inter-birth intervals of less than two years.

For many years, studies demonstrated that when mothers’ space births at least two years apart, their children are more likely to survive and to be healthy. Infant spaced at least two years apart are also less likely to be premature, of low birth weight and be malnourished. Children given birth to after short intervals between pregnancies are at

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4See Dhiba above n7, 83.


6Children born after short intervals between pregnancies are at increased risk of developing autism. The highest risk was associated with pregnancies less than one year. See, Keely Cheslack-Postava, (2011) Closely Spaced Pregnancies are Associated with Increased Odds of Autism in California Sibling Births 127 Pediatrics 246. <http://www.pediatricsdigest.mobi/content/127/2/246.full.pdf+html> (date accessed: 26 June 2012). See also,
increased risk of developing autism. The highest risk was associated with pregnancies of less than one year.\(^1\) In recognition of the adverse outcomes associated with close child birth intervals, the World Health Organization (WHO 2005) recommended a two year waiting period after birth before the next pregnancy.\(^2\) Short inter birth intervals has also been associated with leukemia.\(^3\)

Based on the facts above, all the participants express the view that reproductive right provision within CEDAW will afford Nigerian women the opportunity to space their children and plan their family.\(^4\) Going by the views expressed by the participants of this study, it becomes vivid that the immediate domestication and implementation of CEDAW in Nigeria is very important, if not for anything, because of the health of the mother and child.

### 4. Conclusion

This paper has given to CEDAW’s reproductive right, an interpretation that will spur the Nigerian government to look into the immediate domestication and implementation of the Convention on the Elimination of all forms of discrimination against women (CEDAW). State parties have been directed by CEDAW to make sure that women have access to reproductive right, and the authors here, felt that, the Primary Health Care as provided by the Nigerian Constitution can be used as a means of enabling women to have access to such right. Another area where the government can play a role in accessibility of reproductive right to women is under the Labour Act of Nigeria, where in several provisions and concessions are given only to women by reason of their biology. The conditions experienced by women (pregnancy and child birth) were the driven considerations in promulgation of the Labour Act. An exclusive reproductive right can be attained by women, only if abortion is criminalized. The Nigerian government is particular about the health risks and complications resulting from abortion, and will not want women in Nigeria to be subjected to such hazards.

As a follow up of the conceptual analysis and in a bid to provide a concrete justification on the need to domesticate CEDAW in Nigeria, the empirical analysis carried out in the course of this study has given the required backup necessitating the need for the immediate domestication of CEDAW in Nigeria. All the participants agree unanimously that, family planning and child spacing results in both child health and maternal health. Hence, with the responses gathered from the participants in this study, as well as the provisions of the Constitution of the Federal Republic of Nigeria, the Labour Act of Nigeria, and the Criminal laws of both the North and South of Nigeria, reproductive right of women as provided by CEDAW is hereby guaranteed thus, giving reproductive right to women.

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\(^2\)Chrisler above n41,154.


This paper is a complete deviation from the widespread abortion right interpretation given to the reproductive right provision within CEDAW and will help Nigerian government in the area of reproductive right policies today and in future.

References
Donald E Pokinghorne, (2005), Language and Meaning: Data Collection in Qualitative Research *Journal of Counseling Psychology*, 52(2), 140.

Federal Ministry of Health (Nigeria), (1998), National Health Policy and Strategy to achieve health for all Nigerians. (12-13, 53, Sec 5(a)-(c), Annex II.


Martha C. Nassbaum, (2008), R. west, Jurisprudence and Gender, Defending Radical Feminism University of Chicago Law Review. 75(3), 985.


Acknowledgement
The authors wish to acknowledge with thanks, all the participants that took part in the field study. Their time and opinions are highly appreciated by the authors.