

**MY WOMB IS TIRED: A SOCIO-LEGAL  
PERSPECTIVE OF THE REPRODUCTIVE  
AUTONOMY OF WOMEN IN SOUTH-WEST  
NIGERIA WITH A FOCUS ON ABORTION**

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## ABSTRACT

The patriarchal colonial Nigerian society evaluated women's importance to society by the reproductive proclivity of their wombs. Women's wombs became a blessing and a burden in that their individual autonomous rights became subsumed into their procreative ability. This value judgement finds expression in the abortion law that no longer meets the needs of contemporary women. Women historically controlled their reproduction within the patriarchal system to their advantage, but colonisation re-defined women's status within society taking away their reproductive autonomy and other rights. Women have since found it expedient to take back those rights by choosing abortion despite its unlawfulness and to their disadvantage. Procuring illegal abortion affects women's health adversely, but a law that meets their reproductive and other social needs will prevent the hazard.

Earlier findings on abortion in Nigeria and the empirical data reported within it have been conducted in a hospital environment. They have focused on the prevalence of abortion within a specific population. However, this thesis goes further by examining the historical foundation of the socio-cultural attitudes to women's sexuality and reproductive autonomy. In doing so, it argues for a legal framework that gives women control of their reproduction through the amendment of the abortion law to meet the reproductive needs of contemporary women. The study includes an empirical element conducted in Nigeria involving questionnaires; observations; focus group discussions and in-depth interviews with a representative population sample. The empirical data highlights specific areas of the law that need to be addressed to make it socio-culturally acceptable. Giving women the right to choose abortion would be an acknowledgement of the constitutionally guaranteed autonomous rights of women, which they traditionally exercised, but which were taken away by colonialism and patriarchy. This thesis challenges the State to encompass abortion choice within its reproductive, sexual health and population policy.

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## LIST OF ABBREVIATIONS

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AG	Action Group.
AGIDS	Amsterdam Institute for Global Issues and Development Studies.
ANC	African National Congress.
ARSRC	African Regional Sexuality Resource Centre.
BMJ	British Medical Journal.
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women.
CHESTRAD	Centre for Health Sciences Training, Research and Development.
ECA	Economic Commission for Africa.
ECHR	European Convention for Human Rights.
ECOSOC	Economic and Social Council.
F.L.A.G.	Feminist Legal Action Group.
FAO	Food and Agricultural Organisation.
FGN	Federal Government of Nigeria.
FIDA	International Federation of Women Lawyers.
FNWS	Federation of Nigerian Women's Societies.
FSC	Federal Supreme Court (of Nigeria).
HFEA	Human Fertilisation and Embryology Act, 1990.
HIV/AIDS	Human Immunodeficiency Virus/Acquired immune Deficiency Syndrome.
IBRD	International Bank for Reconstruction and
ICPD	International Conference on Population and
ILO	International Labour Organisation.
IMF	International Monetary Fund.
JSC	Justice of the Supreme Court of Nigeria.
MDCN	Medical and Dental Council of Nigeria.
NCEMA	National Center for Economic Management and Administration.
NCNC	National Council of Nigeria and Northern Cameroon (after 1960 National Council of Nigerian Citizens).
NISER	Nigerian Institute of Social and Economic Research.

NMA	Nigerian Medical Association.
NPP	National Population for Development, Unity, Progress and Self-Reliance (Federal Republic of Nigeria, 1988).
NTA	Nigerian Television Authority.
NWLR	Nigerian Weekly Law Report.
OAPA	Offences against the Persons' Act 1861.
PEPFAR	Presidential Emergency Plan for AIDS Relief.
RSS	Random Survey Sample.
SAPs	Structural Adjustment Programmes.
SPSS	Statistical Package for the Social Sciences.
SSRHN	Social Sciences and Reproductive Health Research Network.
SSS	Systemic Survey Sample.
UCH	University College Hospital, (Nigeria).
UN (UNO)	United Nations (United Nations Organisation).
UNDP	United Nations Development Programme.
UNESCO	United Nations Educational, Scientific and Cultural Organisation.
UNFPA	United Nations Fund for Population Agency.
UNICEF	United Nations Children's Funds.
UNIFEM	United Nations Development Fund for Women.
US/USA	United States of America.
USAID	United States Agency for International Development.
WACA	West African Court of Appeal.
WHO	World Health Organisation.
WNLR	Western Nigeria Law Report.
WPPA	World Population Plan of Action.
WRNLR	Western Region of Nigeria Law Report.

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- Lawal v Younan* [1961] 1 All Nigeria Law Report 245.
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- Meyer v Nebraska* (1923) 262 U.S. 390.
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- R v Bergmann and Ferguson* (1948) BMJ 22 1008-9.
- R v Bourne* [1939] 1 KB 687, [1938] 3 All ER 615.
- R v Brown* [1994] 1 AC 212.
- R v Brown*, [1993] 2 All ER 75 (HL).
- R v Edgal* (1938) 4 WACA 133.
- R v Newton and Stugo* [1958] CLR 469.
- R v R* [1992] 1 AC 599.

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## PREFACE

*"My first wife died as a result of abortion. It was done by a fraud who called himself a doctor. Firstly, it was a doctor from a well-known hospital who diagnosed that she must abort the foetus if she doesn't want to risk her life. So, we complied; only for him to tell us that it is against the law. We tried our possible best to persuade him that her life was in a coma state<sup>1</sup> (sic) but he refused and even went on saying that it's against the will of God. We have to try other doctors, but they all kept on saying the same thing. So, we had to go to a fraud who called himself a doctor. During the abortion, my wife died. So with this I think abortion should be legalised because there are many souls dying as a result of this reason (its illegality)".<sup>2</sup>*

I waited until Abdullahi had finished attending to the last of his customers. By then it was past lunchtime and we sat quietly together under the shade in the butchers' side of the market while the scorching sun sent trickles of sweat down his coffee-coloured face. He answered my questions in a matter-of fact way until Bala came in to ask for money to buy his lunch. The three-year old was handsome with cherubic copper-coloured skin. When I asked about his mother, Abdullahi's otherwise genial face changed, a mist enveloped his eyes, and then he spoke of his pain and how Halima died. The quotation above is his words; they connect with the second on the next page in that it gives an explicit picture of the social reality of the effect of the restrictive abortion law on the lives of ordinary Nigerians. Many times, women loose their lives, just as Halima did. The loss of one woman through abortion affects the lives of her family even more.

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<sup>1</sup> This is colloquial term meaning that she was unconscious.

<sup>2</sup> 47 year old male trader, Muslim, Primary education

*“I already have six mouths to feed. My womb is tired. If I have another pregnancy, I fear I will die. If I die all my other children will die too because without me to take care of them they will become vagabonds, and to me that is another kind of death”.<sup>3</sup>*

I sat with Modinatu by the dusty roadside running through the market, for almost two hours, under the scorching afternoon sun. Her opened umbrella formed an ineffective shelter. In a discarded cardboard box sat Emeka, her 18 months old son with some rattles and a piece of bean-cake; he clearly did not like the restriction his play-pen gave him and made this known with intermittent cry of ‘mama carry’ in his innocent baby talk. Another three year old son Efe, was playing with a stick besides her while seven year old Oluchi, (who recently returned from primary school), was being cajoled to carry a small platter of tomatoes laid out in small flat tin containers to hawk around the market. There are three other children, Nkechi, her 15 year old daughter, Solomon her 13 year old son and Talomola, another 11 year old son. All three attend the local school and will return to the market to hawk their mother’s ware and help raise some income. Modinatu is just 32 but already looks ten years older. She is the middle of three wives and Alhaji (that is her husband), gave each wife what he could and let each woman augment with what they could. She wished she had known where to go when she became pregnant when she and Alhaji were ‘playing the love game’, because then she would have finished her education (which stopped in form three). She did try to terminate the pregnancy, but she said all the concocted herbs the woman at the haberdashery gave did not work. “It’s a miracle Nkechi came out okay with all the things I took to get rid of the baby”. “And the babies just kept coming”, she mused with a regretful look in her eyes. School had stopped for her and so did her dream of becoming a nurse.

The two quotations in this preface are the words of respondents who represent many Nigerians. Both quotations link with the opening one in chapter one to show that women make abortion choices in the midst of pain under circumstances dictated by their environment. They are prevented from exercising reproductive control through the restrictive abortion law. My thesis tells of the needs of millions

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<sup>3</sup> Field Data Analysis: 32 year old female, tomato-seller with uncompleted primary education. All the names have been changed to protect the identities of the respondents. The title of my thesis is taken from the in-depth interview I had with this respondent She blurted out the words ‘my womb is tired’ out of desperation of having repeated pregnancies and repeated clandestine abortions in order not to add to the six children she already has.

of 'Halimas' and 'Modinatus' in Nigeria and their struggle to control their fertility and improve the quality of their lives. It is from Modinatu's words that I take the title of my thesis.

The thesis is divided into two main parts consisting of eight chapters with conclusions. Chapters one to three are theoretical, chapter four discusses 'methodology used in collecting the empirical data, while chapters five to eight focus on the findings from the empirical study. Chapter one makes a case for abortion law reform in Nigeria while chapter two discusses the theoretical issues of the politics of abortion and denial of women's voices to express control over their fertility. In chapter three I discuss the historical and contemporary socio-cultural construct of Nigerian women's sexuality and reproductive autonomy, while chapter five discusses ways women have taken control of their reproduction from the data gathered. The characteristics of the type of women who will seek abortion and their reasons for doing so are my focus in chapter six. In chapter seven I discuss how to arrive at an acceptable reformed abortion law by looking at the rights of competing parties to the abortion issue from the theoretical and survey analyses. In chapter eight I discuss issues of consent for abortion, basics of a reformed abortion law as well as issues a reformed abortion law should consider.

# CHAPTER ONE

## 1.1 THE NIGERIAN WOMAN AND HER WOMB: LIABILITY, DISABILITY OR ASSET?

*"Pain and danger are the hallmarks of unsafe abortion [and] women solve their difficulties in ways appropriate to their time and place".<sup>4</sup>*

In pre-colonial times Nigerian women had control over their sexuality and traditionally women's procreative ability was acknowledged by society as a mark of their superiority because 'they held the secret of creation in their womb'.<sup>5</sup> Patriarchy did not curtail women's emancipation or subjugate their reproductive or economic independence. On the contrary Crowther, Taylor<sup>6</sup> and Johnson<sup>7</sup> noted that women of south-western Nigeria held important social, traditional and political positions before 1900 and the advent of the British Colonialists. Clapperton<sup>8</sup> wrote that they controlled their own economic activities, travelled wide. Patriarchy and patrilineal kinship structures along with polygamy allowed women to exercise their independence in all spheres of life<sup>9</sup> and women and men held complimentary and equal roles within society with neither being subordinated to the other. Colonisation however brought about a redefinition of patriarchy by imposing the English Victorian restrictive interpretation of women's sexuality and reproductive autonomy on the colonised Nigerians.<sup>10</sup> The intrusion into the indigenous societal

<sup>4</sup> Janet Hadley, *Abortion between Freedom and Necessity* (Great Britain: Virago Press, 1996), 34;

<sup>5</sup> Karin Barber, *I Could Speak Until Tomorrow: Oriki, Women And The Past In A Yoruba Town*, (Edinburgh University Press, 1991), 110-111; I discuss the sexuality of Nigerian women in detail in chapter 2.

<sup>6</sup> Samuel Crowther and J. C., Taylor, *The Gospel of the Banks of the Niger*, (London, 1859), 204, in Elizabeth Isichei, *A History of Nigeria* (London & Lagos: Longman Group Limited, 1983).

<sup>7</sup> Samuel Johnson, *The History of the Yorubas from the earliest times to the beginning of the British Protectorate*, (Lagos: C.M.S. Bookshops, (1921), 97.

<sup>8</sup> Hugh Clapperton, 'Journal of a Second Expedition into the Interior of Africa' (London: John Murray, 1829), 21 in Margaret Thompson Drewal, *Yoruba Ritual Performers, Play, Agency* (Indiana University Press, 1992), 186 & 188; Samuel Johnson, (1921) (*ibid*); see also Nina Emma Mba, *Nigerian Women Mobilized, Women's Political Activities in Southern Nigeria 1900-1965*, (Institute of International Studies, University of California, Berkeley, 1982), 14-15.

<sup>9</sup> Elizabeth Isichei, (1983), (Footnote 6), 257; Maria Rojas, *Women in Pre-Colonial Nigeria* (1990), <http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (accessed 29 November 2005).

<sup>10</sup> Sudakasa Niara, *Where Women Work: A study of Yoruba women in the marketplace and in the home* (Ann Arbor: University of Michigan, 1973).



definition of women's roles, found its way into colonial legislation<sup>11</sup> which forcibly subjected women to the power of men and curtailed their independence and rights.<sup>12</sup> The English Offences against the Persons' Act 1869 (OAPA), which criminalizes abortion, is one of the laws which have remained in the Nigerian statute book almost verbatim and unmodified in the Criminal and Penal Codes<sup>13</sup> since its introduction in Nigeria.

From the historical antecedence of the abortion legislation in Nigeria, I argue that the abortion law is an imposition of an alien societal perception of women's sexuality and reproductive autonomy into Nigerian society. Arguably, in England the OAPA 1869 simply reflected the prevailing English social attitude but not that of its colony. However while the English Abortion Act 1967 along with its amendment by the Human Fertilisation and Embryology Act 1990 reflect largely current English social attitude to abortion, the Nigerian codes do not, as I show in this research.<sup>14</sup> The codes took away women's autonomy and objectified their

<sup>11</sup> The British ruled their colonies by replicating English legislations in their colonies: Peter C. Lloyd, *Incorporated Kingdoms: Buganda, Ankole and Ijebu* (Frank Cass & Co. Ltd., 1977).

<sup>12</sup> Samuel Johnson, (1921) (*Footnote 7*), 32-33; Elizabeth Isichei, (1983), (*Footnote 6*) and Nina Emma Mba, (1982), (*Footnote 8*).

<sup>13</sup> Nigeria is a pluralistic and multi-religious society where the southern parts are predominantly Christian and the northern parts predominantly Muslim in both parts there are Traditional believers also. The British first came in contact with Lagos the former capital of Nigeria, through trade around 1841. Lagos was annexed by Britain in 1849 and subsequently other parts of Nigeria. The Royal Niger Company Chartered & Limited initially administered Nigeria for England. Later their administration was revoked and England took direct control of Nigeria with Lord Lugard as its administrator in 1900 ruling the country as Northern and Southern Protectorates of Britain. In 1914 the two protectorates were amalgamated and full English judicial system was introduced alongside Customary law of the various peoples. In order not to interfere with the religious beliefs of the people in obtrusive ways, the Criminal Code was fashioned after the OAPA, 1861 Section 58, to conform with the attitudes of the Christian south along the same model as the Criminal Code of Queensland in Australia; while the Penal Code is applicable in the northern states (where the Sharia law is predominant) it was modified to suit aspects of the Muslim belief, values and standards without the strict Sharia punishment. The Penal Code was modelled after the Sudanese Penal Code which in turn was modified after the Pakistan and Indian Penal Codes. The OAPA, 1861 was therefore binding in Nigeria until 1958. Before Nigeria's independence in 1960, the country was divided into three regions, North, East and West following the British Parliamentary system and Judiciary. The Criminal Code was formally incorporated into the Laws of the Southern regions of Nigeria in 1958 and the Penal Code formally adopted as part of the Northern regions of Nigeria in 1964: (the information given here are culled from the following writers: Boniface B Nwabueze, *The Machinery of Justice in Nigeria* (London: Butterworths, 1963); Olawale Taslim Elias, *The Nigerian Legal System*, (London: Routledge & Kegan Paul, Ltd., 1963); Olawale Taslim Elias, *The British Commonwealth: The Development of its Law and Constitution-Nigeria* Volume 4 (London: Stevens & Sons Ltd, 1967) and Omoniyi Olawale Adewoye, *The Judicial System in Southern Nigeria, 1854-1954 Law and Justice in Dependency* (New Jersey: Humanities Press, 1977). See my further discussion on the Criminal and Penal Codes in chapter 3.2.

<sup>14</sup> Feminist writers like Sally Sheldon have argued that the Abortion Act 1967, is a 'medicalisation' of abortion because it brought women under medical control since it gives the ultimate decision of abortion to doctors, Sally Sheldon, *Beyond Control Medical Power and Abortion Law* (London & Chicago: Pluto Press, 1997), 30-31. The fact still remains that English government recognises the need to amend the regulatory control and access to abortion in the light of evolving bio-medical science to meet with the prevailing needs of contemporary English women as shown in the recent public consultation for the proposed 'REVIEW OF THE HUMAN FERTILISATION &

bodies just as the OAPA did for English women. The law is neither neutral nor impartial and it further demonstrates that 'the legal subject is gendered, showing women as alien to the legal system; as foreign bodies inhabiting a hostile terrain'.<sup>15</sup> Women's bodies are therefore 'commodified'<sup>16</sup> and I argue that the usefulness of their wombs was redefined in the patriarchal social system because the produce benefited the colonial system.<sup>17</sup> A Woman's contribution to society was determined by the number of children she could bear. Women who could not meet this social dictate had no recognition in society;<sup>18</sup> women's bodies are made political tools first by the colonial leaders and later indigenous Nigerian male dominated society.<sup>19</sup> Contemporary evaluations of women's worth and contribution to society became gendered and evaluated along male terms.<sup>20</sup>

I argue further that women have resisted the control of their reproductive autonomy in pre-colonial and colonial times through the use of herbs and traditionally known forms of abortifacients to remove unwanted pregnancies.<sup>21</sup> Henshaw *et al*<sup>22</sup> shows that Nigerian women obtain 610,000 abortions yearly, a rate of 25 abortions per 1,000 women aged 14 to 44. In 73% of cases non-specialist abortion practitioners such as midwives, nurses and women themselves perform the operation through the use of dilation and curettage, insertion of solid or sharp objects or use hormonal or synthetic drugs. The high incidence of illegally procured abortion in Nigeria in contemporary times shows that women will find

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EMBRYOLOGY ACT: A PUBLIC CONSULTATION DEPARTMENT OF HEALTH 2005' [review-hfe-act@dh.gsi.gov.uk](mailto:review-hfe-act@dh.gsi.gov.uk) (accessed 16 November 2005). The fact that there is public consultation preceding the HFEA reform shows the willingness of English government to incorporate the changing needs and attitude of the citizens to meet the law on reproductive health in the light of advancement in medical science.

<sup>15</sup> Jo Bridgeman, & Susan Millns, *Feminist Perspectives on Law, Law's Engagement with the Female Body* (London: Sweet & Maxwell, 1998), ix.

<sup>16</sup> The commodification of the female body is a subject discussed by feminist writers such as Elizabeth Kingdom, 'Body Politics and Rights' in Jo Bridgeman, & Susan Millns (1995), (*ibid*); Sally Sheldon, (1997), (*Footnote 14*) and Lisa C. Ikemotos, 'The Code of Perfect Pregnancy: At the Intersection of Ideology of Motherhood, the Practice of Defaulting to Science and the Interventionist Mindset of Law', [1992] 53 *Ohio State Law Journal* 1205-1306.

<sup>17</sup> The children women bore were sources of cheap labour used on the farm that produced the raw material for the factories of the emerging industrialised Europe at the turn of the 19<sup>th</sup> Century.

<sup>18</sup> Nathaniel A. Fadipe, *The Sociology of the Yoruba* (F. O. Okediji and O. O. Okediji (editors) (Nigeria: Ibadan University Press, 1970), 83-86 and Karin Barber, (1991), (*Footnote 5*), 110-111.

<sup>19</sup> Nina Emma Mba, (1982), (*Footnote 8*), 53; this aspect of the thesis is discussed in chapters three.

<sup>20</sup> Catherine A. MacKinnon, *Towards a Feminist Theory of the State* (London: Cambridge; Massachusetts, Harvard University Press, 1989), 248.

<sup>21</sup> P. O. Olusanya, 'Cultural Barriers to Family Planning Among the Yorubas', in John C. Caldwell; N. O. Addo; A. Igun; S. K. Gaise and P. O. Olusanya, (editors), *Population Growth and Socioeconomic Change in West Africa* (New York and London: Columbia University Press, for Population Council, 1975), 214.

<sup>22</sup> Stanley K. Henshaw; Susheela Singh; Boniface A. Oye-Adeniran; Isaac F. Adewole; Ngozi Iwere and Yvette P. Cuca 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164, 156.



means of controlling their fertility and resist the curtailment of their reproductive freedom by law. The empirical findings from this study also show that women's bodies are highly politicised,<sup>23</sup> and Bridgeman and Mills claim further that by politicising women's bodies they are 'sexualised, objectified, regulated and violated by the institutions of patriarchal society amongst which the legal system takes its place'.<sup>24</sup> The objectification of women's bodies is justified under the guise of patriarchy and what is morally and ethically right as seen in the codes that depict abortion as a moral wrong.<sup>25</sup> The findings from this research however show that many women do not make abortion choices along moral and ethical lines only, but essentially on the prevailing socio-economic circumstances surrounding their pregnancy.

I also argue that men and society dictate women's reproductive choices, rather than the women, who are directly affected by the decisions made on their behalf. Men base their decisions on traditional, cultural and societal preconceived perceptions of women's place and worth in society. Traditional Nigerian society's perception of women's existence and essence in life is to bear children.<sup>26</sup> Women were conditioned to fulfil this societal expectation of regeneration of the population otherwise the purpose of their existence was defeated. Such traditional views left no room for abortion under any circumstance except when there is threat to the life of the pregnant woman or the woman becomes pregnant out of wedlock. The perceived perception is legalised by the Codes. However, herbal preparations used as abortifacients in traditional and contemporary times as shown in *R v Edga*<sup>27</sup> and accounts by respondents in this study shows that this assumption is not totally accurate in that women controlled their fertility using the most appropriate method available to them, which is a pointer to the fact that there is a gap in the knowledge of fertility control by women in Nigeria.

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<sup>23</sup> This is fully discussed in chapter two.

<sup>24</sup> Jo Bridgeman, & Susan Millns, (1998), (*Footnote 15*), xviii.

<sup>25</sup> Laws of the Federation of Nigeria 1990, Criminal Code Act Caption 42 Section, Chapter 21.

<sup>26</sup> William Bascom, *The Yoruba of Southwest Nigeria* (New York: Holt, Rinehart and Winston Inc., 1969), 62.

<sup>27</sup> *R v Edga* (1938) 4 WACA 133. Even though literature on traditional perception and prevalence of abortion is scarce, preliminary discussions with elderly people suggest that young girls in this situation were quietly married off to a polygamist who would agree to marry the pregnant girl. Otherwise they were encouraged to terminate the pregnancy through the use of herbal preparations. See P. O. Olusanya, 'Cultural Barriers to Family Planning Among the Yorubas' in John C. Caldwell (et al) *Population Growth and Socio-economic Change in West Africa*, (Library of Congress Cataloguing in Publication Data, 1975), 214.

### **Gaps in the knowledge**

Most of the research carried out on abortion comprises hospital-based studies which rely on medical records and surveys of patients in relation to abortion and related morbidity.<sup>28</sup> Coeytaux<sup>29</sup> states that it is only in recent times that African policy makers and health authorities have expressed concern about the number of clandestine abortions in their countries and the associated morbidity and mortality resulting from its procedure, which is a drain on the scarce health resources of African governments. But the gaps in the 'existing literatures only hint at the magnitude and urgency of the problem and provide very little information on its nature or social epidemiology'.<sup>30</sup> These gaps in empirical knowledge also extend to the perceptions and attitudes of Nigerian people to abortion.<sup>31</sup> Members of a society will have diverse views on abortion that are affected by their social and economic status, religion, educational attainment and cultural background. The interplay of all these variables will determine pertinent issues surrounding abortion.<sup>32</sup> This study is designed to fill this gap and give an insight into a better understanding of Nigerian people's perceptions of abortion and the social and cultural influences that have engineered their attitudes. Only by understanding these aspects that solutions to the problems identified by the previous research can be adequately tackled and specific laws can be put in place to solve the problem.

In recent times, some research has been carried out examining women's reproductive rights in Nigeria. Most researches have looked at the issue from a human rights perspective;<sup>33</sup> others have specifically focused on abortion as a medical or health issue;<sup>34</sup> while some have seen it from an anthropological view

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<sup>28</sup> J. B. Akingba 'The Nigerian Attitude to unwanted Pregnancies' (1971) 1(3) *Journal of the Nigerian Medical Association* 179-301; V. P. Aggarwal, and J. K. G. Mati, 'review of Abortion at Kenyatta National Hospital of Nairobi' (1980) 57(2) *East African Medical Journal* 138-144; J. C. Caldwell and P. Caldwell 'The Cultural Context of High Fertility in sub-Saharan Africa' (1987) 13(3) *Population and Development Review* 409-438; O. Akinla 'Abortion in Africa' in R. E. Hall (editor) *Abortion in a Changing World* (Volume 1) (New York: Columbia University Press, 1970), 291-301.

<sup>29</sup> Francis M. Coeytaux, 'Induced Abortion in Sub-Saharan Africa: What We Do and Do not Know' (1988) 19(3) *Studies in Family Planning* 186-190, 186.

<sup>30</sup> *Ibid*

<sup>31</sup> Coeytaux, *Ibid*.

<sup>32</sup> These are issues such as the right of an unborn child and those of its mother; and whether socio-cultural dictates should still determine a Nigerian woman's sexual freedom, the empirical findings are discussed in chapter 7.

<sup>33</sup> Center for Reproductive Law and Policy (CRLP) *Women's Reproductive Rights in Nigeria: A Shadow Report* (New York: CRLP 1998).

<sup>34</sup> AGIDS, 'Unsafe Abortion Common in Nigeria' <http://www.agi-usa.org/pubs/archives/newsrelease2404.html> (accessed on November 12, 2002).



point specifically looking at issues of contraception and infertility among the Yorubas.<sup>35</sup> Nigerian writers have also analysed the effect of abortion as a criminal offence under Nigerian law on women and their ability to access safe abortion as a necessity due to other prevailing circumstances that is not within the purview of the law.<sup>36</sup> I argue that no nation can develop its legal system in isolation from the influence of other jurisdictions, especially a post-colonial country like Nigeria. The essence of reform of the law is for each particular nation to develop its laws in ways that meet the social and cultural needs of their society. Basil Markesines summed this up when he said:

In our ever-shrinking world it would add to knowledge if judges borrowed "foreign law" into national law in order to reform, modify or shape national law-A close Cupertino between judges, practitioners and academics can only be to the greater benefit of the development of the law.<sup>37</sup>

It is hoped that this study will prompt reform of the abortion law or at least raise an awareness of the abortion issue amongst Nigerians strong enough for government to put in place a socially and culturally acceptable reform that will address the different issues of reproductive autonomy of women, but especially abortion.

### ***Paucity of Legal material***

The greatest difficulty encountered during this study was the lack of legal material on abortion in Nigeria, especially reported case law. The first reported case is *R v Edgal*<sup>38</sup> which was decided in 1938. Other decided cases since then have dealt with the culpability of defendants who assisted in abortion under the Codes, but

<sup>35</sup> 'Abortion among the Yoruba of Nigeria' <http://gp.fmg.uva.nl/agids/research/herdrai/> (accessed on November 12, 2002).

<sup>36</sup> An example is the discussion by now Justice Owoade: Adekunle Owoade, 'The Legal Implications of Contraception in Contemporary Nigeria' (1988) *Nigeria*: 1(3) *Calabar Law Journal* 3-18.

<sup>37</sup> Basil Markesines, 'Foreign Law Inspiring National Law, Lessons From *Greatorrex* and *Greatorrex*', (July, 2002), 61(2) *Cambridge Law Journal*, 386-404, 398.

<sup>38</sup> *R v Edgal* (1938) 4 WACA 133, later cases have not challenged the legality of the law within the constitutional provision of equality and rights as provided under chapter 4 of the constitution.

not dealt with serious challenges to restrictive abortion in the light of prevailing legislations such as the Constitutional rights of individuals under Chapter four.<sup>39</sup> The existence of a constitution has been used in the United States and other jurisdictions to clearly articulate the rights of patients in the courtroom as did *Roe v Wade*.<sup>40</sup> Davies<sup>41</sup> argues that judicial determination by the courts 'have set the scene for further rights-based demands to enter the courtroom', which however English Common law has not fully embraced.<sup>42</sup> McHale *et al*<sup>43</sup> however disagree to an extent and argues that the 'parameters of the *Bourne*<sup>44</sup> decision gave impetus to the movement to reform the law on abortion' in Britain. In Northern Ireland, the Family Planning Association of Northern Ireland (F.P.A.N.I.)<sup>45</sup> have successfully on appeal challenged the State and obtained a declaration that the Department of Health had failed in its duties to provide guidance as to the availability of abortion services in Northern Ireland. Fletcher states that by challenging the law of abortion (which is similar to Nigeria's) the case 'acknowledges the state's duties to its women citizens and to the health care professionals serving their needs'.<sup>46</sup> She states that it also 'identifies accommodation of women's abortion needs as an aspect of the rule of law and its commitment to equality, fairness and clarity'.<sup>47</sup> My argument is that by challenging the provisions of the law it brought to public notice the negative effect of the restrictive law on women's lives. Through the activities of the F.P.A.N.I. and other activists who joined them 'a more explicit political space for reproductive rights is being carved'.<sup>48</sup> It is similar activism challenging the law that is absent in Nigeria. While my empirical study does not question abortion

<sup>39</sup> Chapter Four of the Nigerian Constitution 1999 guarantees the individual's right to private and family life.

<sup>40</sup> *Roe v Wade* US 113 [93 S Ct 705, 35 L Ed 2d 147] (1973), the court in this case held that a woman had the constitutional right to abortion free of any State interference during the first three months of pregnancy.

<sup>41</sup> Michael Davies, *Textbook on Medical Law* (2<sup>nd</sup> edition) (Oxford University Press, 1998).

<sup>42</sup> *Ibid*, 16, though Davies argues further that there is an innate conservatism in English Common law that 'does not allow for such human-right-based decision-making', making the English Common law 'a clumsy tool to use when the dynamics of medicine are concerned, but this may also indicate that times are changing, and the judiciary will question whether the 'rights' of patients have been respected'.

<sup>43</sup> Jean McHale, Marie Fox and John Murphy *Health Care Law* (Sweet & Maxwell, 1997) 712, note 1.

<sup>44</sup> *R v Bourne* [1939] 1 KB 687, [1938] 3 All ER 615. The recent public debate to the amendment of the HFEA are some of the human-right related issues that citizens are free to express a willingness to incorporate it into the reformed law, (Footnote 12).

<sup>45</sup> *Family Planning of Northern Ireland, Re an Application for Judicial Review* [2003] N. I. Q. B 48 (07 July 2003) available at <http://www.bailii.org/nie/cases/NIHC/QB/2003/OB/2003/48.html> ; 2 Northern Ireland Legal Quarterly (2003).

<sup>46</sup> Ruth Fletcher, 'Abortion Needs or Abortion Rights? Claiming State Accountability for Women's Reproductive Welfare *Family Planning Association of Northern Ireland v Minister for Health, Social Services and Public Safety*, (2005), 13 *Feminist Legal Studies* 123-123.

<sup>47</sup> Ruth Fletcher (2005), (*ibid*), 124.

<sup>48</sup> *Ibid*, 133.



along a human-right based analysis, it is an issue worth further future study. Suffice it to say that no legal impetus has occurred in Nigeria to influence society towards awareness of abortion and its reform. There is therefore no judicial pronouncement that can be used as a benchmark in the development of the law of abortion or to assess peoples' perceptions of abortion and attitudes towards its reform in Nigeria as many of the well known English cases have done.<sup>49</sup>

However the choice of Ibadan for the study site would help in establishing literature of a part of Nigeria that is an ancient but cosmopolitan city.<sup>50</sup> It is inhabited by all the ethnic groups in Nigeria though the Yoruba ethnic group predominate. However, Ibadan has become a melting pot where all the various ethnic groups in the country have lived together for centuries, respondents' views could relatively be judged as fairly representative of the Nigerian society and give empirical data that is representative.<sup>51</sup> But the site is adequately representative of contemporary attitudes to abortion because earlier studies on regional differentials and population policies in Nigeria have shown that the history of external contacts and international relations among the north and southern parts of Nigeria has affected their attitudes to fertility and 'indigenous patterns of social organizations'.<sup>52</sup> Thus, early contacts by people of the southern states of Nigeria (where Ibadan is situated) with Britain has influenced their attitudes to reproductive issues and fertility.<sup>53</sup> Through a process of acculturation and assimilation, while the views of the respondents may be influenced by these factors, it is argued that the process makes the study representative of contemporary cosmopolitan Nigerian attitudes and perceptions to abortion. Similar future studies in other cosmopolitan northern and eastern cities in Nigeria would serve as basis for comparison of findings from this study to make it comprehensively representative of the whole country.

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<sup>49</sup> The successful challenge by Dr Bourne in the case of *R v Bourne* [1939] KB 687 of the use of the term 'unlawful' under section 58 of the Offences Against the person's Act 1861 shows that the law envisages that there could be a 'lawful' abortion; and Macnaghten J's advice to the jury on the interpretation of the meaning of the term 'preserving the life of the mother' under section 1(1)-(2) of the Infant Life (Preservation) Act 1929 no doubt helped in the subsequent reform of the Abortion Law in Britain.

<sup>50</sup> A. A Afolayan, 'Population' in M. O. Filani; F. O. Akintola, and C. O. Akporupko, (editors) *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan, 1994), 129-134.

<sup>51</sup> I discuss the study site in detail in chapter 4.

<sup>52</sup> Jean McHale, Marie Fox and John Murphy (*Footnote 43*,) note 294, 27.

<sup>53</sup> On the other hand the early contact by the northern states with the Arabs and Islam has had an influence on attitude to family size, fertility and reproductive issues which are different from the south.

Due to the size of the study site compared to the other 35 states in Nigeria, the study is exploratory. But this study fills a gap in socio-legal knowledge because earlier studies on abortion had been done with medical personnel who had first hand knowledge on the subject of abortion and not the experiences and personal views of ordinary Nigerians<sup>54</sup> as this study has done. Other community based studies have also been concerned with getting an estimate of the incidence and percentage of women who undergo abortion in Nigeria with the aim of preventing morbidity of women during pregnancy.<sup>55</sup> However, this study aims at understanding the perceptions of women and men towards abortion; whether the present abortion law adequately meets the present social needs of Nigerian women and whether the law is in consonance with social reality and practice. It further seeks to make recommendations on how the law can be reformed to meet contemporary social expectations. The analysis is therefore population and location specific though every effort has been made to balance this through the selection of the respondents to include most socio-cultural, ethnic and economic variables found in Nigeria.<sup>56</sup> The literature generated in this study would help in filling some of the gap in knowledge and legal material on reproductive health in Nigeria.

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<sup>54</sup> Stanley K. Henshaw *et al* (1998) 24(4) (*Footnote 22*), 156-164.

<sup>55</sup> The Center for Reproductive Law and Policy, *Footnote 25*, 7-8.

<sup>56</sup> In chapter four I give a detail discussion of the population sample and method of selection of respondents to make it as representative as possible.

## 1.2 Asserting Reproductive Autonomy within Existing Legislation

I begin this discussion by setting out the sections of the Criminal and Penal Codes relevant to this discussion. As stated earlier,<sup>57</sup> the Criminal Code applies to the southern states of Nigeria and the Penal Code to the northern states.

Sections 227 and 228 of the Criminal Code and Sections 232 and 233 of the Penal Code are set out below.<sup>58</sup>

### Criminal Code:

228 Attempt to procure abortion.

Any person who, with intent to procure Miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony, and is liable to imprisonment for fourteen years.<sup>59</sup>

229 Attempt to procure own miscarriage.

Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.<sup>60</sup>

230 Supplying drugs or instrument to procure abortion

Any person who unlawfully supplies to or procures for any person any thing whatever,

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<sup>57</sup> Since Nigeria is a federation each state has its set of laws applicable within its boundaries. However, the sections of the Criminal and Penal Codes are identical in the states where they apply. The Criminal Code is applicable to the southern states of Nigeria that is predominantly Christian while the Penal Code is applicable to the northern states of Nigeria. The Penal Code has been adapted to reflect the Sharia teaching without imposing the strict Sharia criminal punishments. See *footnote 11* page 5 and Chapter 3 *footnote 115*, page 110.

<sup>58</sup> Note that each of the states in southern Nigeria have enacted the Criminal Code as part of their State laws, but all the sections and content are similar in all the states. Like the Criminal Code, the Penal Code is part of the state laws of the different states comprising northern Nigeria and have identical sections and chapters and contents.

<sup>59</sup> Criminal Code, Caption 77 Laws of the Federal Republic of Nigeria, 1990, S. 228

<sup>60</sup> Laws of the Federation of Nigeria, Caption 77 Sections 229.

knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

The offender cannot be arrested without warrant.<sup>61</sup>

#### Penal Code:

##### 232 Causing Miscarriage.

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 a term which may extend to fourteen years or with fine or with both.

*Explanation.- A woman, who causes herself to miscarry, is within the meaning of this section*<sup>62</sup>.

##### 233 Death caused by act done with intent to cause miscarriage.

Whoever with intent to cause the miscarriage of a woman whether with child or not does any act which causes the death of such woman, shall be punished-  
with imprisonment for a term which may extend to fourteen years and shall also be liable to a fine; and  
(b) if the act is done without the consent of the woman, with imprisonment for life or for any less term and shall also be liable to fine.

*Explanation.-It is not essential for an offence under this section that the offender should know that the act is likely to cause death.*<sup>63</sup>

While the English Abortion Act, 1967 is unambiguous and precise in its wordings, thereby offering medical professionals, abortion providers and judges precise guidelines when considering cases on termination of pregnancy brought to them, Nigerian law is not.

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<sup>61</sup> Criminal Code, Caption 77 Laws of the Federal Republic of Nigeria, 1990, S. 230

<sup>62</sup> Penal Code, Caption 99 Laws of the Federal Republic of Nigeria, 1990, Section 232.

<sup>63</sup> Laws of the Federation of Nigeria, Penal Code Caption 99, Sections 232 & 233, the 'Explanations' in both sections form part of the law.



From the wordings of both laws, I observe that they do not specify at what stage of foetal development abortion becomes a crime. The indistinct wordings give the interpretation that abortion is illegal whatever the gestational stage of the pregnancy leaving no scope for judicial discretion. The difference between both codes in term of sentencing is that while the Criminal Code gives the woman who attempts to procure her own miscarriage a lighter sentence of seven years under section 229, the Penal Code recommends the maximum sentence of up to fourteen years under section 232. Under section 228 of the Criminal Code it is immaterial whether the woman is pregnant or not provided the intent to procure a miscarriage is established. The Penal Code however, makes a distinction between unintentional miscarriage of a woman when 'she is' and when 'she is not with child' in section 234 where the offender is unaware that the woman is pregnant the punishment is three years, or a fine or both. On the other hand an intentional *attempt* at procuring a miscarriage 'if the offender knew that the woman was with child' is punished with up to five years imprisonment or with fine or with both.<sup>64</sup> The Criminal Code does not make a clear distinction between intentional procurement of miscarriage while the Penal Code does. However, neither code makes any distinction as to whether an abortion performed by a registered medical practitioner carries the same punishment as one performed by a non-professional. The language of the law is so wide that almost any act designed to induce abortion whether the woman is pregnant or not may lead to a felony. It gives judges handling such cases only very limited discretion to adjudicate on the matter in the light of the circumstances of individual case. With such a situation development is difficult because there is limited scope for judicial interpretation and the law will remain stagnant unless there is some reform.<sup>65</sup>

The main thrust of the law on abortion is that it denies women the right to have control over their reproduction. It goes further to 'punish'<sup>66</sup> them for attempting to procure an abortion, without inquiring into the reasons why women would want to have an abortion in the first place. This is discriminatory in that it takes two people

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<sup>64</sup> *Ibid* Section 234(b)

<sup>65</sup> It could be that the aim of the legislation is intentionally rigid, leaving limited room for judicial discretion in order to make abortion totally illegal except when the woman's life is in danger. If this is the intention, I argue that such legislated denial of women's autonomy goes to strengthen my argument that the patriarchal nature of society curtails women's reproductive freedom and such curtailment is no longer justifiable in the light of contemporary Nigerian women's reproductive needs.

<sup>66</sup> My use of the word 'punish' is deliberate in that Nigerian attitude to women is to equate their sexuality with the proclivity of their wombs. Any woman who goes against the social expectation of refusing to bear a child through seeking an abortion is denied access as a form of punishment.

to produce a pregnancy and only women bear the responsibility where the pregnancy is unplanned or unwanted, the psychological trauma and humiliation from the conservative Nigerian society is borne by women only.<sup>67</sup> Foucault argues that this form of discrimination is an expression of 'power over sex'.<sup>68</sup> Women who become pregnant are seen as lacking in sexual control, and their need for abortion is a sign of 'weakness or incompetence'.<sup>69</sup> Albury states that unwanted 'pregnancy is often regarded as a moral failure of control and personal responsibility'.<sup>70</sup> 'This form is the law of transgression and punishment, with its interplay of licit and illicit',<sup>71</sup> the abortion law is an instrument of 'punishing' women for their weakness for being pregnant by making access to abortion near impossible unless their life is in danger. The harsh punishment for abortion goes against the constitutional provisions of the equality of genders guaranteeing everybody the 'right to freedom from discrimination'.<sup>72</sup> All Nigerian women should be able to exercise their right to choose abortion being a surgical operation performed on their body in order to exercise their right to bodily autonomy.<sup>73</sup> Otherwise their bodily autonomy will be violated on the ground that they are created as women and are the ones who get pregnant. While pregnancy places on women greater responsibility to protect the foetus within them it should not be at the expense of their bodily integrity. This forms the main thrust of Judith Thomson's<sup>74</sup> argument that if the woman is vaguely felt to represent a house, to which we don't allow a right of self-defence; 'But if the woman houses the child, it should be remembered that she is a person who houses it'.<sup>75</sup> Ultimately, women should not bear responsibility for pregnancy in the midst of pain under socio-economic conditions they are powerless to change. My analysis can be defended under section 42 (1) (a) of the Constitution,<sup>76</sup> which states:

<sup>67</sup> For example a respondent in this study said "despite the fact that pregnancy before marriage is wrong and not accepted in traditional society, the baby must be born, but will be stigmatised along with its mother";: Field Data Analysis: 29-year-old female Secondary school teacher.

<sup>68</sup> Michel Foucault, *The Will To Knowledge: The History of Sexuality: Volume 1* (Penguin Books, 1998), 84.

<sup>69</sup> Ellie Lee and Emily Jackson, 'The Pregnant Body' in Mary Evans, and Emily Jackson, (editors) *Real Bodies: A Sociological Introduction* (Palgrave, 2002), 128.

<sup>70</sup> Albury, Rebecca M. *Beyond the Slogans, the Politics of Reproduction* (St Leonards: Allen and Unwin, 1999), 38.

<sup>71</sup> Michael Foucault, (1998), (*Footnote 68*), 84.

<sup>72</sup> This is guaranteed under Chapter IV of the 1999 Constitution titled 'Fundamental Rights': The Constitution of the Federal Republic of Nigeria, 1999.

<sup>73</sup> Bodily autonomy and the moral and ethical issues of abortion and form the thrust of my argument in chapter 3 pages 125-132.

<sup>74</sup> Thomson, Judith Javis, 'A Defence of Abortion' in Dworkin, R. M. (editor) *The Philosophy of Law* (Oxford University Press, 1977), 116.

<sup>75</sup> I discuss this issue further in chapter three.

<sup>76</sup> The Constitution of the Federal Republic of Nigeria, 1999.

*Right to freedom from discrimination.*

A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he such a person-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

(b) be accorded either expressly by, origin the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions

(c) or political opinions.

I argue that using the provisions of section 42 of the Constitution women can challenge the provisions of sections 228 and 229 and sections 232 and 233 of the Criminal and Penal Codes respectively. This is because whenever any law is inconsistent with the provisions of the Constitution, the provisions of the constitution 'is supreme and its provisions shall be binding', and the inconsistent law shall be declared void for its inconsistency with section one.<sup>77</sup> Therefore, I believe that the constitutionality of the sections of both codes prohibiting abortion could be challenged on these grounds.

Another legal basis on which the abortion law can be challenged is under international law. Nigeria has ratified the Convention on the Elimination of All Forms of Discrimination Against Women and the African Charter on Human and Peoples' Rights. Section 18 of the African Charter stipulates non-discrimination on the basis of gender. Allowing women to choose what happens to their body, choosing when and if to bear children, we respect their personal autonomy and give them the same basic respect that is given men which forms the basis of the non discriminatory law under the Charter. However, my assertion is dependent on there being an established recognised right to reproductive autonomy which can form the basis on which women can assert their rights. While the constitutional

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<sup>77</sup> Section 1(1) Constitution of the Federal Republic of Nigeria, 1999.

rights exist, the reproductive rights do not. According to Denbow<sup>78</sup> it is by allowing women to choose between having an abortion and bringing their pregnancy to term that we respect their personal autonomy.<sup>79</sup> Denbow's argument is further buttressed by Valleman that it is by valuing a person's opportunities for self-determination and by increasing her choices 'We value a person's capacity for self-determination by granting it respect'<sup>80</sup> This thesis is advocating for a recognised right to reproductive autonomy for women as South Africa has done through increasing their choices for abortion under a reformed law.<sup>81</sup>

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<sup>78</sup> Jennifer Denbow, 'Abortion: When Choice and Autonomy Conflict', (2005) *Berkeley Journal of Gender, Law & Justice*, 216-228.

<sup>79</sup> Denbow (*ibid*), is arguing against the pro-choice argument that more choice affords women greater autonomy. According to her this is not always the case where women are indigent and pregnant and who wants to bring her pregnancy to term-'the mere existence of the option to have an abortion can undermine a woman's autonomy' (*ibid*), 1 & 220. I argue however that choice affords women whatever their economic status to make informed decisions about the pregnancy they carry within the ambits of the law. to deny them that choice is to deny their autonomous status as equal human beings with men under the charter and constitution.

<sup>80</sup> David Valleman cited in Jennifer Denbow (*ibid*), 217, (from an unpublished manuscript)

<sup>81</sup> Republic of South Africa: 'Choice of Termination of Pregnancy Bill' Section 2, *Gazette* 45 (1997).

### 1.3 Making a Case for Abortion Law Reform in Nigeria

I now turn my attention to the provisions of the abortion law itself in making a case for abortion law reform. In doing so I am aware that the conflicting attitudes among Nigerians who hold different views about abortion may not be settled to the satisfaction of all peoples affected or interested in the abortion debate which is an on-going argument in other permissive jurisdictions where abortion is permissive.<sup>82</sup> Laws, have however, been used in all societies to settle controversies about salient issues affecting society, or to effect an attitudinal change in people or enforce a set of policies promoted by leaders. Therefore, having a textual interpretation of abortion in written form may not answer all the surrounding ethical and social issues, but its reform offers the best possible way to stem the persistent effect illegally procured abortion creates for women.<sup>83</sup> This is because a reformed abortion law would offer a legal framework by which courts could interpret the law and guide the conduct of doctors in their practice of abortion in a constitutionally acceptable way without infringing its provisions.<sup>84</sup> It would also save women from the necessity of resorting to illegality to terminate unwanted pregnancies.

The provisions of the Nigerian abortion laws that absolve the medical doctor of criminal liability in the performance of an abortion procedure on pregnant women are contained in sections 297 and 232<sup>85</sup> of the Criminal and Penal Codes respectively. They state as follows:

#### *Section 297 Criminal Code*

A person is not criminally responsible  
for performing in good faith and with

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<sup>82</sup> In the United States of America since the Bush administration came into office there has been an on-going debate and attempt to restrict access to abortion within the country and even in countries where the USA have some influence: Susan A. Cohen, 'Abortion Politics and the U.S. Population Aid: Coping with a Complex New Law' (September 2000) 26(3) *International Family Planning Perspectives* 137-138 & 145, Kissling and Shannon also highlight the on-going conflict in the USA: Frances Kissling and Denise Shannon, 'Abortion Rights in the United States: Discourse and Dissension' in Ellie Lee, (editor), *Abortion Law And Politics Today* (New York: PALGRAVE, 2001), 144-154. I discuss this issue as it affects Nigeria in chapter 2.4.

<sup>83</sup> Henshaw *et al* (Footnote 22).

<sup>84</sup> Permissive abortion legislation has had this effect in other jurisdictions such as England and other parts of Europe such as France and USA: See Sally Sheldon, 'The Abortion Act 1967: a Critical Perspective' in Ellie Lee, (editor), *Abortion Law And Politics Today* (New York: PALGRAVE, 2001), 54-57.

<sup>85</sup> The wordings of Section 232 of the Penal Code are on page 14. Note however that each of the 19 states of Northern Nigeria has the Penal Code as part of their state legislations under different captions but the contents are *pari parsu*.

reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all circumstances of the case.<sup>86</sup>

The terminology and construction of the legal provisions described gives rise to a number of anomalies which will now be discussed.

### ***Vagueness of language complicates abortion law provisions***

When a comparison is made between these provisions and Sections 1 to 4 of the British Abortion Act 1967, the inadequacy of the Nigerian law to meet social needs become evident.<sup>87</sup> While the laws of both countries do not make abortion legal, the difference is that until 1958 when the British abortion law was formally incorporated into Nigerian law; Sections 58 and 59 of the OAPA, 1861 was binding in Nigeria,<sup>88</sup> and is still binding in Britain. The Codes and the 1967 Act legitimise abortion under certain conditions, but while the conditions enumerated under the British Act are reasonably comprehensive in addressing implicit social and health issues that surround abortion in Britain in the 1960s and presently,<sup>89</sup> the Nigerian Codes do not.<sup>90</sup>

The Abortion Act 1967 together with its amendment by the Human Fertilisation and Embryology Act, (HFEA), 1990 makes categorical provisions for who is legally authorised to perform an abortion. The Criminal code states 'A person' while the Penal code states 'Whoever'. While the assumption is that the references are to a medically qualified doctor, it does not say so in clear terms. For example, Section 1(1) of the 1967 Act explicitly states that abortion is to be performed by 'a registered medical practitioner'. Section 1 (1) (a) to (d) further provides wide ranging grounds 'of injury to the physical or mental health of the pregnant woman

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<sup>86</sup> Laws of the Federation of Nigeria, 1990: The Criminal Code Law Caption 42, Section 297; note that all the 15 states of Southern Nigeria have the Criminal Code incorporated as part of their State legislations under different captions though the contents are *pari passu*. See Footnote 11.

<sup>87</sup> Britain is used for comparison because Nigeria is her former colony and the Nigerian legislation has its foundation in the British legislation.

<sup>88</sup> The Criminal Code was enacted for the Southern part of Nigeria in 1958 and the Penal Code for Northern part in 1964. The Penal Code followed the Pakistan and Indian Penal Code generally,

<sup>89</sup> The Abortion Law 1967 answered the British societal need for abortion during the 1960s due to the volume of deaths and maternal mortality of British women and the decisive problem of the thalidomide incidence that made it unjust not to allow abortion for foetal deformity.

<sup>90</sup> The findings are discussed in chapter eight.



or any existing child of her family'.<sup>91</sup> Sub-section 2 allows the doctor to take account of the 'pregnant woman's actual or reasonably foreseeable environment'. The section provides for most of the foreseeable reasons why English women choose abortion which are the same for Nigerian women as I show in this study. However, the codes make no provision for this.

The law in England makes it clear that abortion can be performed until term in cases of significant foetal abnormality, but until 24 weeks otherwise as long as the other criteria are satisfied.<sup>92</sup> The Nigerian laws do not state the circumstances under which the abortion can take place; the place the operation can be performed and the person authorised to direct the place for the performance of an abortion as is clearly stated in the English Act. This is regrettable because Henshaw *et al*<sup>93</sup> found that 73 percent of abortion is done by non-physicians; there is no means of knowing under what sanitary conditions the abortion takes place which further exposes the pregnant woman to danger from septic conditions. For instance in the case of *Commissioner of Police v Modebe*,<sup>94</sup> the accused medical doctor examined the deceased pregnant woman in 'his children's bedroom by asking her to sit on a mackintosh'<sup>95</sup>.

...the accused gave her two injections  
and did some vaginal examination. In the  
course of the vaginal examination, ...he  
pulled out ...a human arm and leg.<sup>96</sup>

The court found that the clandestine way Modebe discharged a professional duty was sufficient to lay him open to complicity in the event leading to the deceased's death.<sup>97</sup> A clear provision in the law would state the place and conditions under which abortion should take place. Nigerian law does not even state the conditions

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<sup>91</sup> Abortion Act, 1967, Section 1(1) (a).

<sup>92</sup> Abortion Act 1967, Section 1 (1)(d) permits abortion where 'there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped'.

<sup>93</sup> Footnote 20.

<sup>94</sup> *Commissioner of Police v Modebe*, (1980) 1 NCR 367.

<sup>95</sup> *Ibid*, 377.

<sup>96</sup> *Ibid*, 375. While the medical doctor was acquitted on the ground that he did not give the pregnant woman treatment with the intention of aborting her, but merely gave her first aid treatment; the court stated that 'a children's bedroom is not the proper place to treat a septic pregnancy and that a diligent doctor would have sent the deceased to the hospital in the condition she was in on the day he treated her, (*ibid*), 378.

<sup>97</sup> *Ibid*, 391. He was however acquitted because the court held that his action was not the initial catalyst that started the continuous and irreversible act of miscarriage which was attributed to the deceased's self-induced medication, *ibid*, 388.

for 'legal' abortions in situations when it is essential to save the pregnant woman's life.

Section 4 of the Abortion Act, 1967<sup>98</sup> also relieves a doctor from performing an abortion based on his conscientious objection to participate in the operation. Considering that Nigeria is a secular country, it is important for patients that they are aware of their doctors' views on abortion to save both parties' unnecessary delay in accessing treatment. This provision is absent in the Nigerian Codes, but is necessary to meet the present needs of the health care provisions of Nigerians.

The provisions of the Codes which absolve the medical doctor from criminal liability in the performance of abortion are not clear. While we know they are directed at the medical practitioner to act as guide for them when they make decisions on abortion, there is no mention of the medical doctor in either Code. Section 297 of the Criminal Code uses the words "A person"<sup>99</sup> while Section 232 of the Penal Code states "Whoever".<sup>100</sup> We can argue that these words need not refer to a medical practitioner as is the presumed intention of the laws.<sup>101</sup> On the other hand Section 1, Abortion Act 1967 stipulates that only 'a registered medical practitioner' can terminate a pregnancy, while "two registered medical practitioners" must form the opinion in "good faith" to recommend abortion. The provision is important to safeguard the health of women by preventing non-professionals providing abortion services as is the current practice.

Also, while it is not implicitly stated in either Codes that only a registered medical practitioner can lawfully perform an abortion, it is assumed from the wording of the sections that the same doctor can decide and also carry out the abortion. This explains the reasons why one doctor in privately owned hospitals in Nigeria can perform abortion without seeking a second professional opinion from colleagues.

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<sup>98</sup> The section states '...no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection', a similar provision I made under S. 38 of HFEA, 1990. Kennedy and Grubb states that the provision 'allows for dissent on the basis of 'conscience', i.e. a conviction or belief based upon a moral assessment rather than prejudice. It allows the doctor (or other) to 'opt out' of some (though not all) abortions where the individual's belief prevent his involvement, for example, 'late' rather than 'early' abortions or one based solely upon foetal disability': Kennedy, Ian and Grubb Andrew, *Medical Law*, (Butterworths, 3<sup>rd</sup> edition, 2000), 1443. The scope of the provision has been considered in the case of *Janaway v Salford AHA* [1989] AC 537, [1988] 3 All ER 1079.

<sup>99</sup> Criminal Code: Footnote 86.

<sup>100</sup> Penal Code: Footnote 62.

<sup>101</sup> This is based on my observation from decided cases in Nigeria.



This gives room for exploitation of pregnant women seeking abortion by medical doctors. It is also impossible to monitor the performance of the operation itself to ensure that it meets acceptable standards recognised by the Nigerian Medical Association. Under the Abortion Act, 1967 the stipulation of two doctors forming the opinion for the operation ensure that the reasons for the abortion were valid within the law. The clause also eliminates the possibility of collusion to an extent which occurred in *State v Ade-Ojo*.<sup>102</sup>

My understanding of the wordings of the sections of the Codes shows that it is also not necessary that the two doctors who formed the opinion are the ones who will necessarily carry out the operation. This means a third doctor can perform it. By not allowing just one medical doctor absolute control over the practice and provision of abortion services and making doctors aware that they owe a duty to act with utmost professional medical standards, exploitation of pregnant women can be avoided. Nigerian doctors should be aware that they can be sanctioned if they have not performed their duty 'in good faith' and with utmost professional care. In *R v Smith*<sup>103</sup> the court stated that this was the way the legal profession has been able to retain its independence ... (and) the law retains its ability to protect society from abuse of the Act'.<sup>104</sup> Nigerian courts have been reluctant to sanction doctors even where there is clear evidence of their negligence or complicity in an abortion process as is shown in *Ade-Ojo*.<sup>105</sup> Clarity in the language of the law would clearly stipulate the person to perform the operation and assist the court in the adjudication of abortion cases before them.

Through its use of abstract language the Nigerian abortion legislation has only succeeded in obscuring the fact that women are denied bodily integrity on equal

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<sup>102</sup> Though in the Nigerian case of *State v Ade-Ojo* (1972) 12 CCHCJ 27, two newly qualified Nigerian medical doctors colluded in negligently performing an abortion on a 14 year old minor which resulted in perforation of her uterus and her death. The girl was pregnant through her school's assistant headmaster. The assistant headmaster falsely took her away from her parent's home to procure an abortion for her through the assistance of the doctor who examined her. The doctor was an experienced gynaecologist, but he referred her to another doctor. However, this second doctor also asked a junior doctor to carry out the operation believing it to be routine enough for him. But the doctor who performed the actual operation was a newly qualified and inexperienced doctor, who perforated her uterus in the course of the operation. Both doctors were found culpable but were referred to the Attorney-General of Lagos State and the NMA for 'any action they may deem fit' (*ibid* at 31) rather than the court sentencing them.

<sup>103</sup> *R v Smith* [1974] 1 All ER 376; [1973] 1 WLR 1510 (CA).

<sup>104</sup> *R v Smith Ibid*, 376.

<sup>105</sup> See Footnotes 93. However, I believe Nigerian courts are reluctant to punish erring doctors in most abortion cases involving negligent practices as in the *Ade-Ojo* case where neither doctors were sanctioned by the court, preferring instead to refer the case to the Attorney General and the Nigerian Medical Association. From my research I found no reported case involving abortion where the court has sanctioned any medical doctor.

terms with men.<sup>106</sup> It is obvious for example that section 297 of the Criminal Code<sup>107</sup> is not concise as it leads to lack of clarity in the provision. The section refers to surgical operation performed “upon any person” as well as “upon an unborn child” if the operation is ‘for the preservation of the mother’s life’. If the provision is directed at pregnant women it should state so clearly and not give the impression that it is also making reference to surgical operations other than abortion on women as is suggested. The use of the pronoun ‘his’<sup>108</sup> in the section, leads to further ambiguity of the correct interpretation of the provision. Uncertainty in the language of the law leads to doctors, service providers and judges interpreting the provisions as they deem fit within their understanding.

The lack of clarity in the language of the law may lead to inconsistency in their judicial interpretation, which may be detrimental to women.<sup>109</sup> Because none of the post-independence abortion cases have reached the Supreme Court<sup>110</sup> of Nigeria and have not gone beyond the High Courts, the judges in the High Court are not bound to follow the decisions of their brother judges in the High Court since such decisions merely have a persuasive influence on them.<sup>111</sup> Different High Courts will likely arrive at different interpretations of the provisions when the language of the law is vague and there is no decision of an appellate court to act as guide to bind the lower court’s decision.

There should also be clarity in the language of the law because its provisions are also expected to guide the conduct of medical practitioners who are not usually familiar with the language of law. Dickens<sup>112</sup> observes that:

‘when medical practitioners encounter problems  
of law associated with their duties, their training

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<sup>106</sup> This is against the constitutional non-discrimination clause in chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>107</sup> Footnote 86.

<sup>108</sup> Though it can be argued that the provision clearly refers to women because they are the ones of the two genders who have the biological capacity to be pregnant.

<sup>109</sup> While it is understood that every case will be decided on its merit, the principles laid down on substantive issues based on the interpretation of the language of the law ought to give a uniform outcome whichever High Court is trying the case. This is all the more important because my research shows that all the cases decided on abortion so far in Nigeria have been in the High Courts in different parts of the country and none have reached any of the appellate courts.

<sup>110</sup> The only case on abortion that reached the then West African Court of Appeal was the 1938 case of *R v Edgal* (1938) 10 WACA 133.

<sup>111</sup> This principle of *stare decisis* is applicable to a decision of a higher court binding a lower court as was stated in the Nigerian case of *Clement and Another v Nwanyanwu and Another* (1989) 3 NWLR (Part 107) 39 at 53-54 following the British case of *Young v Bristol Aeroplane Company Limited and Another* (1944) 2 KB 293; see also *Osumare v Amadu* 12 WACA 437.

<sup>112</sup> Bernard M. Dickens, *Abortion and the Law*, (Macgibbon & Kee Ltd, 1966).

and instinct lead them to consult medical textbooks which deal with their interests. They rarely have recourse to legal textbooks'.<sup>113</sup>

Because it is lawyers who defend and judge the actions of medical practitioners on either side of the court room in suspected cases where doctors have not carried out the abortion operation in good faith based on the law; the language of the law should be easily understood by medical practitioners so that it gives them precise and accurate information concerning their conduct in the termination of a pregnancy. Judicial officers should also be able to interpret the law as accurately as possible. For instance in Section 230 of the Criminal Code it is not clear what is meant by the word "unlawful". For this reason the West African Court of Appeal (WACA) in *R v Edgal*<sup>114</sup> sought for clarification of this word and why it was used twice in the section from the English *Bourne* case.<sup>115</sup> The WACA concluded that the use of the word "unlawful" twice in section 230 suggests that there could be instances when it could be lawful to procure an abortion.

Nigerian judges have often sought guidance from British decisions in abortion cases before them. The need to seek clarification from British cases shows that the provisions of the Nigerian abortion law are insufficient even to judges.<sup>116</sup> The reason for this in my opinion is partly historical, in that the abortion legislation are not as a result of any over-arching social necessity at the time it was incorporated into Nigerian legal system in the Nineteenth Century by Britain. Having absorbed the Colonial legislation there have not been any concerted efforts by Nigerian Legislature since then to modify the law so that it meets the social need for abortion in contemporary Nigerian. By continuing to define the offence of abortion as a 'crime against morality'<sup>117</sup> and not regarding it as a prevalent social problem, the legislation is inadequate to solve the abortion problem and all the ancillary health problems that are associated with it.

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<sup>113</sup> Bernard M. Dickens, *ibid*, 97.

<sup>114</sup> *R v Edgal* (1938) 4 WACA 133, 133-134 see especially the judgement of Lord Bret

<sup>115</sup> *R v Bourne* [1938] 3 All ER 615.

<sup>116</sup> On the other hand it is a common practice among judges in the Commonwealth to refer to cases in other Commonwealth jurisdictions because of the historical connection and foundation of their law in the English legal system.

<sup>117</sup> The title of Chapter 21 beginning from section 214 where the crime of 'procurement of miscarriage' and other sexual offences stated is titled 'Offences against Morality'.



I show in chapter five that for the majority of the respondents choosing abortion is a social necessity and a health problem. Abortion choice is also a socio-economic necessity because the moral issues that underpin their choice are often influenced by the economic reality of their lives and their ability to maintain the unborn child. Their choice is therefore personal and ought not to be dictated to them by legislation. Therefore this research shows Nigerian women make choices about abortion based on social necessity rather than on their religious dictates. It is often difficult to legislate against a prevalent social and health problem like abortion especially when is defined by law as a 'moral crime'<sup>118</sup> when the majority of citizens the law is intended to guide do not see it the same way. It ultimately shows that the provisions do not meet the present needs of Nigerian society.<sup>119</sup> The Irish abortion law is similar to Nigeria's and Fegan and Rebouche<sup>120</sup> argue that 'the debate on abortion is constructed as a profoundly moral issue, invoking deeply held religious views on both sides of the traditional divide'. The 'vague universalist moral claim' conceal other more subtly dominant norms and values<sup>121</sup> that often receive little or no public attention. As noted by the Irish Feminist Action Group (FLAG) even within orthodox perspective, there are several layers to the moral complexity of abortion, including: "the *factual context* of pregnancy, the *values* which inform the regulation of pregnancy and the *history* of abortion regulation".<sup>122</sup> It is these underlying norms, values and historical antecedents of abortion legislation and how they impact on women's abortion choice that I explore in this research, because ignoring them could lead to injustice for women and prevent a concerted support for law reform.

<sup>118</sup> Chapter 21 of the Criminal Code contains the provisions for most of the laws on sexual matters, (such as unlawful miscarriages, unlawful carnal knowledge, sodomy, homosexuality, defilement of girls of different ages, idiots and women, prostitution etc) under the heading 'Offences against Morality. Note however, that the heading of the sections of the law in the Penal Code is clearly specific to the offences they relate as it is titled: 'Causing Miscarriages, Injuries to Unborn Children, Exposure of Infants, Causing Cruelty to Children and Concealment of Births'.

<sup>119</sup> The question that comes to my mind is who are the laws intended for? Is it the rich who can afford safe, but illegal abortions or the thousands of poor women who cannot? The recent demand in Ireland to review the strict abortion law there is a pointer to the fact that Parliament cannot through legislation dictate nor enforce a certain moral or ethical code on their people, because those who can will always find avenues to circumvent the law by going to other European countries where abortion is easily available; while those who can't afford to have complications or die needlessly. See 'New Report Calls for Reappraisal of Northern Irish Attitudes to Abortion', <http://www.prochoiceforum.org.uk/ireland5.asp> (accessed 18 August 2003).

<sup>120</sup> Eileen V. Fegan, and Rachel Rebouche, 'Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency' (2003) 11 *Feminist Legal Studies* 221-254.

<sup>121</sup> *ibid*, 222.

<sup>122</sup> Feminist Action Group (FLAG), note 6 in Fegan & Rebouche, *ibid*, 222.

The kind of injustice a restrictive abortion law can bring is shown in the Republic of Ireland case of *Attorney General v X*.<sup>123</sup> In the crisis moment of the X case, the role of abortion law in absolutely protecting Irish foetuses and thus Irish culture is challenged as that law's failure to protect a young Irish rape victim is revealed".<sup>124</sup> Abortion is sometimes viewed as a negation of the essence of Nigerian womanhood, which I argue in chapter three as not being entirely true. In essence I argue that the restrictive abortion law in Nigeria is a reflection of the failure of the Nigerian State keeping up with the morality as reflected in the abortion law that are at variance with contemporary Nigerian women's needs and perceptions of abortion. Modernisation and cross-cultural influence across the globe has infiltrated the law that it can no longer feasibly address the needs of the complexity of the health problems it has created.<sup>125</sup> Similarly, in Ireland Fletcher argues that the explanation for the conservative abortion policy that protects the right to life of the unborn is historical. It is seen as part of a post-colonial desire 'to construct a culturally authentic 'pro-life' Irishness in opposition to what has been perceived as a British colonial pro-choice culture'.<sup>126</sup> However, insisting on carving a unique cultural identity by policy makers can bring injustice to women who need abortion services. This is what Fletcher identifies in *Attorney General v X*<sup>127</sup> as the inability of the State restrictive abortion law to protect a vulnerable minor in a situation where abortion would clearly have been the only equitable choice as a failure of the Irish Republic to protect women's needs. McCarthy J in the X case states that this lapse of "...the failure of the legislature to enact the appropriate legislation is no longer just unfortunate. It is inexcusable; what are pregnant women to do?"<sup>128</sup>

<sup>123</sup> Northern Ireland is part of the United Kingdom where the Abortion Act 1967 applies while the Republic of Ireland is an independent state which has constitutional protection of foetal right to life. In *Attorney General v X and others* [1992] 1 I.R. 1, a 14 year old girl was pregnant as a result of rape by her friend's father. The restrictive abortion law prevented her from having an abortion in Ireland; she therefore challenged her right to seek abortion in England. The High Court decision preventing her from travelling abroad to seek abortion was overturned in the Supreme Court because there was a "real and substantial risk" to her life by the pregnancy which justified her right to have an abortion in England.

<sup>124</sup> Ruth Fletcher, 'Post-colonial Fragments: Representations of Abortion in Irish Law and Politics', (2001) 28(4) *Journal of Law and Society* 568-589 at 568.

<sup>125</sup> Similarly the law leaves unresolved the legal issues of the different dimensions of abortion, for example in the X case the Irish Supreme Court ruled the girl could return to England for abortion because there was 'a real and substantial threat to the life as distinct from the health of the mother' which 'could only be avoided by the termination of the pregnancy' *per* M Reid, J in *Attorney General v X and others* [1992] 1 I.R. 1, 27-28.

<sup>126</sup> Ruth Fletcher, (2001) (*Footnote 124*), 569; Laury Oaks makes similar in "Abortion is part of the Irish Experience, it is part of what we are": The transformation of public discourses on Irish abortion policy', (2002) 25(3) *Women's Studies International Forum*, 315-333, 316-318.

<sup>127</sup> *Attorney General v X and others* [1992] 1 I.R. 1

<sup>128</sup> *Attorney General v X and others* [1992] 1 I.R. 1 at 82.

In chapter six I use empirical data to show that respondents would want abortion to be made available on some social grounds. Abortion is not even legally permitted where severe foetal abnormality is detected as in cases where the pregnant woman has contracted rubella.<sup>129</sup> It is not clear if abortion is permissible in cases of rape and incest.<sup>130</sup> Unless we can argue that the clauses 'preservation of the mother's life' in Section 297 of the Criminal Code and 'saving the life of the mother' in Section 232 of the Penal Code can be given a wider interpretation to include the mental health of pregnant women to make abortion legally available because carrying a child to term under such circumstances may affect women's mental health. This is I believe is the preferred socially acceptable interpretation of the sections.<sup>131</sup>

### **A review of past attempts at abortion law reform in Nigeria**

Law reform often begins from a need to address social problems evident in society. An historical analysis of the struggle for abortion law reform in Britain that culminated in the passing of the 1967 Abortion Act shows that it started with people from different backgrounds being consistent in their advocacy for more liberal abortion in order to stem the deaths of women who died from illegally procured abortion.<sup>132</sup> There was active participation of the medical professionals, government, the media and non-governmental organisations in this pursuit. The Inter-Departmental Committee on Abortion, 1939, reported on the social use of abortion and its major finding was that the main reason for abortion was

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<sup>129</sup> This is the crux of the decision in *R v Bourne*. We could however argue on the other hand that sections 297 and 232 of the Criminal and Penal Codes respectively already make provision for therapeutic abortion in Nigeria on eugenic grounds if the abortion is aimed at preserving the mother's health, if we include 'health' to also mean mental health. But without the privilege of judicial pronouncement and interpretation of the sections, we cannot make this assertion with certitude. Moreover, for as long as abortion remains a criminal offence, without clarity in the language of the law providing justification for abortion, the likelihood of a judicial pronouncement by Nigerian courts seems very remote.

<sup>130</sup> I have shown in Chapter six that there is a social acceptance of abortion in cases of rape and incest in Nigeria, but the law as it is presently drafted makes no explicit provision for it.

<sup>131</sup> Which itself is as a result of the failure to provide the appropriate regulatory avenue for women to exercise their abortion choice. This is a failure of the Nigerian State to protect women from the health hazards of illegal abortion.

<sup>132</sup> See the accounts of Simms, Cossey and Fisher: Madeline Simms, 'Abortion Law Reform' in Ellie Lee, (editor), *Abortion Law and Politics Today* (Palgrave, 1998), 5-11; Dilys Cossey, 'Campaigning for Abortion Law Reform in Britain in the 1960s-What were the Issues Then?' in Ellie Lee, (editor), (1998), (*ibid*), 20-19 and Kate Fisher 'Women's Experience of Abortion before the 1967 Abortion Act: a Study of South Wales c. 1930-1950' in Lee, Ellie (editor), *Abortion Law and Politics Today* (Palgrave, 1998), 27-42 and David Paintin 'A Medical View of Abortion in the 60s' in Ellie Lee (editor) *ibid* 12.



economic<sup>133</sup> The Committee sought to protect medical doctors from prosecution when they performed therapeutic abortion<sup>134</sup> under section 58 of the OAPA 1861. The Nigerian Medical Association (NMA) guideline is silent on abortion procedure but from the decided cases involving doctors, the courts have so far protected doctors.<sup>135</sup>

A number of academic writers and abortion reform advocates have documented the struggle for abortion law reform in Britain.<sup>136</sup> In all their struggles there was a conscientious effort to include Parliament as well as society in advocating for the reform. The Nigerian academics have been less conscientious in their advocacy and Parliament has not treated the issue of reproductive health with the seriousness it deserves.<sup>137</sup> There have been only half-hearted attempts at abortion law reform until recent times. Even so, in contemporary times, the struggle for abortion law reform in Nigeria has been mainly by non-governmental agencies with little input from Parliamentarians. The reason for the lethargy may be attributed to political and economic instability in Nigeria.<sup>138</sup> The only significant attempt at abortion law reform at Parliamentary level was in 1974 by the Society of Gynaecology and Obstetrics of Nigeria which yielded no result.<sup>139</sup> This was followed in 1981 during the Second Republic.<sup>140</sup> The Nigerian Society of Gynaecology and Obstetrics sponsored a Bill through a medical doctor<sup>141</sup> who was a member of the House of Representatives of the National Assembly titled 'The

<sup>133</sup> Alison MacFarlane, Alison MacFarlane 'Confidential Enquiries into Maternal Deaths: Development and Trends from 1952 Onwards', [http://www.cemach.org.uk/publication/WMD2000\\_2002/wmd-22.htm](http://www.cemach.org.uk/publication/WMD2000_2002/wmd-22.htm) (accessed July 19 2005).

<sup>134</sup> Bernard M Dickens (1966), (Footnote 112), 109.

<sup>135</sup> See my comments in Footnotes 93 & 102.

<sup>136</sup> Some of these writers are mentioned in Footnote 86.

<sup>137</sup> The few academic writers who have advocated for abortion law reform are: Isabella Adi, 'The Question of Abortion', (1982) *Nigeria Current Law Review*, 191; E. H. Ofori-Amankwah, 'The Law on Abortion and Birth Control' (1984) 2 *Ahmadu Bello University Law Journal*, 36-43; M. Adekunle Owoade, (Footnote 36); Isabella Okagbue, 'Pregnancy Termination and the Law in Nigeria', 21(4) (July-August 1990), *Studies in Family Planning*, 197-208 and Adetoun Ilumoka, 'Reproductive Rights: A Critical Appraisal of the Law Relating to Abortion in Nigeria' in Mere N Kesekka, (editor) *Women's Health Issues in Nigeria* (Nigeria: Tamaza Publishing Company Limited, 1992).

<sup>138</sup> This has been discussed in detail in Chapter three; but, the problems persist until now, so much so that Legislators do not discuss abortion law reform in Parliament. From my personal participation as a State Secretary of the International Federation of women Lawyers (FIDA), I am aware that when organisations like FIDA (Anambra State in eastern part of Nigeria) sought to table a Bill on reform of abortion law in 2002 in the state House of Representatives on abortion law reform they were not even allowed to get the first reading tabled before the house.

<sup>139</sup> Adetoun Ilumoka, 'Reproductive Rights: A Critical Appraisal of the Law Relating to Abortion in Nigeria' in Mere N Kesekka, (editor) *Women's Health Issues in Nigeria* (Nigeria: Tamaza Publishing Company Limited, 1992), 92.

<sup>140</sup> Nigeria gained its independence from Britain in 1960 with a civilian government in place following British Parliamentary system. This government was overtaken in 1966 by the military following a civil war. The Second Republic is Nigeria's second attempt at civilian governance under an American styled Presidential form of government in 1981.

<sup>141</sup> Dr Ogunkoya was the member who presented the Bill to the House.

Termination of Pregnancy Bill', 1981. The Bill proposed that abortion shall be lawful if two registered medical practitioners formed an opinion in good faith:

- (a) That the continuance of the pregnancy would involve risk to the life of pregnant women or injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
- (b) that there is substantial risk that if the child were born, it would suffer such physical or mental abnormalities as to be seriously handicapped.<sup>142</sup>

It can be seen that there is nothing innovative about the Bill as it is merely a re-enactment of Section 1 of the British Abortion Act 1967. Unfortunately the Bill was unsuccessful. The opposition was mainly that abortion is murder while others believed abortion would lead to promiscuity and a decline in the moral standard of the society.<sup>143</sup> An analysis of the Bill shows that like the British Act, the Bill does not give pregnant women any input into the decision made by doctors in pregnancy termination. Considering that the major criticism by many feminist writers against the British Abortion Act 1967 is the fact that the Act took away women's autonomy and right to choose abortion and vested it in the doctor, the Nigerian legislation ought to improve on this by giving pregnant women a say in the decision whether abortion should be performed on them or not.<sup>144</sup> A proposed law should learn from the critiques of the English law.

Like the British Act it was proposed in the Bill that neither of the two doctors who formed the opinion need be the one to perform the actual operation. I suggest that this clause should be modified to state that either of the two doctors who formed the opinion should be the one to perform the operation because in Nigeria the cost of healthcare is often beyond the reach of most people. It would be expensive for pregnant women to bear the cost of paying three medical doctors for a single

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<sup>142</sup> Federal Republic of Nigeria, 'Termination of Pregnancy Bill', 1981 Section 1.

<sup>143</sup> M. Adekunle Owoade (now Justice Owoade), (*Footnote* 36), 3-8; Isabella Okagbue, 'Pregnancy Termination and the Law in Nigeria', Volume 21 Number 4 (July-August 1990), *Studies in Family Planning*, 197-208.

<sup>144</sup> This is the focus of my discussion in chapter 7.



operation, especially if it were performed in a private hospital; unless the clause stipulates that the pregnant woman is not to bear any greater cost if the operation were performed by either of the doctors who made the abortion decision.<sup>145</sup> This will make abortion more affordable to a greater number of women who need it. If abortion law is reformed, it should also be possible for abortion services to be available in government owned hospitals in Nigeria which are heavily subsidised by government. Further, Owoade<sup>146</sup> is unsure about the wisdom in the Bill implying that the doctor who is to perform the operation need not have any special experience, (which is in line with the Abortion Act, 1967). He believes the clause is there in order not to create artificial scarcity of such emergency doctors which may consequently increase illegally procured abortion. There is wisdom in Owoade's assertion especially when we consider that there has been a mass exodus of medical doctors and other medical personnel from Nigeria to Britain and other developing countries in the last two decades in their search to escape the economic problems they face in Nigeria.<sup>147</sup> Discussions with medical doctors during the field study reveal that, doctors agree that abortion is a fairly simple procedure that could safely be carried out within the first three months of pregnancy by a properly trained medical doctor. Therefore, doctors do not need any special experience or skill to perform an abortion if they are medically qualified. However, where the doctor suspects that the pregnancy is at an advanced stage, the clause should stipulate that a doctor with the necessary skill and experience ought to perform the operation in order to protect pregnant women. That is, if the reformed law stipulates a period beyond the first trimester of pregnancy for reasons other than to save the pregnant woman's life as it is stipulated in the Codes presently.<sup>148</sup>

<sup>145</sup> This clause could be part of the practice regulations endorsed by the Nigerian Medical Association if it is not to be included in the proposed reform.

<sup>146</sup> Owoade (*Footnote 36*), 15.

<sup>147</sup> In 1991 the World Health Organisation estimated that the number of medical personnel who migrated to Britain from Nigeria and other developing countries were known to be large but figures are unreliable 'Stilwell et al 'Managing Brain Drain and Brain Waste of Health Workers in Nigeria' <http://www.who.int/bulletinboard/82/stilwell/en/print/html> ;(accessed 16 July 2005); The brain drain of medical personnel from Sub-Saharan Africa to Britain also formed part of the 2005 election campaign of the Conservative party that such exodus to the national Health Service helped to cripple the health services in countries affected including Nigeria; <http://www.conservatives.com/tile.do?def=news.story.page&objid=123138> (accessed 16 July 2005).

<sup>148</sup> In chapter 8.3 the survey data on respondents' responses to issues a reformed abortion law should consider shows that more than 65% of respondents would want the law to stipulate that abortion be available on demand within the first 12 weeks of pregnancy. I therefore propose that abortion should be available on demand within the first three months of pregnancy at government expense.

## Why reform is preferred to stricter enforcement

Some of the respondents interviewed for this research were of the opinion that stricter enforcement of the current law would be preferable to permissive reform. However, in my view abortion is often an act formed of desperation as evidenced by the fact that pregnant women are prepared to drink a concoction of 'lime or unripe lemon, sulphur, gin, and other leaves'<sup>149</sup> as abortifacients which they know are injurious to their health. That this is performed even though abortion is currently a crime is further evidence of how desperate these women must be. A pregnant woman desperate enough to harm herself in order to prevent an unwanted baby is not likely to be stopped by the illegality of the law to choose abortion by whatever means available to her. The form of abortion available is dependent on factors such as economics and education.<sup>150</sup> These individual variables are also determinants of the quality of abortion service women will be able to access. These factors in turn may determine the outcome and effect of the operation on her health.<sup>151</sup> It is a vicious circle that can only be stopped through greater openness, awareness and legal reform of abortion by Nigerian society. Otherwise, abortionists will become more extortionists with little or no control. Dickens<sup>152</sup> in 1966 while advocating for abortion law reform in Britain wrote that:

...the possibility of stricter enforcement  
to render the present law effective... seems  
difficult, however, because detection of the  
crime is very rare now, particularly when a  
woman operates upon herself, and  
increased likelihood of detection would  
drive the crime further underground and

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<sup>149</sup> These were the local abortifacients used to induce abortion named by some of the women I interviewed See Text box 5.22 as part of the data analysis. Henshaw *et al* (Footnote 22), 162 found that complications from illegally procured abortions usually occurred as a result of the use of commercial drugs, alcohol, and traditional herbs by women.

<sup>150</sup> See text boxes 5.6, 5.9, 6.2 (iii) & (iv); 6.6, 6.7, 6.8 & 6.9; Table 6.2 also shows the influence of respondents' educational attainment on their attitude to abortion. Henshaw *et al* (Footnote 22), 163 stated that there are more than 1,300 hospitals, clinics and individual practices nationwide that provide abortion services in Nigeria, but women still resort to unsafe abortion procedures. They state that among the factors responsible for women resorting to illegal abortion is lack of knowledge of abortion facilities, financial inability of the woman to pay the charges among several factors.

<sup>151</sup> As Henshaw *et al* noted women who go to qualified doctors for abortion service are less likely to suffer complications from the operation (Footnote 22) 161-162.

<sup>152</sup> Bernard M. Dickens, (1966), (Footnote 112), 109.



produce greater secrecy.<sup>153</sup>

Dickens claimed that in the 1960s in Britain abortionists would be confident that their clients would go to hospitals when any complications occurred thereby reducing the rate of death and morbidity from the operation;<sup>154</sup> in Nigeria this is often not the case. Nigerian women are reluctant to go to hospital when complications occur because of the social stigma attached to abortion and are only rushed to hospitals when they are often at the stage of shock from "toxaemia, haemorrhage and puerperal sepsis",<sup>155</sup> by which time it might be too late to save their life.<sup>156</sup> Doctors consulted during this study explained that many illiterate women, not appreciating the seriousness of their problem, would rather go to patent medicine stores to seek a remedy for their problem than seek professional medical help. The reason for this is also attributable to the difference in the literacy and awareness levels of Nigerian women, which is much lower than those of British women. The fact that hospital fees are high and often out of the reach of many women is also a deterrent to their seeking professional medical help when complications arise. Sometimes it is the lack of money to pay qualified doctors or even abortionists that make some women resort to self-induced abortion in the first place. There is a greater awareness among the younger generation of Nigerians<sup>157</sup> that reform of the law is the only means to stop Nigerian women "dying like goats"<sup>158</sup> as a result of the incompatibility of the law with abortion practice.

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<sup>153</sup> Bernard M. Dickens, *Ibid*.

<sup>154</sup> Bernard M. Dickens, (*ibid*) in Nigeria women are less likely to go to qualified doctors for abortion services for a number of reasons such as social stigma and other reasons I discuss in this study, see footnote 141 & 142. Social stigma being a factor for women not seeking qualified medical personnel for abortion services corroborates the findings by Valentine O. Otoide; Frank Oransaye, and Friday E Okonofua,., 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 International *Family Planning Perspectives* 77-81, 78 .

<sup>155</sup> These were some of the identified consequences of illegally procured abortion stated in the Inter-Departmental Committee on Abortion 1939 in the article by Alison MacFarlane 'Confidential Enquiries into Maternal Deaths: Development and Trends from 1952 Onwards', [http://www.cemach.org.uk/publication/WMD2000\\_2002/wmd-22.htm](http://www.cemach.org.uk/publication/WMD2000_2002/wmd-22.htm) (accessed July 19 2005), see also Otoide *et al* (*ibid*), 78-79.

<sup>156</sup> This is evident from the case of *Modebe* (Footnote 94) where the deceased woman was rushed to the hospital only when it was too late to save her life because of the fear of social stigma she would face, despite being a staff of the hospital at 380-383.

<sup>157</sup> As I show in chapter six.

<sup>158</sup> Field Data Analysis: extract from a statement by a 32 year old female Commercial Sex Worker.

## **Summary**

The historical antecedence of the abortion legislation in Nigeria shows that it is a law that has taken away Nigerian women's autonomy through its imposition of an alien conceptualisation of their importance within society. The current abortion law is an expression of the denial of women's autonomy, which I argue can be challenged within existing legislation such as the constitution. However abortion law reform is the best appropriate method to meet women's needs. There are sections of the existing law where there is vagueness in the language which makes it difficult for abortion service providers and judges to determine the accuracy of the provisions as it relates to them as well as pregnant women. There is a need for a specific law that deals with the reproductive health needs of women as other jurisdictions have done in order to preserve the complications that often result from illegally procured abortion.

In the next chapter I will discuss body politics and how women can be given a voice to express their reproductive choice.

# CHAPTER TWO

## THE POLITICS OF ABORTION IN NIGERIA: GIVING NIGERIAN WOMEN A VOICE

The US and the USSR are the most powerful countries in the world  
but only 1/8 of the world's population.  
African people are also 1/8 of the world's population,  
Of that, 1/4 is Nigerian.  
1/2 of the world's population is Asian.  
1/2 of that is Chinese.<sup>1</sup>

The distinguishing physiological factor that differentiates women from men is their possession of a womb, which is both an advantage and a disadvantage to them. It contributes to the size of the population as Lorde's quotation above shows. In the social construct of gender relations within society, men have used women's wombs as a source of control and subjugation of women. Beveridge and Mullally state that '...women's connectedness to the other is the source of women's different morality, women's "different voice" and "different ways of knowing".<sup>2</sup> These in my opinion are the intrinsically peculiar and distinctively differentiating characteristics between women and men that has made society limit, if not almost completely drown the voices of women in controlling their fertility through the combined activities of national and international policies. Because autonomy is sometimes expressed as being principally a masculine trait and preoccupation<sup>3</sup> and I believe, exclusively male preserve,<sup>4</sup> autonomy is often portrayed as not

<sup>1</sup> Audre Lorde, (January 1 1989), unpublished poem, quoted in her commencement address to Oberlin College, 29 May 1989, in Chandra Talpade Mohanty; Ann Russo and Lourdes Torres (editors), *Third World Women and the Politics of Feminism*, (Bloomington and Indianapolis: Indiana University Press, 1991), 1; the high population of Nigeria is one of the major reasons for Nigerian Government's introduction of a population control policy which I argue is ineffective without a change in the abortion legislation to give women greater access and control of their fertility.

<sup>2</sup> Fiona Beveridge, and Siobhan Mullally, 'International Human Rights and Body Politics' in Jo Bridgeman, & Susan Millns, *Feminist Perspectives on Law, Law's Engagement with the Female Body* (London: Sweet & Maxwell, 1998), 243.

<sup>3</sup> Emily Jackson, *Regulating Reproduction Law, Technology and Autonomy* (Oxford and Portland Oregon: Hart Publishing Ltd, 2001), 2.

<sup>4</sup> Which is why traditional Nigerian society found it convenient to treat and dispose of their female daughters and wives as chattels with no regard whatsoever for their autonomous right to their

being applicable to women in the traditionally patriarchal Nigerian society following Nigeria's independence. Being woman therefore is synonymous with possessing the capacity for pregnancy<sup>5</sup>, which men seek to control through State policies and legislations.

My focus in this chapter is not to promote an argument for separateness of gender based on women's capacity to bear and nurture children but rather I argue for greater access to control of childbearing capabilities for women in order to benefit society. I use Gilligan's<sup>6</sup> words that feminine mode of thinking is not proposed as superior to men, but that the different voices of women's experiences and judgements should be heard alongside male voices to buttress my argument.<sup>7</sup>

This chapter will examine theoretical issues of body politics to illustrate some of the ways in which Nigerian state policies relating to women's autonomy and reproductive rights have constrained their ability to control their fertility. It will also examine the reasons for the lack of an abortion policy in Nigeria prior to independence. More than any other country in Africa, the military incursion into the political leadership of Nigeria has been the one single factor that has affected all area of the country's life; I will therefore discuss abortion policies and military intervention post independence in relation to the reproductive autonomy of Nigerian women. Lastly, I will discuss how international policies of population control of developed countries affect directly on women's reproductive autonomy in developing countries like Nigeria. The chapter concludes with a summary.

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bodily integrity; even in modern day Nigeria upon marriage 'A husband and wife were regarded as one person and that person was the husband. *The personality of the wife is thus submerged into that of her husband*': (Justice Chukwudifu Oputa, 'Women and Children as Disempowered Groups' in Federal Ministry of Justice Law Review Series, *Women and Children under Nigerian Law* (Federal Ministry of Justice: 1989), 4, (Italics as in text). This ancient notion presupposes that men have some proprietary interest in the female body simply because they are men with filial relationship with the women as husband or father and by extension, the state.

<sup>5</sup> Emily Jackson, (2001), (Footnote 3), 2.

<sup>6</sup> C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge Massachusetts, London: Harvard University Press, 1982).

<sup>7</sup> Ibid, 19.



## 2.1 Body Politics, State Policies and the Control of Fertility

The policies of government and decisions of legislature play important roles in any legislation on reproductive choices. In Nigeria, these policies are reflections of historical as well as social factors.<sup>8</sup> Beverage and Mullally<sup>9</sup> state that 'conflicts over the body involves issues of immense social, political, economic, sexual and psychological complexity: The body is a complex social construct whose meaning and significance changes from place to place and time to time'.<sup>10</sup> In the past legal control of women's fertility was of benefit to men and the Colonial leaders because of the economic contribution of women's fertility to the State.<sup>11</sup> While still a significant and inescapable contribution today, women's fertility has also been used as an instrument of subjugation. However, fertility control by men is no longer justifiable or sustainable in Nigeria because of government's need to sustain or reduce its present population to meet exigent economic development.<sup>12</sup>

The major development objectives of all nations, including Nigeria are to achieve sustainable human development. Speth<sup>13</sup> states that generally human advancement is conditioned by their concept of progress. Progress will be appreciable where there is an improvement in the standard of living of citizens so that the poor and rich alike can aspire to achieve it. Human well-being and decent standards of living are influenced by the capacity of the family income to meet the economic needs in the family unit. This means that if the number of the family unit outstrips their income, the family's standard of living will depreciate. People generally I believe, should therefore be able to have the number of children the family can sustain and maintain a decent standard of living through the control of

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<sup>8</sup> The influence of historical and social factors in the enactment of Nigeria's abortion law is the focus of my discussion in Chapter 3.

<sup>9</sup> Fiona Beveridge, and Siobhan Mullally, (1998), (*Footnote 2*).

<sup>10</sup> Ibid, 247.

<sup>11</sup> Children defined the social and material wealth of men who in turn produced the raw materials in Nigeria for the factories of the colonial leaders: Elizabeth Isichei, *A History of Nigeria* (London & Lagos: Longman Group Ltd., 1983), 259-260.

<sup>12</sup> The Nigerian Government recognises that fertility control is a pressing need of Nigeria because of the population implication of a large population to the economic viability and sustenance of the society. This is stated in the Federal Republic of Nigeria: National Policy on Population for Development, 1988 S. 2, (referred to henceforth as FGN and NPP respectively), which recognises the right of couples to determine voluntarily the number and spacing of the children they can maintain. I however disagree that it can be achieved 'through a broadly-based national programme of information, education and communication' alone (as stated in the 'Forward' to the NPP) without the enabling law to achieve fertility control by women.

<sup>13</sup> J. G. Speth, *Human Development Report 1996 UNDP*, (New York: Oxford University Press, 1996), Forward.



women's fertility.<sup>14</sup> Government needs to put policies in place that will ensure that women are able to seek legal means of exercising abortion choice if the circumstances of their pregnancy call for it. However, this is increasingly harder to achieve due to the patriarchal system of Nigeria.

### **The influence of patriarchy on reproductive rights of women**

Patriarchy has been used before, during and after colonisation as justification for control of women's bodies through coercive traditional practices and the use of the fruit of women's wombs as a source of labour.<sup>15</sup> Women's bodies in almost all cultures have been a 'site of struggle, definition and control and are extensively regulated and confined by societal mores and norms'<sup>16</sup> and Nigeria is no exception.

In contemporary times, the State also creates subordination and submission of women through law despite the constitutional guarantee of equality of the sexes.<sup>17</sup> There still exist a number of laws in Nigeria's statute books that do not make it possible for women to exercise independent reproductive choices without dictation from men and influence of society.<sup>18</sup> For now men dominate the upper and lower

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<sup>14</sup> Since contraceptive methods are not 100 per cent foolproof because there are instances, where pregnancies occur unexpectedly and the family will need to seek a safe and decent means to terminate the pregnancy.

<sup>15</sup> The Patriarchal nature of pre-colonial society ensured that men dictated the acceptance and identity of humans into society because men were the ones to acknowledge paternity and therefore integration into society. During pre-colonial times women were encouraged to be 'fruitful' and their fertility determined their social status within society, and in post-colonial era Government still want to control women's fertility through acknowledgment of patriarchy as a stabilising factor in society and that determination of family size is the responsibility of men: FGN: NPP, 1988 S. 5.3.

<sup>16</sup> Fiona Beveridge, and Siobhan Mullally, (1998), (*Footnote 2*), 247.

<sup>17</sup> FGN: The Constitution of the Federal Republic of Nigeria, 1999, S. 42.

<sup>18</sup> Section 42 of the Nigerian Constitution (FGN: The Constitution of the Federal Republic of Nigeria, 1999) guarantees equality and non-discrimination based on gender. But in S. 6, it states a woman (regardless of her age) is deemed to be an adult, this is a way of accommodating and shielding men from prosecution when they marry under-aged girls. Also Nigerian courts have judicially recognised the fact that under customary law, a child cannot gain recognition within society and inherit from his father's property or hold any traditional post within his father's community unless given acknowledgement by his father: T. O. Elias, *Nigerian Land Law* (Sweet & Maxwell, 1971), 178-237; *Young v Young*, (1953), WACA, Civil Appeal No. 3631, Report 19. In my opinion following this customary law, means that women would make choices about their pregnancy based on the reaction of the putative father, which is a negation of the supposed equality of both gender and the right to make free choice.

legislative houses, though compared to some developed countries Nigeria still has a higher female representation than some developed democracies in the world.<sup>19</sup> Friedman<sup>20</sup> argues that society makes division of moral labour along gender line defining male moral norms, values and virtues along justice and rights while female moral norms, values and virtues are defined along care and responsiveness.<sup>21</sup> I suggest that it is because the State does not believe that women have the moral characteristics that men do to make responsible choice on reproductive issues that abortion is restricted to women through law.

However, why is it so important for women to exercise control over their fertility? The 'self' according to West<sup>22</sup> is embodied in its social context because women are not essentially separate from other human beings; [but] are quite clearly "connected" to another human life when pregnant.<sup>23</sup> I believe that it is the realisation of women's connectivity to other human life that explains why patriarchal societies seek avenues to diminish the influence that women may (and do exert) over children. West states further that 'The potential for material connection with the 'other' defines women's subjective, phenomenological and existential state, just as surely as the inevitability of material separation from the other defines men's existential state'.<sup>24</sup> She goes further to say that '[w]omen's potential for material 'connection' invite invasion into the physical integrity of our bodies and intrusion into and existential integrity of our lives',<sup>25</sup> this to my mind

<sup>19</sup> The findings of the United Nations International Development Fund for Women (UNIFEM) show that Sub-Saharan Africa has a greater female representation in Parliament than some leading economic powers in the world. This report is based on UNIFEM latest two-year survey of global women's rights. In addition, it is the policy of the present government in Nigeria headed by President Olusegun Obasanjo to reserve 33 per cent of all appointments and elective offices at the Federal Level for women. It is recommended that governments at the state levels follow the policy. This is a means of allowing women's voices to be heard. BBC News, *Europe leads on women's rights*, <http://news.bbc.co.uk/1/hi/world/america> (accessed May 7 2003).

<sup>20</sup> M. Friedman, 'Beyond Caring: The De-moralization of Gender' (1987) (Supplementary) 13 *Canadian Journal of Philosophy* 87-96, 94; but in Nigeria, when certain sections of the law are interpreted, the definition of sexual morality can turn out to be oppressive and biased against women as exemplified in sections 6 and 42 of the Constitution as I state above (footnote 18).

<sup>21</sup> Ibid, 94; these are some of the reasons used to characterise women and justify their denial of control over their reproduction, (I discuss this in chapter 6).

<sup>22</sup> Robin West, 'Jurisprudence and Gender' (1988) 55 Number 1 *The University of Chicago Law Review* 1-72, 14.

<sup>23</sup> Ibid, 15; West states that women are in fact connected to life and to other human beings during four recurrent critical material experiences: pregnancy; penetration during heterosexual sex leading to maybe pregnancy; monthly menstruation and post-pregnancy experience of pregnancy: *ibid*, 2-3.

<sup>24</sup> Robin West, (1988), (Footnote 22), 8.

<sup>25</sup> Ibid 15.

could be as a result of fear of losing control over women's fertility by men.<sup>26</sup> The law has been used to reinforce men's control over women in various ways, with the restriction of access to abortion being just one example. Nevertheless, Jackson recognises that reproductive decisions are 'informed by the rich network of relationships and cultural expectations within which each individual is situated';<sup>27</sup> I believe that the extant female experiences and the needs of Nigerian women necessitate their being given autonomous freedom to control their fertility and exercise their bodily integrity. At present in respect of abortion, the law prevent them from achieving this, illustrating the need to reform the law.

### **Justification for control of fertility by women and not the State on the basis of bodily integrity**

The State has often sought to exert some influence on population growth through fertility control.<sup>28</sup> However, the main reason that justifies the right of control of fertility by women is based on Mill's notion of ownership which (paraphrased) stipulates that my body is my own to use as I please provided I do not do harm to others.<sup>29</sup> Because I own my body, therefore, the State has no right to interfere with what I do with my body.<sup>30</sup>

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<sup>26</sup> A Yoruba proverb says 'it is only when a woman says a man is the father of her child that he can acknowledge paternity' this is an intrinsically inherent superiority women have over men which in a way diminishes the influence they may have. (However, with the knowledge of DNA testing this can no longer be quite true, because men can determine paternity through DNA even when a woman seeks to deny him this).

<sup>27</sup> Emily Jackson, (2001), (*Footnote 3*), 3.

<sup>28</sup> State control of the type of population they wanted in society started in the 1890s in the USA from where it gained popularity in the Western world; State ordered compulsory sterilization of 'the insane, the "criminalistic", the feeble-minded, orphans, vagrants' etc, culminating in Justice Holmes approval of sterilization in *Buck v Bell* (1926) 274 U. S. 200, 207, on the ground of 'compelling state interest in preventing the procreation of children who will become a burden on state'; Rosalind Pollack Petchesky, *Abortion And Woman's Choice: The State, Sexuality, and Reproductive Freedom* (Boston: Northeastern University Press, 1990), 87-88; in England Francis Galton founded the Eugenics Education Society in 1907 and advocated that 'the first object of eugenics is to check the birth rate of the unfit: Emily Jackson, (2001), (*Footnote 3*), 14.

<sup>29</sup> This is an area of law that has occupied academic debates which is beyond the purview of this thesis. Suffice to state that ownership of body is not absolute even if no harm is done to others, there are certain acts that (though consensual) has been seen as being against public morality and should be prevented by the State as seen in the case of *R v Brown* [1993] 2 All ER 75 (HL).

<sup>30</sup> J. S. Mill states that 'the only purpose for which power can be rightly exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant': John Stuart Mill 1806-1873, *Mill on Bentham and Coleridge* (London: Chatto Windus, 1950), 70.



The justification for women being allowed to control their body is also based on the precept that everybody is autonomous and has a will as enunciated by Kant.<sup>31</sup> Everybody should be responsible for their actions and any action of moral worth according to Jackson must emanate from a motive of duty rather than inclination because an autonomous person is s/he who is not 'a slave to instinct, or whim or caprice, but rather *doing as one ought as a rational being*.'<sup>32</sup>

I suggest that the social construct of women's reproductive autonomy in Nigeria is communitarian in the sense that women's fertility was traditionally for the benefit of the entire community and not the nuclear family alone. Therefore, as members of a social group women's fertility were the main positive contribution they could provide for the development and survival of the community.<sup>33</sup> Using practised and established cultural taboos, social demands and expectations on women (which were linked to their procreative ability); I argue that women were indoctrinated to believe that the most significant contribution they could make to the State was bearing children. This attitude still exists today as exemplified in the abortion legislation, which seeks to preserve this assumption. Kymlicka asserts that individuals' goals and the choices they make are, like education and socialization, conditioned by their social interactions and it would be misconceived' to think they have the 'freedom to opt in or out of these social interactions,'<sup>34</sup> I believe because women are conditioned by the exigencies of their society it was possible for men to use socialization and cultural taboos to exercise power over women's procreation in Nigeria. As observed by Foucault 'there is a uniformity of the apparatus' of the use of power over sex. He says: 'Power over sex is exercised in the same way at all levels...it acts in a uniform and comprehensive manner; it operates according to the simple and endlessly reproduced mechanisms of law,

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<sup>31</sup> However Kant also says that man is not his own property to be disposed of as he pleases because man is not property and cannot be a thing which can be owned 'for it is impossible to be a person and a thing, the proprietor and the property': Immanuel Kant, 'Lectures on ethics' in H. J. Paton (editor) 'Groundwork of the metaphysics of morals', (London: Hutchinson, 1953), 165.

<sup>32</sup> Emily Jackson, (2001), (*Footnote 3*), 87, (italics as in text).

<sup>33</sup> Note however that the individualistic approach to feminist reproductive autonomy based on liberalism was condemned by Jagger and she terms it 'political solipsism' [which means] 'the liberal assumption that human individuals are essentially solitary with needs and interests that are separate from if not in opposition to those of other individuals' Allison Jagger, *Feminist Politics & Human Nature* (Totowa New Jersey: Rowman & Allanheld, 1983), 40. However, I believe this is essentially not an aspect of Nigerian communitarian society, and may not be applicable to Nigeria, which is still largely a communal society especially in the rural areas.

<sup>34</sup> Will Kymlicka, *Liberalism Community and Culture* (Oxford University Press, 1989), 41.

taboo, and censorship; from state to family...from the agencies of social domination to the structures that constitute the subject himself, one finds a general form of power, varying in scale alone'.<sup>35</sup> Social interactions modify our character and indeed modify the choices we make. Therefore, I believe it is for this reason that the State should take into account all the varying social exigencies of contemporary Nigerian women and how they affect their reproductive choices rather than putting in place the rigid dogmatic abortion legislation that does not meet these needs.<sup>36</sup> My views are based on the constitutional guarantees<sup>37</sup> that all people are equal regardless of their gender and they therefore have a right to exercise their bodily integrity within the law. The bodily integrity principle enunciated by Lock<sup>38</sup> promotes the notion of equality of all people and states that:

Though the earth and all inferior creatures be  
common to all men, yet every man has a  
property in his own person; this nobody has any  
right to but himself. The labour of his body and  
the work of his hands we may say are properly his.<sup>39</sup>

The Lockean and Kantian principles have been harnessed together by Harris<sup>40</sup> in his 'bodily use freedom' principle, which states that 'a person is free to use his body as he pleases and, at his say-so refuse bodily (especially sexual) contact with others'.<sup>41</sup> Self-ownership, ownership of the fruits of my labour is expressed further by Harris<sup>42</sup> along the line that 'My body is the tree; my actions are the

<sup>35</sup> Michael Foucault, *The Will To Know The History of Sexuality: Volume 1* (Penguin Books, 1998), 84-85.

<sup>36</sup> My findings from this research show that many of the respondents who support abortion believe that women choose abortion after careful deliberation and consideration of the effect of the pregnancy on the foetus and other children of the family, and not necessarily on what society may think of them. In the findings, on 5% of female respondents and 4% male respondents said that married women would likely make abortion choice based on what society thinks of them. This is the focus of my discussion in chapter 5; see also Table 5.5 and Chart 5.4.

<sup>37</sup> FGN: The Constitution of the Federal Republic of Nigeria, 1999, Chapter IV.

<sup>38</sup> John Locke 'An essay concerning the true origin and extent and end of civil government' (1690) in Laslett, P., (editor) *Two Treatises of Government* (Cambridge University Press, 1960).

<sup>39</sup> *Ibid*, 16-17.

<sup>40</sup> J. W. Harris 'Who Owns My Body' (1996) 16(1) *Oxford Journal of Legal Studies* 55-84, 56.

<sup>41</sup> *Ibid* 62-63; note however that limitations occurs 'when all other contested values are in play' *ibid* 63 which explains why the court in *R v Brown* (1994) 1 AC 212 ruled against the consensual but maniacal sexual act of the defendants.

<sup>42</sup> J. W. Harris *ibid*.

branches; and the product of my labouring activities is the fruit'.<sup>43</sup> Rather than being able to exercise this control, Nigerian women are prevented from freely exercising control or express bodily freedom by social attitude and the law.

I believe women should be able to use the equality principle entrenched in the constitution<sup>44</sup> to justify control of their fertility and access to abortion. According to Kymlicka for women to take advantage of this principle they must 'have the resources and liberties to live their lives in accordance with their beliefs about value...and individuals must have the cultural conditions conducive to acquiring an awareness of different views about the good life'.<sup>45</sup> I argue that what constitutes the good life differs in as many ways as women's individual experiences, just as values are as varied as there are people.<sup>46</sup> What is 'correct value' is subjective and one can only conjecture what it actually means especially when we notice that one of the fundamental statements on social value stated in the Constitution of Nigeria is that 'The State social order is founded on the ideals of Freedom, Equality and Justice'.<sup>47</sup> I accept that procreation is an important aspect of women's lives, but it would be a misconception of State to insist on enforcing control over women's procreation through legislation, because by doing so women are denied Freedom, Equality, and Justice. I agree that while government must be able to provide the basic conditions for citizens to live a good life; they must be neutral about what they regard as what constitute the good life.<sup>48</sup> According to Kymlicka, 'My life goes better if I'm leading it from the inside, according to my beliefs about value...while we may be mistaken in our beliefs about value it doesn't follow that someone else who has reason to believe a mistake has been made, can come along and improve my life by leading it for me, in accordance with the *correct* account of value'.<sup>49</sup> This is a view echoed similarly by West that government must honour at the level of politics the existential claim that our separateness entails our freedom,

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<sup>43</sup> J. W. Harris *ibid*, 68.

<sup>44</sup> FGN: The Constitution of the Federal republic of Nigeria, 1999, S. 42 guarantees 'Freedom from discrimination'.

<sup>45</sup> Will Kymlicka, (1989), (*Footnote 34*), 13.

<sup>46</sup> The social construct that shaped and defined women's experiences in pre-colonial time is quite different from contemporary times, and would naturally differ among women across socio-economic variables.

<sup>47</sup> FGN: The Constitution of the Federal Republic of Nigeria, 1999, S. 17(1).

<sup>48</sup> Robin West, (1988) (*Footnote 24*), 6.

<sup>49</sup> Will Kymlicka, (1989), (*Footnote 34*), 12 (emphasis mine),



independence and concept of value because 'my ends are my *ends*; that I cannot be forced to embrace your ends as mine'.<sup>50</sup>

This research shows that abortion choices are made by most women with full awareness of what constitutes 'correct value' either according to faith teachings or traditional norms but their ultimate decisions are made based on their individual normative value suitable to their existence at that particular period of their pregnancy and not as dictated by State, Faith, Tradition or Law.<sup>51</sup> This becomes more pertinent because Nigeria is a secular country where no state is supposed to impose on its citizens any particular religion.<sup>52</sup> From findings from this research, I acknowledge that these social factors will undoubtedly influence women's decision-making process, but the individual woman should make the evaluation and decision. Carrying this argument further I would suggest that what constitutes 'correct value' vary across the different socio-economic levels of women, and within these demographic variables individual women may shift and vary their choices at different times in their life according to their extant situations surrounding their pregnancy. For example an economically indigent woman may choose abortion because 'it is wrong to bring a child to the world to suffer'<sup>53</sup> because she will be unable maintain the child, while an economically independent woman of the same age but of a different socio-economic level may choose abortion for a different reason possibly because it is not socially convenient for her at that point in time, or alternatively she may decide to retain the pregnancy because she can have access to proper medical care and thereby adequately

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<sup>50</sup> Robin West, (1988) 55(1) (*Footnote 48*), 6 (emphasis as in the text). I observe however, that adherents of promotion of 'Nigerian culture' may justify the right of State to promote and preserve the position the patriarchal state has put women in accordance with section 21 of the constitution, which states: 'The State shall, (a) protect, preserve and promote the Nigerian cultures which enhances human dignity and are consistent with the fundamental objectives as provided in this chapter'. I argue that this position is wrong because, the control of the individuality and exercise of reproductive freewill by women is not an aspect of traditional Nigerian cultures, nor does it enhance the human dignity of women.

<sup>51</sup> The findings of the empirical study on this issue are discussed in Chapter 5.

<sup>52</sup> FGN: The Constitution of the Federal Republic of Nigeria, 1999, S. 10; Titilayo O. Aderibigbe 'Confronting the Legal Challenges' in D. Olu Ajakaiye, and F. O. Nyemutu Roberts, (editors), *Meeting the Challenges of Sustainable Democracy in Nigeria* (Nigerian Institute of Social and Economic Research, 2002), 347-352.

<sup>53</sup> Field data analysis: as stated by a 26 year old female respondent, because she realises she will not be able to maintain the child when it is born; this is a finding that shows clearly in this statement so that the characterisation of women who choose abortion is not fixed or determinable precisely along socio-demographic lines. This is discussed in-depth in chapter 6.

maintain the child when it is born even without the support of the putative father. I believe that none of these choices is correct or bad because we must look at the decisions each individual woman makes within individual environment surrounding her pregnancy and no one, not even the State can evaluate these choices and arrive at a 'correct decision' on her behalf. This finding is not unexpected because as Kymlicka states 'we live our lives in accordance with our beliefs about what gives value to life... [in] the light of whatever information and examples and arguments our culture can provide;'<sup>54</sup> this I believe is an individual approach that all Nigerians irrespective of gender should be able to freely exercise and act upon without restriction by the State.

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<sup>54</sup> Will Kymlicka, (1989), (*Footnote 34*), 13.

## 2.2 Women's political voice

Political instability following independence contributed to the lack of a clear reproductive policy in Nigeria.<sup>55</sup> On October 1, 1960, Nigeria became an independent state with its own democratically elected government. Nigeria retained the same regional government structure put in place by the British when they ruled and the British Parliamentary system of government. There were three regional governments along the three dominant ethnic groups. The east consisted of the Igbo ethnic group and they controlled the Eastern Regional government, in the north, the mainly Hausa-Fulani ethnic group formed the Northern Regional government and the west, made up of the Yoruba ethnic group controlled the Western Regional Government. On gaining independence,<sup>56</sup> the political leaders had not learnt how to work together as a nation because, they still held on to the divisive ethnic differences amongst them. Allegations of ethnic bias in political appointments at the Federal level, mismanagement of state funds and suspicion among all the political leaders soon led to a breakdown of law and order in the country especially in the western part of Nigeria.<sup>57</sup> A coup de t  t in January 1966 led by the military ended Nigeria's first attempt at democracy. From that time onward until 1999 there has been a succession of military governments ruling Nigeria broken by brief spells of democratic governance between 1979 and 1983 and eventually leading to the present democratic government in 1999.<sup>58</sup>

Military governments in Nigeria had focused mainly on providing basic healthcare services for the citizens. For the first time, the military government in 1988<sup>59</sup> put in place a national health and population policy titled 'National Policy on Population

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<sup>55</sup> I give a brief political history of Nigeria as an introduction to make my argument clearer.

<sup>56</sup> Nigeria gained independence from Britain on October 1 1960.

<sup>57</sup> Titilayo Aderibigbe, *OVERCOMING THE PAST: Problems Facing Nigeria's Transition from One Civilian Administration to Another* (not yet published manuscript for NISER project on transition in Nigeria).

<sup>58</sup> Titilayo Aderibigbe (2002), (*Footnote 52*), 343-346.

<sup>59</sup> General Ibrahim Babangida headed the government and The NPP encompassed basic treatment of health problems, maternal, child and family planning services, provision of drugs and control of infectious diseases. Note that the present democratic government under President Olusegun Obasanjo has adopted and reviewed the NPP to meet present health and population needs of society, but still falling short of advocating for widening the scope of access to abortion for women.

for Development, Unity, Progress and Self-Reliance (NPP).<sup>60</sup> It is not in the nature of an autocratic dictatorship to allow the citizens to exercise any form autonomy and freedom of expression since they govern by decrees; the NPP therefore did not have any public input in its decisions. The main aim of the NPP was to decrease the population growth of Nigerians while supposedly improving their standard of living.<sup>61</sup> The NPP did not therefore; arise out of a genuine desire of Nigerian government to put in place a health policy that addressed the reproductive choice or fertility control of women.

The social and political environment in Nigeria in the early 1950s to 1960 was characterised by fight for political emancipation from Britain the colonial master.<sup>62</sup> When political leaders and women themselves focused on women's issues the preoccupation were generally on education of girls and the reduction of taxes imposed on women.<sup>63</sup> Female reproductive autonomy, much less abortion rights were not debated as a public or policy concern. However, the educated women most of whom studied in Britain at this time were aware of the international concern for legalisation of abortion, this was not a priority for them.<sup>64</sup> Besides, at the Federal and State levels during the pre and post-colonial era women did not actively take part in the decision making process of party politics and policy implementation of government. This is despite the fact that many notable women

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<sup>60</sup> Federal Republic of Nigeria: National Policy on Population, 1988, S.1; CENTER FOR REPRODUCTIVE RIGHTS: 'Women's Reproductive Rights in Nigeria: A shadow Report' [www.reproductiverights.org](http://www.reproductiverights.org) , [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed November 24 2002).

<sup>61</sup> It is believed the policy was put in place due to pressure from International Monetary Fund and the World Bank. In response, the State focused its expenditure from this time to the 1990s on satisfying these bodies through their careful monitoring of the Structural Adjustment Programme (SAP) put in place by government. The policy impoverished the majority of Nigerians, as it was more of a debt repayment programme rather than a development programme. See the social and economic assessment of this period in *NISER REVIEW OF NIGERIAN DEVELOPMENT, 2000 THE STATE IN DEVELOPMENT* (Nigerian Institute of Social and Economic Research, (NISER), Ibadan, 2001), 304-305. This issue will be discussed in detail in the next sub-paragraph.

<sup>62</sup> Lindgren notes that most Third World countries gained political independence from colonial leaders like Britain in the 1960s (Nigeria gained her independence on October 1 1960), but these 'First World' countries still retained their influence over the nation's political agenda: Ralph, J., Lindgren 'Rethinking the Ground for Reproductive Freedom' in Arnaud, A. J., and Kingdom, E. *Women's Rights and the Rights of Man* (Aberdeen University Press, 1990), 153, .

<sup>63</sup> Nina Emma Mba, *Nigerian Women Mobilized Women's Political Activity in Southern Nigeria, 1900-1965*, (International and Area Studies (IAS), University of California at Berkeley and Nigeria: Crucible Publishers Limited, 1982), 278-289 .

<sup>64</sup> This could probably have been because the social and cultural beliefs of the people that women's duty is to bear children was so deeply entrenched that these educated women kept a veil of silence on fighting for reproductive autonomy.



campaigned as prominently as their male counterparts on many social issues.<sup>65</sup> Other women did not take up their seats in the Houses of Parliament, in some cases because their male colleagues (and societal pressure), discouraged them and at times, “the party advised [her] that it would be too dangerous.”<sup>66</sup> Women were therefore denied their rights to take up posts at democratically won parliamentary seats on gaining independence. I believe as a result concerns that were specific to women (such as reproductive autonomy) did not feature in legislative debates.

Beyond the mobilisation of women to give support in party politics, Nigerian women did not participate in party policy decisions and were inhibited in advocating for reproductive autonomy as women in Britain did at this time. Enahoro observed the absence of women in the policy decisions of government<sup>67</sup> and he proposed a motion:

That this House regrets that there are no women members in the House and prays that the Lieutenant-Governor to [sic] recognise women as one of the special interests not adequately represented in this House and to exercise his powers under section 34 of the Nigerian [Constitution] Order-in-Council, 1951, to appoint at least one woman to the House.<sup>68</sup>

Probably in response to such debates, the first woman was appointed to the Legislative House in the Western Regional government on February 17 1956 as a ‘special member’<sup>69</sup> by all-male members. This drew very cryptic criticism from the

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<sup>65</sup> One such prominent woman was Esther Soyonwo who was the first woman to win the seat to the Federal House of Representatives against a male colleague for the first time in 1953 under the Action Group government in the Western Region. Nina Emma Mba, (1997), (*Footnote 65*), 263.

<sup>66</sup> *ibid.*

<sup>67</sup> Chief Anthony Enahoro an Action Group party member from the Ishan Senatorial District of the then Mid-Western Nigeria when he addressed the Western House of Assembly on 20 January 1953, N. E. Mba, *ibid.*, 268.

<sup>68</sup> The situation is disheartening because Ghana in 1956 had ten seats in Parliament reserved for women: *ibid.*

<sup>69</sup> The quotation marks are mine to show that gender discrimination did not acknowledge that women could be considered to have equal standing and participation with men in an atmosphere where competence and not gender differentials was the guiding principle.

women members in the party. One of the women leaders protested this lack of independence to choose representatives in their own affairs:

It is highly undemocratic, grossly unfair and very insulting to the women of this country when men have to nominate who should represent women in the legislature... anybody could be pitchforked from obscurity...<sup>70</sup>

Educated Nigerian women sought to have an independent voice at the political level to address women concerns free from undue pressure and interference from men.<sup>71</sup> Many of the leaders expressed the view that women's issues "were above party politics" and would be better addressed when they remained distinctly separate from attachment to any specific political party. Women insisted on their autonomous right to independent participation in party politics, stating, "in vain did I convince [him] that this would mean the failure of women to organise themselves".<sup>72</sup> While it was acknowledged that Dr Nnamdi Azikiwe the political leader of the Northern Council of Nigeria and the Cameroon (NCNC) was favourably disposed to letting women be autonomous in his party, Chief Obafemi Awolowo, leader of the Action Group was opposed to such independence by women. Awolowo was of the view that women should be a subsidiary part of the party pressing for party policies.<sup>73</sup> Eventually these women were forced to abandon their principle through pressure from male political leaders and society by joining the "women's wing" of their desired political party.<sup>74</sup> Possibly, if women had

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<sup>70</sup> *Ibid* 185: Mrs Adekogba the leader of the Women's Movement in the NCNC Western Region protesting the nomination of Mrs Remi Aiyedun, the appointment also shows the domination of men in legislature which contributed to the lack of any concerted platform by women to address their reproductive concerns as was the case at this time in Britain.

<sup>71</sup> It is noted that many educated Nigerian women attended and had links with international women's organisations such as attending the June 1954 International Council of Women at Helsinki. But theses did not seem to have influenced the rights of women to any appreciable extent at the time, despite receiving sponsorship from the United States Information Service to attend the International Council of Women in Montreal, Canada in July, 1959: *Ibid* 185 & 187.

<sup>72</sup> Statement by Mrs Adekogba a member of the Western Region member of the Action Group (AG) to their leader Chief Obafemi Awolowo: *Ibid*: 185-186.

<sup>73</sup> *Ibid*.

<sup>74</sup> Women eventually succumbed and were forced to become 'Women's Wings' of the various political parties they wished to be affiliated to. Rather than being a national movement to act as a voice to address all women concerns, under the auspices of 'Women's Wings' of the party they



been able to address specific women issue the question of reproductive autonomy could have been a more prominent public issue that could have changed the law on abortion. Through political manoeuvring women were denied the right to determine their reproductive autonomy by men and society.

As in the pre-independence days, abortion remains a controversial subject in Nigerian and successive governments have avoided making clear policy statements on the issue of the illegality of abortion apart from occasional comments by Federal Health Ministers.<sup>75</sup> Some national commentators believe this to be a wise decision on government's part otherwise it will affect the family planning control programme put in place by the family planning providers.<sup>76</sup> However, I opine that not allowing impute from the public on the policy decision of government on the NPP, have silenced women's voices and denied them reproductive choice.<sup>77</sup>

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could only highlight women concern as dictated at party levels, which, most of the time did not include reproductive autonomy of women: Ibid: 185-186. I also argue that the situation is no better in contemporary times, because the domination of men in the Federal and state Assemblies will ensure that the voices of men and not women are heard in the house furthering women's subordination through their legislative minority representation.

<sup>75</sup> Government has allowed an atmosphere that is conducive for family planning providers to give contraceptives and other family planning services to the people of Nigeria, but made no categorical statement on abortion. An earlier attempt was made in 1982 to liberalize abortion law in Nigeria was defeated. A termination of pregnancy bill, sponsored by the Society of Gynaecologists and Obstetricians of Nigeria (SOGON), was presented to the National Assembly along the same terms as the British Abortion Law; United Nations Organisation: Nigeria's population <http://www.un.org/esa/population/publications/abortion/doc/nigeria.doc> (accessed 19 October 2005).

<sup>76</sup> Dr Akin Akinyemi, The Country Representative, Nigerian Family Health Service (Policy Division), United State Agency for International Development (USAID), 'Abortion: The endless Debate', Nigeria: *Daily Champion*, September 12, 1991.

<sup>77</sup> As they similarly did in pre-independent days, I have given an analysis of the major policy goals and objectives of the NPP in chapter 8.2.

## Other non-political obstacles to the implementation of a reproductive health policy in post-independent Nigeria

### *Social obstacles*

Nigerian women were denied equal rights because Britain, the colonial leader, still exerted political influence on Nigeria following independence leading to the creation of new forms of neo-colonialism because the newly independent State adhered to the policies, mode of government and law left in place by Britain.<sup>78</sup> Economic mismanagement by post-colonial leaders led to huge external debts; high rates of inflation; extreme concentration of land ownership in the hands of a few families and individuals; low levels of productive investment by government and individuals, leading to increasing rate of unemployment and drastic decrease in the purchasing power of citizens. These social reasons affected women (more than men) who still engaged in domestic chores, had low level professional skills, or had lower pay and lacked the social infrastructure that could enable them gain autonomous recognition and equality with men.<sup>79</sup>

Other social impediment women faced was the underlying fear that educating women would sometimes make them substitute Nigerian traditional cultural values and practices for Western ones.<sup>80</sup> Education might have given women greater access to the labour market through the acquisition of skills and professional qualifications, but it has not necessarily led to equal opportunities for both genders.<sup>81</sup> I observe that many educated Nigerian men are still tied to traditional

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<sup>78</sup> This observation was not limited to Britain/Nigeria post-independent relation alone but applied to all former colonial leaders and their former colonies, which precluded these states from improving their standard of living because they still depended on the former colonial leaders for economic sustenance. For example, most of their raw materials were sold to the developed countries to feed their industries: Ralph J. Lindgren, (1990), (*Footnote 62*), 152-153.

<sup>79</sup> Ibid; my opinion is that an historical evaluation of the political history of Nigeria shows that party leaders' views exerted enormous influence over the people and their attitudes and perceptions to many issues; Chief Awolowo's policies even today are viewed by many of his adherents as remarkable, but I do believe that if he had given women members equal recognition and voice as male members of the party, probably women would have been able to address reproductive issues that were of concern to them. However, women could not even be accepted as equal party members with men especially because the 'Women's Wing' of the Action Group party did not have any influence on party policies and decisions: Mba, Nina Emma, (1982), (*Footnote 63*), 181-187.

<sup>80</sup> In chapter 4 I refer to the fact that during the field study, some community heads were reluctant to allow the enumerators and I access to some of the women because there is the perceived belief that we would taint them with Western values and make their women become promiscuous.

<sup>81</sup> Lindgren states that 'equal opportunities to enter college, to get training, or to enter the labour market, to have a profession, or to obtain a seat in the House of Representatives, do not

attitudes where women are expected to do all domestic chores, maintain a home, a husband, succeed in professional life, and perform conjugal duties while men believe that it is 'un-Nigerian', and 'un-traditional' for them to get involved or assist their professional wives in alleviating these domestic-social problems. Many educated Nigerian women like me even from privileged backgrounds, find our aspirations to assert reproductive control sometimes impeded by the extended family citing what is deemed 'traditionally acceptable'. Marriage can sometimes be a social impediment to acquiring education, gaining professional success and control of fertility because spouses and family members often believe the overriding duty of true Nigerian women is their ability to prove their fertile fecundity first, maintain a home and care for their families. Even after complying with these traditional perceptions of Nigerian womanhood, determined women who want greater access to professional life are sometimes forced to abandon their homes in order to be able to achieve their objectives if they do not receive the cooperation of spouses or family members. As of necessity, professional women need to take control of their fertility, which can sometimes be seen as an imposition of Western cultural values as seen from the two comments taken from the field study:

*'[The] Western civilisation and culture has greatly influenced our ways of living and culture, thereby giving room for such (i.e. abortion) practices'.<sup>82</sup>*

*'Women in those (i.e. traditional) days had as many children as God destined them to have'.<sup>83</sup>*

Controlling fertility can also be perceived as a way of introducing population policy by State through giving women control of their fertility, thereby breaking down the extended family system, which is seen as another Western cultural imposition. Riedmann argues that population policies in Nigeria were perceived as 'cultural impositions' that sought to win obedience to the institutionalisation of nucleation of

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necessarily coincide with equality in the results of economic growth, technological advancement and social development': Ralph, J. Lindgren, (1990), (*Footnote 62*),156.

<sup>82</sup> Traditionally, women were expected to bear as many children as they could, and during the field study this statement by a 22 year old male respondent with Secondary education exemplifies this attitude.

<sup>83</sup> Field Study Analysis, exert from in-depth interview: 60-year-old male (Chief Imam of a Mosque) with Secondary and Koranic education.



the family as the 'real family'.<sup>84</sup> However, Furedi states that Riedmann's work on Nigeria raises the important issues about the enterprise of challenging cultural values and practices. In addition, he asks 'at what point does the attempt to target fertility behaviour become propaganda or even a form of alien imposition?'<sup>85</sup> However Lindgren argues that the first step in changing attitudes to the unequal responsibilities in the home to relieve women from unpaid domestic services and share equally responsibility for child care and the family is by changing domestic legislation (the type that still exist in the Penal and Criminal Codes). Passing such legislation will be achieved easily than changing the cultural values and diminishing the influence of religion on women.<sup>86</sup> While I agree with him, it will also take women themselves working from the inside to challenge the social attitudes that have increasingly found their way into Statute books. I believe that Western ideology and imposing attitudes from outside cannot dislodge or change traditional perceptions and attitudes that impede women's reproductive autonomy because education should bring a greater awareness and appreciation of Nigerian cultural values while changing those that impede women's reproductive autonomy. It is through women themselves educating their male and female children to the negative impact of these traditions on their mothers that will eventually lead to a shift in attitude and give women access to reproductive autonomy, this I believe could take a generation to achieve, but it could be done eventually.

Nigeria is a naturally endowed nation<sup>87</sup> but poverty and economic mismanagement has decimated the population and women in particular so that little time is left for

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<sup>84</sup> Agnes Riedmann, *Science that Colonizes: A Critique of Fertility Studies in Africa* (Philadelphia: Temple University Press, 1993), 68-69 & 78); Furedi says also that it was noticed that research workers involved in her survey were increasingly implicitly challenging 'the taken-for-granted assumptions of Yoruba life'.

<sup>85</sup> Frank Furedi, *Population and Development: A Critical Introduction* (Polity Press, 1997), 120.

<sup>86</sup> Ralph, J. Lindgren, (1990), (*Footnote 62*), 156.

<sup>87</sup> Nigeria is the sixth largest producer of natural gas, in the world, it has mineral resources ranging from petroleum, gold, tar-sand, tin, iron-ore, coal cobalt, limestone, silver niobium, lead, zinc and arable land many of which are still untapped; Center for Intelligence Agency (CIA): 'The World Factbook-Nigeria' <http://www.cia.gov/cia/publications/factbook/fields/2119.html> (accessed 27 May, 2005; however one of the greatest resource that Nigeria has is her human resource, but most of Nigeria's professionals are from the Southern part of Nigeria but most work in developed countries out of despair and low paying wages leading to what has been tagged 'brain-drain': 'Stop recruiting doctors and nurses from the Developing World': [http://www.conservatives.com/tile.do?def=news.story.page&obj\\_id=123138](http://www.conservatives.com/tile.do?def=news.story.page&obj_id=123138) (accessed 16 July 2005).

women to engage actively in struggles for reproductive rights or equality.<sup>88</sup> The conclusion I reach from this fact is 'that the relationship between population and resources or population and living standards is indeterminate',<sup>89</sup> therefore, women need to make a conscious effort to insist on controlling their fertility. This research has shown that women of all demographic characteristics are determined to exercise control over their reproduction and be given access to legally safe abortion facilities.<sup>90</sup>

### *Religious and ethnic obstacles*

My research shows that religion and ethnicity are social impediments, which influence the perceptions and attitudes of society to reproductive rights of women generally, and abortion particularly.<sup>91</sup> Lindgren goes so far as to say that 'the Catholic Church indoctrinates women to accept passively all the inequalities and injustices committed against them on earth'.<sup>92</sup> However, my research shows that most Nigerian women have found a way out of the impact of religion on their reproductive rights.<sup>93</sup>

Ethnic differences and unequal development between the Northern and Southern parts of Nigeria unfortunately coincide with the religious divisions between the mostly Muslim north and predominantly Christian south and sometimes the attitude to reproductive rights of women. However, my research shows that attitudes towards reproductive health issues is not based on religious differences but social factors surrounding women's pregnancy at that point in time.

A clear focus on the reproductive rights of women have also been overshadowed by the focus of leadership being based on ethnic lines and the desire of each ethnic group to demand federal power based along ethnic origins rather than

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<sup>88</sup> Ralph J. Lindgren, (1990), (*Footnote 62*), 154.

<sup>89</sup> Frank Furedi, (1997), (*Footnote 85*), 37.

<sup>90</sup> The findings from the research show this fact throughout, but particularly chapters 5 and 6 dealing with attitudes to abortion and characteristics of women who seek abortion (respectively) shows this.

<sup>91</sup> In addition, other forms of fertility control that could give women greater reproductive autonomy such as contraceptive use and female circumcision (because it is believed to prevent promiscuity in women so that they remain chaste for the satisfaction of men).

<sup>92</sup> Ralph, J. Lindgren, (1990), (*Footnote 82*), 156.

<sup>93</sup> However, as I state in chapter 6, my findings from this research show that women have learnt to compartmentalise their religious doctrinal teachings and separate it from the economic and social impact a particular pregnancy will have on their lives and other members of their family in making an abortion choice.



capability and popularity. For example, a renowned professor called on minority ethnic groups to have more children to compete more effectively in the politics of numbers carried out in the Nigerian federation.<sup>94</sup> Another factor is ethnic rivalry, which has led to manipulations of census figures in an effort to gain control of Nigeria's resources through controlling federal or central government.<sup>95</sup>

**“Reproductive rights concepts are too un-African and an importation of Western concepts”<sup>96</sup>**

In the course of my interactions with the respondents during fieldwork one traditional but educated male respondent said to me that the concept that ‘feminists’ like me are advocating are too ‘un-African’ and that the traditional reproductive situations women find themselves in actually protect women and promote our culture.<sup>97</sup> Corr  a<sup>98</sup> has noted that some ‘Southern activists’<sup>99</sup> have queried the concept of ‘self ownership’ and ‘bodily integrity’ as ‘founded on Western capitalist assumptions of self-ownership that imply a patriarchal, bourgeois concept of a discrete ‘self’ that may be subjugated by medical science,

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<sup>94</sup> C. S. Momoh, *Philosophy of a new Past and an Old Future* (Nigeria: Auchi, African Philosophy Projects Publication, 1991), 221. This is part of the focus of my discussion in the next sub-paragraph.

<sup>95</sup> Frank Furedi, (1997), (*Footnote 85*), 120; also A. Kokole, ‘The politics of fertility in Africa’ in J. L. Finkel and C. A. McIntosh (editors), *The New Politics of Population* (New York: The Population Council, 1994).

<sup>96</sup> Field Study Analysis: 58 year old, male University lecturer.

<sup>97</sup> The respondent's argument is that polygamous union was beneficial to the Nigerian woman in so many ways; because it allowed co-wives to pursue independent, economic activities since sexual and domestic demand were shared. As an educated don, but a traditionalist, he is of the view that a husband ‘is the crowning glory of a woman’ (a typical Yoruba proverb that is found in all ethnic groups in Nigeria); therefore being subordinated to a man gave women societal respect and protection. This attitude I found is still prevalent among men and women alike, and it would be difficult to change such perceptions because they are still situations that subjugate women and negate the principle of equality as enunciated in our Constitution. I believe a paradigm shift in the social perception of women's reproductive autonomy can only become effectual if women are prepared to express their opinion through adequate representation at the National and State Assemblies. Legislators will be obliged to follow broad policy objectives of their parties that may not always tally with the expressed views of the citizens they represent:

<sup>98</sup> Corr  a also found that cultural identities given women are so embedded in people's perception that they aid in perpetuating women's subordination and denial of equality with men: Sonia Corr  a, (in collaboration with Rebecca Reichmann), *Population and Reproductive Rights Feminist Perspectives from the South* (London & New Jersey: Zed Books Ltd., 1994), 81.

<sup>99</sup> Southern activists are activists in countries in the developing world of Africa, Latin America and developing parts of Asia: Ibid, 77

population control or patriarchal kinship system'.<sup>100</sup> She states further that the concepts of individualism, autonomous control and individual choice are culturally biased notions that are inappropriate to women of Africa and Asia particularly. 'Choice' for African and Asian women is not to be interpreted on individual levels as in the West without taking cognisance of the societal context and conditions within which African and Asian women need to make their reproductive choice. In agreeing with this assertion this research has buttress the fact that Nigerian women do not make reproductive choices in isolation. They do so within the constraints of socio-cultural and economic environment surrounding their pregnancy so that Correa's statement that emphasis on autonomy and right may be inappropriate for African and Asian societies other than Western societies, I argue that attitudes are changing. My research shows there is a growing acceptance for married women seeking abortion by both men and women in the study area.<sup>101</sup> I however believe that culture is not static and social concepts and ideals evolve over time to meet the changes and dynamisms of different societies at specific stages of their development.<sup>102</sup> While traditional practices such as polygamy are accepted by some rural and urban women in Africa,<sup>103</sup> the reasons behind the need for polygamy are slowly becoming untenable with democratic concepts of equality, medical advancement, and technological advancement of domestic appliances that make domestic chores less intensive. Therefore I share the same sentiment with Corr  a that cultural practices negates women's autonomous identity and only consolidate women's subordination, damage their

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<sup>100</sup> Ibid

<sup>101</sup> In this research about 45% females and over 57% males feel it should be acceptable for married women to seek abortion, this is discussed in detail in chapter 5 see in particular Table 5.4.

<sup>102</sup> The evolution may take generations since they are results of integration and assimilations of other cultural values and extant social condition within society; for instance as I stated earlier it was economically viable and socially expedient for women to bear many children in traditional times, but attitudes are changing due to a combination of social, political and economic changes and advancement in health care that has drastically reduced child mortality and hence the need to bear so many children out of which only a few may eventually survive. The desire for having fewer children in contemporary Nigeria under present circumstances could be said to be a Western concept, but it is also an evolving African concept because the evolving needs of society demands this change in fertility control.

<sup>103</sup> Because it lightened the daily intensive burden of rural and urban women it meant the liberation from the servitude of marriage allowing wives to attend to their personal needs and hence gave them certain measure of emancipation and autonomy: Corr  a *ibid*, 81.

physical integrity or freedom to make decisions about their own lives must be questioned and cannot be acceptable.<sup>104</sup>

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<sup>104</sup> For instance, in the name of culture and tradition, one-quarter of all women in Nigeria are married by the age of 14, one-half by the age of 16 and three-quarters by the age of 18: Ibid, 82.

## 2.3 'With a Load on Her Head, a Child in Her Arms and a Protruding Stomach', Reasons for the Lack of an Abortion Policy in Nigeria

The opening title depicts the picture of an African woman that I refer to as 'three in one'. I depict her as a victim of her socio-political environment and lacking effective fertility control policy.<sup>105</sup> Past Nigerian governments have found it more convenient to adopt a liberal approach to fertility control by providing an atmosphere conducive to contraceptive use without enforcing coercive policies on the people to control their fertility. No Nigerian government has ever actually made reproductive health matters (apart from the general provision of medical and health facilities) a party policy. The only time the respected Minister for Health, Professor Olikoye Ransome-Kuti made a categorical statement on abortion from his special position and informed knowledge (as a physician) on abortion was in August 1991.<sup>106</sup> The religious leaders were the most vociferous in denouncing the proposed legislation. The President of the Catholic Bishops Conference, Archbishop Olubunmi Okogie and the Secretary Bishop F. F. Alonge respectively, immediately issued a joint statement.<sup>107</sup>

Public outcry and lack-lustre government interest led the issue to die a premature death. Ransome-Kuti being a medical doctor was concerned about the medical catastrophe women faced because of being forced to seek illegal termination of

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<sup>105</sup> In the past, it was often the case that women in Nigeria used their entire reproductive life bearing children because of any form of effective fertility control policy. It was possible to see a woman carrying a load on her head, holding a toddler by the arm and another pregnancy on the way. Situations like this can be prevented if government put in place an appropriate reproductive health policy and reform of the abortion law.

<sup>106</sup> He expressed the intention of government to legalise abortion in order to stem the high incidence of induced abortion among young girls and resultant complications associated with it. Professor Ransome-Kuti said: '...going by the available records of deaths from unwanted pregnancies and given the high number of illegal abortions, there is nothing wrong with giving our women a safer way to abortion and the only way to do this, is to legalise abortion': Gbenga Ogunleye, (Quoting Ransome-Kuti at a press briefing he addressed on August 21 in Lagos, Nigeria) 'Abortion: The debate continues', Nigeria: *Daily Times*, February 14 1991, 6.

<sup>107</sup> Both clerics' views are in keeping with the Catholic abhorrence of abortion, they argued that abortion is: '...abomination not only in the Christian faith but in Islam and our traditional religions. It is contrary to all that was best in our culture which reflects the eminent sacredness of human life': (At a Conference of Catholic Bishops held in Awka, capital of Anambra state in Eastern Nigeria), Gbenga Ogunleye, (1991) *ibid*.

unwanted pregnancies was in favour of abortion law reform.<sup>108</sup> The religious clerics on the other hand were expressing their opinion based on the interpretation of the religious teachings on abortion.<sup>109</sup> To a large extent these views are the broad views of the Nigerian population which has, I believe, encouraged successive governments to ignore the issue of abortion in their policies. However, my opinion is that these are mostly the voices of men. Before a realistic policy on abortion can be put in place in Nigeria, women and adolescent girls who are directly affected by the illegality of abortion must be allowed to express their opinion on abortion.<sup>110</sup>

For Nigeria, having a manageable and predictable population would make for better planning and effective distribution of available resources to its population and ensure the steady growth of its economy.<sup>111</sup> I observe that countries often arrive at their policies on reproductive choices based on circumstances and events in their social environment and the political and historical experiences in their development.<sup>112</sup> International episodes on reproductive issues can also exert

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<sup>108</sup> Stanley K Henshaw; Susheela Singh; Boniface A Oye-Adeniran.; Isaac F. Adewole; Ngozi Iwere and Yvette P. Cuca, 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164.

<sup>109</sup> Note that during the time of the Roman Empire (who conquered what forms modern Britain who in turn brought Christianity to Nigeria) abortion was frequently practised and authors such as Ovid, Juvenal and Seneca informed us of the practice of abortion at this time. Pliny gave a list of prescriptions that could be used for abortion; legal regulation of abortion was then unknown and Roman law then stated that the 'child in the belly of its mother' was not a person and abortion was not murder. Abortion became a crime in 1869 with the pronouncement of Pope Pius IX who made it so: Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley, Los Angeles & London: University of California Press, 1984), 11-18 and 264 (note 3).

<sup>110</sup> Earlier research on women's reproductive rights and abortion shows that women's needs were often ignored by the State: Valentine O. Otoide; Frank Oransaye and Friday E. Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81; E. I. Archibong, 'Illegal induced abortion-a continuing problem in Nigeria', (1991) Volume 34(3), *International Journal of Gynaecology and Obstetrics*, 261-265.

<sup>111</sup> This was the observed by Prime Minister Kofi Busia at the first African Population Conference held in Accra Ghana in December, 1971: Lars Bondestam, 'The Political Ideology of Population Control' in Lars Bondestam and Staffan Bergström (editors) *Poverty and Population Control* (Academic Press, 1980), 1.

<sup>112</sup> In the Forward to the National Population Policy, it was stated by Olikoye Ransome-Kuti states that 'Government enunciates policies to provide a framework and appropriate guidelines for examining and solving national problems in a coherent and realistic manner'. In British history the thalidomide cases where pregnant women who were given thalidomide as a sedative in the 1960s resulted in extensive and horrific deformities of their babies and many women could not seek legal abortion and often had to seek illegal ones, this partly influenced the reform of the abortion law in Britain many parts of Europe and USA: Tribe, Laurence H., *ABORTION: The Clash of Absolutes* (London & New York: W. W. Norton & Company, 1992), 37.



some influence on the policies of a state towards similar issues in its own state<sup>113</sup>. The international upheaval in the late 1960s and early 1970s on abortion policies in Britain and other parts of Europe and USA does not seem to have exerted any influence on women's reproductive choices and autonomy in the Nigerian state until the 1980s however.<sup>114</sup> This is probably because political instability characterised by military dictatorship during this time did not allow any meaningful policy on reproductive issues to be put in place by the government in power beyond the general provision of health care facilities for the people.<sup>115</sup> Besides, I believe Nigerian leaders (colonial and indigenous) promotion of fertility has lingered in social attitudes to fertility control despite changes in the necessity for smaller rather than large families brought about by development,<sup>116</sup> due to a shift from agriculture based economy, urbanisation and education of women.<sup>117</sup>

### **Controlling population through the eyes of developed countries, can Nigeria learn anything?**

Some Western European countries such as France have used fertility regulation through state laws to control their population depending on whether their objective is to increase or decrease population growth.<sup>118</sup> France for example, from the time of the Franco-Prussian War of 1870 has used strict control of access to contraceptive devices and abortion to generate population growth. In turn, liberal policies on family allowances aimed at fertility and higher birth rate are used by the

<sup>113</sup> For instance, the legalisation of abortion in Britain in 1967 had some influence on the American population. It is believed that the demand by the Americans to legalise abortion in their own state to an extent influenced the decision of the United State Supreme Court in the case of *Roe v Wade* in 1973. The case gave American women the 'right to choose' as a 'fundamental right being part of a "right of privacy" law. See Laurence H. Tribe, (1992), (*ibid*), 11.

<sup>114</sup> When the military government at the time brought out its policy on population titled: Federal Government of Nigeria: National Policy on Population for Development, 1988.

<sup>115</sup> Titilayo Aderibigbe, (*Footnote 57*),.

<sup>116</sup> Odile Frank, 'The Demand for Fertility Control in Sub-Saharan Africa' (1987), 18(4) *Studies in Family Planning* 181-201.

<sup>117</sup> Obbo states that these changes led to a change in the traditional power relationship between the sexes which African men found unacceptable as it was a threat to their traditional power and authority, especially in the domestic sphere; 'However, men found that, just as they could not "control" women at home, so they could not stop them exerting moral pressure in public': Christine Obbo, *African Women Their Struggle for Economic Independence* (Johannesburg: Ravan Press, 1981), 155); to reverse these changes in their authority they divided women into 'good' and 'loose' women. African women demanded equal treatment in the home with particular regard to the product of their labour so that some asserted their individuality through the decisions they took regarding their sexuality and childbearing (*ibid*, 156).

<sup>118</sup> This is true of some traditionally Catholic societies; I believe religious influence will also play a part.

French state to encourage population growth<sup>119</sup>. Similarly, the majority of Eastern European countries have sought to increase their population growth having discovered that the low birth rate was inimical to their political survival<sup>120</sup>. Likewise, China also changed its population policy to affect decrease in fertility.<sup>121</sup> In South Africa before independence under the apartheid regime the government gave tax incentives to encourage white women 'to sacrifice by...having enough children to ensure continued existence as a Christian and Western country on the continent of Africa'.<sup>122</sup> I refer to these developed countries in order to show that the control of women's reproduction is not confined to developing countries alone but is dependent on the objective population policy of the State.<sup>123</sup> Past Nigerian governments could argue that there had not been a necessity to control population growth through fertility control because of the high maternal and child mortality rates experienced by women in the past. Though Nigerian women's struggle for autonomy has been consistent but largely ignored by successive government,<sup>124</sup> this may account for the low fertility and family limitation drive in Nigeria as in many Sub-Saharan African countries. Therefore, that demand for lower

<sup>119</sup> The French believed their defeat in the war and subsequent decline in population is due to their declining birth rate: Jacques Donzelot, (with a Forward by Gilles Deleuz, Translated from the French by Robert Hurley), *The Policing of Families* (London: Hutchinson, 1980), 75-78; Etienne Van De Walle, 'Motivations and Technology in the Decline of French Fertility' in Robert Wheaton and Tamara K. Hareven (editors), *Family and Sexuality in French History* (Philadelphia: University of Pennsylvania Press, 1978), 167-172; see also Y. Blanpied; M. F. Coulet and C. Gallard, 'The Legal and Factual Status of Planned Parenthood in France' in P. Meredith and L. Thomas (editors) *Planned Parenthood in Europe: A Human Right Perspective* (1986), referred to by Gillian Douglas in *Law, Fertility and Reproduction* (Sweet and Maxwell, 1991), 175.

<sup>120</sup> D. Biro; P. Jozan and K. Miltenyi (editors), 'Population and Population Policy in Hungary, (1984) referenced in Gillian Douglas, *Law, Fertility and Reproduction* (London: Sweet and Maxwell, 1991), 1.

<sup>121</sup> In the early 1970s the Chinese reproductive policy slogan was 'Late, Spaced and Few'; China changed its minimum age of marriage to effect change in family size and stem population growth to 20 years for women and 22 for men, with incentives (such as longer honeymoon), for later marriages of 23 and above for women and 25 and above for men; as a result Yang Chen reported that by 1984 the rate of late marriages had risen to 53% from 16% in the early 1970s: Yang Chen, 'Family Law in China' (1987) 1 *International Journal of Law and the Family* 248-258, 252.

<sup>122</sup> Sally Guttmacher; Farazana Kapadia; Jim Te Water Naude and Helen de Pinho, 'Abortion Reform in South Africa: A Case Study of the 1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 191-194, 191. On the other hand encouragement of contraceptive use among the black population was used to stymie the growth of the black population so that family planning became associated with the racist policy of the apartheid government; Ibid, 192.

<sup>123</sup> Petchesky gives a detailed analysis of how different States sought to control women's fertility in the 19<sup>th</sup> C leading to the criminalisation of abortion in some States; Rosalind Pollack Petchesky, (1990), (Footnote 28), 67-90.

<sup>124</sup> Christine Obbo (1981), (Footnote 117), 150.

population through fertility limitation is not being met.<sup>125</sup> This is often because of lack of proper medical facilities, malnutrition and disease women and children faced apart from women's lack of reproductive control.

The United Nations Fund for Population Activities (UNFPA), the United Nations International Children's Educational Fund (UNICEF) and the United States Agency for International Development (USAID) conducted a joint study in West and Central Africa in 2001 on fertility and causes of maternal mortality. The study revealed that 120,000 women die every year from complications during pregnancy and childbirth in most of West and Central Africa. "Within each hour about 14 women die and 25 new born babies don't survive".<sup>126</sup> The situation in Nigeria is equally alarming in that there is an estimated maternal mortality of 1,000 maternal deaths per 100,000 live births. In addition, there is an approximate 610,000 abortions, each year in Nigeria, a rate of 25 abortions per 1,000 women aged 15 to 44.<sup>127</sup> Judging by these statistics on the mortality and abortion rate of Nigerian women in these circumstances, the government may be justified in focusing attention on the provision of better health care services to preserve the life of women. The Nigerian government has therefore been less concerned with legalising abortion as a way of enforcing the reproductive autonomy of women and is reluctant to put in place policies that will control population through access to safe medically legal abortion. Thereby Nigerian women are denied reproductive autonomy because of social factors and the reluctance of government to make their reproductive health policies look like population control policies.

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<sup>125</sup> Charles Westoff and Akinrinola Bankole, 'Trends in the demand for family Limitation in Developing countries' (2002) 26(2) *International Family Planning Perspective* 56-62 & 97, 56.

<sup>126</sup> AllAfrica.com <http://allafrica.com/stories/200204050243.html> 'That Mothers May Live' (accessed April 5 2002); likewise in the USA the total white fertility rate decreased by half between 1800 and 1900 due to mainly a decline in marital fertility and social changes; Rosalind Pollack Petchesky, (1990), (Footnote 28), 73-74.

<sup>127</sup> Henshaw, *et al* (Footnote 108), see also; AllAfrica.com <http://allafrica.com/stories/200204050243.html> 'That Mothers May Live' (accessed April 5 2002).

## **Nigeria's available resources makes fertility control unnecessary**

I argue that there exists in all societies a synergy between social issues and State policies.<sup>128</sup> The prominent social issues focused upon through policies by the state are those that immediately affect the citizens poignantly and are those they are more vociferous about by government. Governments in turn will address these issues first. For most Nigerian citizens focusing on the availability of food, shelter, jobs and better health-care facilities rather than singling out abortion as a focal issue attracts the State's attention and is therefore the priority of its policies.

Despite having the largest population in Africa, no government in Nigeria has acknowledged that it is over-populated. This is justifiable as Greer<sup>129</sup> observes that most countries in the world will assert that their population growth rate is "acceptable".<sup>130</sup> No Government whether the developed societies of Britain and USA or the developing societies of Africa and Asia will readily admit to its citizens on coming to power that part of its manifesto is to effect a decrease in the population of its citizens. I observe that it is unusual for people to accept readily the curtailment of their fertility in the Nigerian society. A Nigerian sociologist at the University of Lagos commented that:

Sociologically coitus between a man and a woman  
is considered within our cultural frame of reference  
as procreation. Abortion is inconsistent with our  
people's value of seeing intercourse as procreation.  
In this society it is like the more children, the merrier.  
If people are finding abortion objectionable, socially,  
religiously, as a means of birth control, then it is

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<sup>128</sup> This is observed in the two examples I gave on the thalidomide cases in Britain (see footnotes 137 & 138) and the eugenic policy of the apartheid regime in South Africa stated above.

<sup>129</sup> *Ibid*, 33.

<sup>130</sup> This is probably because population growth is synonymous with poverty which is often associated with developing countries, few leaders in the developing world are often cynical about dictation from developed countries on how to cure the problems of population of developing countries because most of the policy guidelines are put in place primarily to benefit the developed countries as observed by: Lars Bondestam, (1980), (*Footnote 111*), 15. Bondestam illustrates this observation through the comment made by a Swedish 'expert' on West Africa who decided that the best way to accommodate the increasing meat consumption of Europe without breeding more cattle on their own soil (and disfiguring the green landscape of Europe) is to breed cattle in the Savannah of West Africa where labour is cheap (because cattle-breeding is labour intensive). The interest is not that of Africa but of what benefit to Europe and developed countries.



perceived as bad.<sup>131</sup>

During the course of this research (especially the in-depth interviews), I observe that the belief of some Nigerian policy makers and social commentators is that there is a cornucopia of natural resources in the state yet untapped to accommodate Nigeria's population. As a result, there is no perceived need to encourage abortion or abortion law reform through state policies. In this study, many respondents stated that mismanagement by previous governments have obviated development and growth. These are germane socio-cultural arguments that have made it unnecessary for previous governments to make reproductive autonomy and abortion a social and medically acceptable means of terminating unwanted pregnancies.

Successive Nigerian governments have also been reluctant to use abortion as a means of curbing fertility and thereby the population. A detailed analysis of the government policy paper on population for development (the National Policy on Population, NPP) I believe shows that there is a subtle undertone that government recognises that widening the scope of abortion is the best method of curbing population and increasing the standard of living of its citizens. Clearly, however, "the Nigerian approach"<sup>132</sup> as put forward by the Federal Minister for Health has not worked. The population growth projection for the future is 165 million by the year 2000 and 280 million by the year 2015. Nigeria's population stands at about 128,771,988 million presently.<sup>133</sup> Some university lecturers and members of the House of Representatives in the study area were sceptical about the need for abortion law reform and argued that the resources in Nigeria were not fully tapped and if properly managed and utilised, should be able to sustain whatever population Nigeria may have now and in future.<sup>134</sup> The society thereby denies women the right to make a choice of abortion premised on the assumption that

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<sup>131</sup> Bayo Ninalowo, 'Legalising Abortion' *Nigeria: Daily Times*, September 30, 1991, 12.

<sup>132</sup> FGN: NPP, 1988, (the term used in the 'Forward' to the NPP).

<sup>133</sup> CIA-The World Factbook-Nigeria <http://www.cia.gov/cia/publications/factbook/fields/2119.html> (accessed 27 May, 2005), (she is not too far from the projection).

<sup>134</sup> This is an area that I feel needs further research because it wasn't part of the specific questions in the questionnaire because it will throw more light on the different other reasons why some Nigerians are opposed to fertility control by women and access to abortion apart from the religious reasons .



women need not resort to abortion in the first place since the resources in the country are sufficient to take care of unplanned pregnancies and births if properly managed.

My argument against this assertion is that Legislators as representatives of the people are expected to enact laws that reflect the evolving exigencies and views of society.<sup>135</sup> For example in the United Kingdom it is estimated that about 10,000 to 100,000 illegal abortions were performed by quack doctors in the early 1960s which led to public outcry for abortion law reform.<sup>136</sup> However, the most poignant social disaster that drastically tilted the otherwise conservative anti-abortion British society's view on abortion was the thalidomide tragedy in Britain in the early 1960s<sup>137</sup>. The thalidomide cases brought to the British public the inadequacy and sometimes the absurdity, of the law on abortion before 1967. Abortion became a public health issue.<sup>138</sup> Women who were prescribed and took the drugs knew that they would certainly have terribly deformed babies as a result, but were precluded by the law from seeking legal termination of the pregnancy. As a public health, issue abortion was then extensively debated at public and parliamentary levels, which can be said to be the one singular reason that brought about abortion law reform in Britain. American public opinion as well as those in many parts of Western Europe also changed to an acceptance of medically legal abortion because of the thalidomide medical disaster. Many parts of the developed world adopted a liberal view on abortion as a result.<sup>139</sup> It also resulted in a reform of the law making abortion an operation that could be legally obtained in many of these

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<sup>135</sup> For instance it is believed that the Second World War in most part of the world affected by the war led to a drastic increase in the number of illegitimate children and socially 'disastrous pregnancies': Rosalind Pollack Petchesky, (1990), (*Footnote 28*).

<sup>136</sup> J. K. Mason, *Medico-Legal Aspects of Reproduction and Parenthood* (2<sup>nd</sup> Edition), (Ashgate Dartmouth, 1998), 107-141, 107.

<sup>137</sup> This was the case where British medical doctors administered the drug thalidomide to thousands of women to curb morning sickness when they were pregnant. The drug was subsequently found to cause devastating deformities on the foetus so those babies were born severely deformed and with missing limbs. These pregnant women could not initially seek legal abortion even in this extreme case.

<sup>138</sup> Jo Bridgeman, 'A Woman's Right to Choose' in Ellie Lee (editor) *Abortion Law and Politics Today* (New York: PALGRAVE, 1998), 79; also, Ann Furendi, 'Wrong but the Right Thing to Do' in Ellie Lee (editor) *ibid*, 165 and Melanie Lath 'Reform and Revolution: the Campaign for Abortion in Britain and France' in Ellie Lee (editor), *ibid*, 136.

<sup>139</sup> Laurence H Tribe, (1992), (*Footnote 112*), 37.

countries.<sup>140</sup> While Nigeria has increasingly focused on reproductive health of women,<sup>141</sup> this has been in relation to improvement in health care and population control; but I do not see how these can be isolated from the broader issue of abortion and other reproductive rights. I believe there is a need for Nigerian government to be decisive about abortion law reform as a major policy due to the mortality and health effect of illegal abortion on her women population.

Nigeria's reproductive health objectives could be achieved through international participation and collaboration with world bodies promoting such objectives.

Over the years, Nigeria has participated in many international conferences whose themes have laid emphasis on social development in all countries of the world, which could have made her achieve objectives of reproductive choice for women.<sup>142</sup> A major theme running through these Conventions is the recognition and enforcement of the rights of women including reproductive health rights.<sup>143</sup> The exercise of these rights should be viewed as a part of women's reproductive rights and not merely as a means of population control or fertility regulation.<sup>144</sup> Despite participating in these international conferences, the Nigerian government

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<sup>140</sup> Laurence H. Tribe, *ibid*, 65: Abortion became legal earlier in the Eastern European countries than in Western Europe. Hungary in 1956, Czechoslovakia in 1957, Romania banned it in 1966 and decriminalised it in 1989.

<sup>141</sup> 'The UNFPA noted that: Nigeria's National Population Policy (NPP) has been revised to take into account the objectives of the International Conference on Population and Development. However, progress has been hampered in recent years by severe budgetary constraints coupled with the still-limited capacity of the National and 36 State Planning Commissions to integrate population factors into development plans and to translate the NPP into an multisectoral programme framework that can be implemented': UNFPA: 'Nigeria's Population' <http://www.unfpa.org/profile/nigeria.cfm> (accessed 21 September 2005); This shows that there is an awareness of the need to curb population growth to aid development and increase Nigerians' standard of living, but I believe it is still unachievable unless women have access to control their fertility under less stringent circumstances as it is presently under the law.

<sup>142</sup> Some of these conferences are the Convention on the Elimination of All Forms of Discrimination against Women, 1979: General Assembly Resolution 34/180, UN Document number A/34/46 (1979); The African Charter on Human and Peoples' Rights, 1981; WHO and International Women's Health Coalition, *Creating Common Grounds*, 1991: WHO/HRP/ITT/91 (Geneva, 1991); The Cairo Conference on Population, 1993; the International Conference on Population and Development, (ICPD)1994 and the Beijing Conference on Women, 1995.

<sup>143</sup> For example the Women's Convention aims at making all those people who exercise some form of influence on policy affecting the reproductive health of women should recognise it as a vehicle to ensure reproductive empowerment for women which I believe demands that government, decision-makers, legislators and the women themselves ensure that women are given the right of choice to exercise control over their fertility.

<sup>144</sup> Maria Isabel Plato, 'Reproductive Rights as Human Rights: The Colombian Case in Rebecca J Cook, (editor), *HUMAN RIGHTS OF WOMEN National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1993), 515-516.

failed to implement reproductive rights of women through a reform of the abortion law due to political instability as I discussed earlier.

Reproductive health rights are seen as an aspect of universal human right. The evolution of the reproductive health framework shows that the notion of universal human rights was first incorporated into the United Nations Charter in 1945 giving rise to the UN Declaration of Human Rights in 1948, which affirmed equality among gender as a basic principle.<sup>145</sup> The concept of universal rights was first applied to family planning in 1968 at the International Human Rights Conference in Tehran<sup>146</sup>, which declared that:

Couples have a basic human right to decide  
freely and responsibly on the number and spacing  
of their children and a right to adequate  
education and information in this respect.<sup>147</sup>

Freedman and Isaacs are of the opinion that this statement was more to convince world government to implement family planning programmes rather than giving the intention that it is a declaration of government to protect the rights of women from population control.<sup>148</sup>

The World Population Conference in Bucharest Romania in 1974 rephrased this declaration to *individuals* (not only couples), which indicated that all people should have the means to exercise these rights.<sup>149</sup> However, women's reproductive rights did not come into focus until 1975 with the declaration of the Women's Decade.<sup>150</sup> The UN Decade for Women resulted in an international legal instrument: the Convention of the Elimination of all forms of Discrimination against Women (CEDAW), ratified in 1979.<sup>151</sup> By 1984 at the World Population Plan of Action

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<sup>145</sup> Sonia Corr  a, (1994), (*Footnote 98*), 57.

<sup>146</sup> *Ibid*, 59.

<sup>147</sup> L. P. Freedman and S. L. Isaacs, 'Human Rights and Reproductive Choice' (January/February 1993) 24 *Studies in Family Planning* 18-30, 19.

<sup>148</sup> Freedman and Isaacs, (*ibid*).

<sup>149</sup> Corr  a believes that this phrase could be interpreted to cover a range of social and economic rights: Sonia Corr  a, (*Footnote 98*),, 59; see also Freedman & Isaacs, (*Footnote 147*), 20.

<sup>150</sup> The UN sponsored the meeting International Women's Year Conference in Mexico City in 1975 that gave rise to the decade long declaration which culminated in Nairobi in 1985: Sonia Corr  a, (*ibid*), 75.

<sup>151</sup> While CEDAW was a significant victory for securing women's equality with men it failed to specifically state a number of women's reproductive rights: Corr  a, (*ibid*), 58-59.

(WPPA) female delegates sought to focus on the correlation between fertility and low education of women because delegates believed there is a 'linkage between high fertility and lack of education, health care, and employment opportunities for women and their low status in general'.<sup>152</sup> This research shows that the desire to complete their education by adolescents is accepted as a justifiable reason for choosing abortion.<sup>153</sup> One could argue that these conventions encouraged Nigeria to implement the National Population Policy in 1988.

### *Social duty of the State to implement reproductive health policies*

I argue that the consideration government have for women is reflected in the policies they put in place regarding women's health, it also reflects the position government expects women to occupy in society as equal partners with men in the socio-political development of the nation. For instance, the African National Congress (ANC) leaders during the 1994 elections<sup>154</sup> advocated that 'every woman must have the right to choose whether or not to have an early termination of pregnancy according to her own belief'.<sup>155</sup> To my mind, the policy objectives as enumerated above cannot be fully implemented until there is a review of the law on abortion that will make it feasible for women to exercise the right to safe and legal abortion within parameters that are socially acceptable to Nigerians. The Government's objective of a decrease in population growth and even distribution of population between the urban and rural areas can be achieved through access to legally safe termination of unwanted pregnancies. This has to be in conjunction with education of both men and women on reproductive health, contraceptive use and the achievement of a better standard of living through having only the number

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<sup>152</sup> Corr  a, Sonia (ibid), 59-60, see also R. Dixon-Mueller, 'Abortion Policy and Women's rights: Transforming Reproductive Choice in Developing Countries'(1990) 20(2) *International Journal of Health Services* 297-314, the rights of individuals to exercise control over their body also opens up new areas in economic and social rights according to Corr  a, (ibid).

<sup>153</sup> This forms the focus of my discussion in chapter 5 and 5.3 in particular.

<sup>154</sup> Under South Africa's 'Reconstruction and Development Programme': Sally Guttmacher et al (Footnote 122).

<sup>155</sup> ANC, *The Reconstruction and Development Programme: A Policy Framework*, (South Africa: Johannesburg, Umanyano Publication, 1994), in Sally Guttmacher (et al); (ibid), the policy culminated in the South African 'Choice of Termination of pregnancy Act' which came into effect in February 1 1997, thereby allowing women access to abortion on request within the first trimester of pregnancy without any approval from doctors, psychiatrists or magistrates: South Africa: 'Choice of Termination of Pregnancy Bill' Section 2, (1997) *Gazette*, 45.



of children couples are capable of maintaining in accordance with the objectives of the NPP as I discuss in chapter 8.2. 'Voluntary fertility regulation methods'<sup>156</sup> as stated in the NPP should include voluntary access to legally safe abortion. Without this Government policy will be contradictory, (since the fertility, regulation is not wholly voluntary) and its objective of a reduction in the birth rate and improved standard of living may be difficult to achieve. Government policies have thereby prevented women from exercising their reproductive right to control their fertility and failed to achieve population control.

### *Constitutional duty of government*

In my opinion, the State has a constitutional duty towards the people as part of state's 'social objective' to provide 'adequate medical and health facilities to all persons'.<sup>157</sup> Chapter two of the Nigerian Constitution is titled 'Fundamental Objectives and Directive Principles of State Policy'<sup>158</sup> and all organs of government are directed 'to conform, observe and apply' the provisions of this chapter.<sup>159</sup> Justice Blackburn,<sup>160</sup> in the American case of *Roe v Wade*<sup>161</sup> noted the 'state's important interest in safeguarding health, maintaining medical standards, and protecting potential life...at some point in pregnancy',<sup>162</sup> are compelling enough reasons to justify some form of regulation of abortion. However, the reported cases of maternal mortality and morbidity resulting from complications of illegal abortion are pervasive social problems faced by thousands of Nigerian women annually which government needs to put in perspective in arriving at an

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<sup>156</sup> FGN: NPP Forward.

<sup>157</sup> FGN Constitution, 1999, S. 17(d).

<sup>158</sup> The Constitution of the Federal Republic of Nigeria, 1999 S. 13-24, the chapter lays out the obligations of government towards the people and those of the people towards the State, and specifically S. 15(2) promotes national integration and prohibition of discrimination on the ground of sex (among other distinctions), which is a constitutional reason for government to give women the right to control their fertility under similar terms as the South African legislation.

<sup>159</sup> FGN Constitution, 1999: S. 13 'Fundamental obligations of the Government'.

<sup>160</sup> CNN.com/LAW CENTER '30 years after ruling, ambiguity, anxiety surround abortion debate', William Mears and Bob Franken, <http://www.cnn.com/2003/LAW/01/21/roevwade.overview/> (accessed 22 February 2003), 2.

<sup>161</sup> *Roe v Wade* (1973) 410 US 113.

<sup>162</sup> *Roe v Wade* (1973) 410 US, 179.



abortion policy.<sup>163</sup> To stem the unnecessary death and be able to achieve this objective, government will need to address the issue of unsafe abortion in Nigeria as a primary social concern in order to improve the quality of life of her citizens.<sup>164</sup>

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<sup>163</sup> There have been several research carried out in Nigeria on the health implications of complications resulting from illegally procured abortion in the past 10 years: Stanley K Henshaw *et al*; (*Footnote 108*),164; O. A. Ladipo, 'Illegal abortion and effect on medical practice and public health-Nigeria' in E. Renee 'Changing patterns of child-spacing and abortion in a northern town', Working Paper Series, (Princeton, New Jersey: Office of Population Research, Number 97-1, 1997); Odile Frank, (*Footnote 116*),201; D. Nichols; O. A Ladipo; J. M. Paxman, and E. O. Otolorin, 'Sexual behaviour, contraceptive practice and reproductive health among Nigerian adolescents' (1986) 17(2) *Studies in Family Planning*, 100-106, 102; A. A. Olukoya 'Pregnancy termination: Results of a community-based study in Lagos, Nigeria' (1987) 25(1) *International Journal of Gynaecology and Obstetrics* 41-46.

<sup>164</sup> Corr  a argues that laying emphasis on the health implications of abortion rather than its human right angle might be more persuasive in making the developing countries of Africa change its abortion policy and law: Sonia Corr  a, (1994), (*Footnote 98*),71-72; which is a strategy adopted in passing to law most of the most radical abortion laws in Sub-Saharan Africa; see account of the passage of reform by: Sally Guttmacher; (*Footnote 122*).

## 2.4 Laying beside a Different Kind of Master: Population Control, International Politics and Nigerian Women's Reproductive Autonomy

In the preceding sub-heading, I dwelt on the influence of colonial history, internal politics and the influence of tradition and culture on the reproductive rights of women. This sub-heading is concerned with population control policies of developed countries and their influence on domestic policies of developing countries like Nigeria. I begin this discussion by looking at the historical correlation between international population policies and reproductive health.

There is a need to appreciate that government policies are influenced by international politics that do not seem at first directly related to reproductive autonomy. The link between societal development and population control goes back to 1789 when Reverend Thomas Malthus published his calculations to show how population growth resulted in poverty of the working class.<sup>165</sup> Malthus' book, *'Essay on the Principle of Population'* was directed at the working class to whom his doctrine was towards "a new moral economy".<sup>166</sup> His doctrine to the working class was for them to refrain from "excess" sex and not bring children to the world when they cannot find the means for their support.<sup>167</sup> This Neo-Malthusian ideology has informed the public policy of many governments for decades. Most importantly however, some political economist have stated that it has also been the policy the developed Western world have used and premised their interactions with the developing nations in Africa, Asia and Latin America.<sup>168</sup> This is essentially because it is known that population growth directly influences food production and

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<sup>165</sup> Lars Bondestam, (1980), (Footnote 111), 2.

<sup>166</sup> Bondestam states the idea was not original to Malthus because Adam Smith 20 years before advocated similar theory: *ibid*

<sup>167</sup> *Ibid*, 36-37.

<sup>168</sup> Lars Bondestam, , *ibid*, 50-57; Frank Furedi (1997), (Footnote 85), 52-60; Note that Corr  a states that the impact of the Structural Adjustment Programme (SAP) on the overall economic conditions and service provisions in developing countries of Africa must be further investigated because the conditions of funding sometimes seriously compromised the scope and quality of general health services available and usually women are the hardest hit. Though I recognise that the internal social problems of ethnic divisions and use of population to gain superior political power is also an inherent problem that cannot be discountenanced.

the quality of life of woman and their children.<sup>169</sup> The effect of population on reproductive health is that after the Second World War, the standard of living of most developing countries improved considerably.<sup>170</sup> As a result, mortality from pregnancy related complications reduced, leading to an increase in the population of many developing countries because their fertility remained high.<sup>171</sup>

The alarm of the increase in population growth of developing nations was heightened when Paul Ehrlich<sup>172</sup> published his pamphlet titled 'The Population Bomb' where he asserted that population "threatened to create an explosion, as disruptive and dangerous as the atomic bomb".<sup>173</sup> The United States of America (USA) from the 1950s increased their contact and direct influence on many developing countries by giving economic aid tied to population reduction.<sup>174</sup> America thereby, took over the influence of the former European colonial leaders in the developing countries through promoting contraceptives and abortion.<sup>175</sup>

Following World War Two, developed nations became increasingly alarmed at the disparity in the population distribution between the developed nations of the North and the developing ones of the South.<sup>176</sup> The USA became the greatest proponent of the curtailment of the population of the South at this time through encouraging economic growth and a reduction in the population of the South<sup>177</sup> principally because the high fertility of the South was seen as a potential threat to the fast-ageing and socially problematic geriatric population of the North.<sup>178</sup> Furedi states

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<sup>169</sup> Sonia Correa, (1994), (*Footnote 98*), 1-5; Rosalind Pollack Petchesky, (1990), (*Footnote 28*).34-45.

<sup>170</sup> Isichei says the impact of western ideas, access to imported European goods, geographical mobility all made access to available resources more accessible and improved the condition of the population: Elizabeth Isichei, (1976), (*Footnote 11*).38-39.

<sup>171</sup> Sonia Corr  a, (1994), (*Footnote 98*), 34 & 53 (note 23).

<sup>172</sup> Laurence H. Tribe, (1992), (*Footnote 112*), 41.

<sup>173</sup> *Ibid*.

<sup>174</sup> This view finds endorsement in that both Presidents Harry Truman and Dwight Eisenhower became co-chairmen of the Planned Parenthood/World Population in 1965: Rosalind Pollack, Petchesky, (1990), (*Footnote 28*), 118.

<sup>175</sup> *Ibid*, 120.

<sup>176</sup> Frank Furedi, (1997), (*Footnote 85*), 6.

<sup>177</sup> *Ibid*; 22-23; Biggs states for instance that by the year 2021 there will be an excess of 12 million older people in Britain which means there will be more older people each year making demand on welfare resources: Hazel Biggs, 'The Ageing Body' in Evans, Mary and Lee, Ellie, (editors) *Real Bodies A Sociological Introduction* (Palgrave, 2002), 167.

<sup>178</sup> Furedi, *Ibid*; P. Kennedy, *Preparing for the Twenty-first Century* (London: Harper Collins, 1993), 24-25. The reasoning behind this is that the North will be unable to regenerate their population, which will lead to a reduction in their work force, so that fewer young people are servicing the older retired population. Ultimately the population of the North will be replaced by immigrants from the South and result in changes in the socio-cultural make-up of Northern societies with its resultant

that 'pronouncements on population are rarely neutral statements about numbers. They are usually based on an agenda, which involves issues of resources, power and national interest'.<sup>179</sup> I believe vital economic aids from Western countries and debt rescheduling to improve the ailing economies of developing nations may not overtly be tied to population control;<sup>180</sup> but this aid is often a subtle means of ensuring that extant governments in developing nations reduce the population of their people and conform to the dictates of Western interests.<sup>181</sup> To achieve the aim, aid was used as the price to be paid for defusing the population boom of the South.<sup>182</sup> Giving aid to Third World countries like Nigeria with insistence on a reduction in their population was justified by Hertzler in these words:

These peoples are problems, even hazard, for all of the countries of the world as endemic diseases, as areas of economic dependency, as explosive centres of unrest and rebellion and as possible disturbers of world peace if and when they should attempt the age-old nostrum of alleviating their population pressure by aggressive action against presumably more favourably situated peoples. It is desirable, in fact essential, that they be extricated from their adverse state at the earliest possible moment.<sup>183</sup>

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effect of antagonisms and race problems: Erland Hofsten, 'Is There a Population Problem in the Industrialized Countries?' in Lars Bondestam, and Staffan Bergström, (editors) *Poverty and Population Control* (Academic Press, 1980), 79-80.

<sup>179</sup> Frank Furedi, (ibid), 52

<sup>180</sup> Between the late 1970s and 1980s Nigeria along with other countries of the South, 'particularly African countries experienced severe savings gap and shortage of funds for investment. In the face of low international interest rates, some countries succumbed to the temptation of resorting to external borrowing' for development from the developed nations who were under one economic conglomerate called 'The Paris Club'. Due to political and economic upheavals in Nigeria, the loans could not be repaid as and when due making successive governments to ask for debt rescheduling. The conditions tied to them were often tied to Nigerian government putting in place appropriate population control policies: FGN: Office of Public Communication, Abuja, Nigeria: 'Debt: Challenge to Nigeria's Sustainable Development', [http://www.nigeriafirst.org/printer\\_55.shtml](http://www.nigeriafirst.org/printer_55.shtml) (accessed October 23 2005). After completing this thesis the Federal Government of Nigeria announced on 21 April 2006 that it had repaid all the loans owed The Paris Club.

<sup>181</sup> Frank Furedi, (1997), (Footnote 98), 52-64.

<sup>182</sup> Frank Furedi, *Ibid*, 23.

<sup>183</sup> J. O. Hertzler, *The Crisis in World Population: A Sociological Examination with Special Reference to the Underdeveloped Area* (Lincoln Nebraska: University of Nebraska Press, 1956), 111.



I identify with the opinion of Furedi in stating that 'the growth of academic ideas about encouraging economic development of societies of Africa, Asia and Latin America was at least in part inspired by the non-economic motive of avoiding the consequences of a population explosion in the South'.<sup>184</sup> Many developing nations, such as Africa, Asia and Latin America are coerced into putting in place anti-natalist policies in line with international dictates by developed western nations before economic aids and debt rescheduling are given to them.<sup>185</sup> The Nigerian public may oppose abortion law reform as another anti-natalist attempt to re-colonise Nigeria through curtailment of her population and denial of vital aid to achieve economic development,<sup>186</sup> but I believe the focus of the Nigerian government should be on the benefit of a manageable population to economic development and the health of women generally.

The developed countries became alarmed at the population growth of the developing countries and needed to find justification to curb the trend, which they sought to do through encouraging the use of contraception and abortion.<sup>187</sup> Developed countries also used Neo-Malthusian theory as justification to convince the developing countries to accept the conditions they attached to economic aid. The leaders in the developing countries were coerced into encompassing Western donor organisations' population reduction policies into their domestic policies to enable them to receive the aid and thereby achieve a better standard of living for their people.<sup>188</sup> Western donor nations reasoned low population of developing

<sup>184</sup> Frank Furedi, (1997), (*Footnote 98*), 22.

<sup>185</sup> Frank Furedi, (*ibid*) 173; As I stated earlier, the implementation of the NPP by the military government in 1988 is believed to have been out of compulsion by international donor nations of the IMF and World Bank to abide by a number of conditions given by them (which include population control) before her debt could be rescheduled: [nigeriafirst.org](http://www.nigeriafirst.org) Official Website of the Office of Public Communication, State House Abuja, Nigeria, 'DEBT: Challenge to Nigeria's Sustainable Development', [http://www.nigeriafirst.org/printer\\_55.shtml](http://www.nigeriafirst.org/printer_55.shtml) (accessed 11 November 2005).

<sup>186</sup> This is demonstrated in the run-up to the implementation of the reformed abortion law in South Africa where it was seen as another means of curbing the population of the black population and keep them in servitude as was the case under the former apartheid government: Sally Guttmacher; *et al*, (*Footnote 122*), 191-192; this view is not limited to Nigeria as it has been opposed for the same reason by other developing countries see: Sonia Corr  a, (1994), (*Footnote 98*), 42-43 7 137-138.

<sup>187</sup> Frank Furedi, (1997), (*Footnote 98*), 23.

<sup>188</sup> Since the time of Malthus in the early part of the 19<sup>th</sup> Century it was popular to blame societal defects on population growth: Erland Hofsten, 'Is There a Population Problem in the Industrialized



countries would achieve an enhanced economic rate.<sup>189</sup> What has further worsened the population problems of developing countries is the movement of the population from the rural to the urban area, which has led to a reduction in agricultural produce and therefore less food for the population.<sup>190</sup> Many of the developing nations including Nigeria are also faced with public and private investment debt payment and a reduction in the saving capacity of government.<sup>191</sup> Developing governments such as Nigeria therefore looked to the developed countries to ease their economic problems and growing domestic social unrest. Nigeria, among many countries in Sub-Saharan Africa in recent times has had a steady rise in fertility with Nigeria's population growth dropping between 1970-1990 by 12.6 percent. But the NPP maintains this kind of growth rate is not sustainable because it 'constrains the government from fulfilling [the] increase in the standard of living of the people [and] every effort needs to be made to adjust this rate of growth of the population to the resources available to the people and the nation'.<sup>192</sup>

However, many people in Nigeria do appreciate the benefit of fertility control and its usefulness in improving the standard of living of the people.<sup>193</sup> There is a greater need for government policies to meet the demands of the demographic growth rate and reduction in food supply has on the economy. This I believe is achievable if women are given the legal means to control their fertility through a reformed abortion law.<sup>194</sup>

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Countries?' (1980), (*Footnote 178*), 76; Frank Furedi, (1997), (*Footnote 98*), 23; this is the general focus of Cohen's article showing that such subtle incursion into the domestic policies of developing countries of Africa is still going on under the Bush administration: Susan A. Cohen, 'Abortion Politics and the U.S. Population Aid: Coping with a Complex New Law' (September 2000) 26(3) *International Family Planning Perspectives* 137-138 & 145.

<sup>189</sup> Nanette Davies, 'From Crime to Choice: The Transformation of Abortion in America', (1985), 102, cited in Laurence H. Tribe, (1992), (*Footnote 112*), 41-43.

<sup>190</sup> Sonia Corr  a, (1994), (*Footnote 98*), 34.

<sup>191</sup> Ibid, 35.

<sup>192</sup> Federal Government of Nigeria: NPP S. 3.

<sup>193</sup> In an earlier report by Odumosu (*et al*) on the attitude of the people of Oyo State in Nigeria to fertility control, a policy maker had this to say: 'Education and good standard of living is important to our people. Right now, there is the burden of sending children to school, feeding them, and so on, in these bad times. It is only an illiterate who will not appreciate the benefits of fertility control now': O. Odumosu; F. O. N. Roberts and A. S. Jegede 'Regional Differentials and the Implementation of the National Policy on Population: A Pilot Study of Borno and Oyo States of Nigeria' in Adedotun O. Phillips and D. Olu Ajakaiye, *Population-Environment Interactions in Nigeria* (Nigerian Institute of Social and Economic Research (NISER), 1996), 26.

<sup>194</sup> In the findings of this research several respondents stated that it was important for them to be able to control their fertility through legally safe abortion and other contraceptive means in order for

As polemic as these issues may be, the relevance of this to this research is that they show that population growth has a direct effect on economic policies of developing countries which in consequence influence the reproductive health policies of developing countries such as Nigeria.<sup>195</sup> I also believe these facts show that reproductive autonomy and the right of choice of women to control their fertility could arguably said to be dependent on national and international politics. Therefore, the attempt to reduce the population of the developing countries by the developed ones made the people in developing nations to view the interference into their domestic policies with animosity and suspicion.<sup>196</sup> I argue further that though Nigerian leaders might embrace these populations reducing policies by inculcating them into their domestic policies the people themselves could consciously reject it. Riedmann states in her study on population policies in Nigeria that many Nigerians view the population policies put in place by government with suspicion because it challenges cultural values about fertility.<sup>197</sup>

During this study, also some respondents were sceptical and viewed the whole issue of abortion and all forms of fertility prevention as a method devised by developed countries to curb their population out of fear of their own dwindling population growth.<sup>198</sup> Therefore, the interplay of national and international politics

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them to have only the children they can adequately cater for from their income and maintain a decent standard of living: see samples of the respondents responses in Chapter 5, Text Box 5.13.

<sup>195</sup> A. I. Ayodele, 'Public Enterprises and the Structural Adjustment Programme: Policy Implementation and Implications' in Dotun Phillips and O. Ndekwe (editors), *Structural Adjustment Programme in a Developing Economy* (Nigerian Institute of Social and Economic Research, 1987; D. Olu Ajakaiye, 'Growth, Structure and Linkages in the Nigerian Economy' in M. I. Obadan, and D. O. Ajakaiye (editors) *Nigerian Economic Development* (National Center for Economic Management and Administration (NCEMA), 2000).

<sup>196</sup> Reidmann in her study in Nigeria on the implementation of the National Policy on education carried out in 1995 found that regional differences existed between the north and south of Nigeria on the issue of fertility control. While the northern people (Borno State) rejected outright attempts to curtail their fertility on religious and political grounds, the southern Nigerians (Oyo state) were more willing to embrace family planning, contraceptives and abortion if it will improve their standard of living and enable them educate their children, A Reidmann: (1993) (*Footnote 84*);. See also O. Odumosu *et al* 1996), (*Footnote 193*), 11-16 and 26-31.

<sup>197</sup> Agnes Riedmann, (1993), (*Footnote 84*), 68-69.

<sup>198</sup> Furedi states that in a USA government document titled 'Implications of worldwide population growth for US security and overseas interests' it was said that 'To "minimise charges of an imperialist motivation behind support of population activities"...the programmes had to be presented as if they were about social reform...[and] that terms like 'population control' and 'birth control' should be avoided by personnel implementing such programmes in the Third World...[And ] proposed that population programmes should be disguised as a service promoting health or some other good': Frank Furedi (1997), (*Footnote 98*), 137-138.

can be said influence the lack of abortion law reform by successive Nigeria governments.

The mistrust the developing countries have towards the developed countries in tying aid to population reduction and the use of contraceptives and abortion is traceable to the eugenic principles of Maria Stopes.<sup>199</sup> Stopes attitude to miscegenation was extreme and severe. The depopulation of the less than perfect race she believed could be achieved through curbing their fertility through sterilisation. Muriel Segal said of Stopes that 'She believed that all half-casts should be sterilised at birth. Thus painlessly and in no way interfering with the individual's life, the unhappy fate of he (sic) who is neither black nor white is prevented from being passed on to unborn babies.'<sup>200</sup>

Tribe states that this type of attitude towards the so-called Third world countries started the Planned Parenthood Federation that has embarked on several population limitation programmes in Africa, Latin America and Asia.<sup>201</sup> The rejection of fertility control by women in Nigeria and other developing countries to my mind is not borne out of a desire to have children solely for social reasons alone, it is also because many women mistrust and find the contraceptive methods put forward by the Western countries incompatible with their culture.<sup>202</sup>

### **The origin of Western nations' incursion into the bedroom of the Nigerian nation**

Increasingly it seems that Western donor nations have found it more expedient to encourage decline in population than to make a commitment to encourage

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<sup>199</sup> The founder of the Eugenic Society Maria Stopes from the early 1920s had always had an obsession to maintain the purity of the races and prevent the over-population of the world by less desirable humanity such as mixed race children, coloured people, the poor and the disabled: Rosalind Pollack Petchesky, (1990), (*Footnote 28*), 54; also Germaine Greer, *Sex and Destiny The Politics of Human Fertility* (London: Secker and Warburg, 1984), 134-137.

<sup>200</sup> 'Australian Women's Weekly' 19 April 1934, in Germaine Greer, (*ibid*), 310.

<sup>201</sup> Laurence H. Tribe(1992), (*Footnote 112*), 41; Germaine Greer, *ibid* 310.

<sup>202</sup> Odile Frank, (*Footnote 116*), 183; Charles Westoff and Akinrinola Bankole, 'Trends in the demand for family Limitation in Developing countries', (2002) 26(2) *International Family Planning Perspective* 56-62 & 97; 59; and Anastasia J. Gage Brandon and Dominique Meekers, 'Sex, Contraception and Childbearing Before Marriage in Sub-Saharan Africa' (1993) 19(1) *International Family Planning Perspective* 14-18 & 33, 16.

development and transformation of the developing countries through socio-economic transformation of their society.<sup>203</sup> This opinion rests on the basis that in recent times the USA, which is the largest aid donor nation,<sup>204</sup> has since April 2000 followed a new policy that seeks to further curtail the reproductive autonomy of woman in developing countries.<sup>205</sup> What is referred to as 'the global gag rule' is a US law whose goal is to discourage non-governmental organisations (NGOs) based outside the United States from providing any abortion services (even where abortion is legal in that country), with any of their funds, even those not coming from the USA government.<sup>206</sup> Unfortunately, most cash-strapped developing countries need the aid the USA provides to maintain their health services especially in the area of reproductive health. These subtle incursions into domestic policies of developing countries by the USA cannot be justified especially when it is shown that in the developed countries of Europe, the ability to control their procreative autonomy has helped women to control and improve the standard of their lives, members of their family and consequently the nation.<sup>207</sup>

President Clinton<sup>208</sup> stated the USA's commitment to voluntary and safe family planning services is due to their 'moral interest in saving human lives...and [as a nation] believes in individual freedom and responsibility.... He further said 'we have every interest in supporting others around the world who seeks the same rights and responsibilities we ourselves enjoy'. He went on to refer to the USA Congressional imposed restrictions 'as a destructive double standard' [asking further that] 'When would we ever accept rules telling Americans at home not to even discuss women's health and women's choices?'<sup>209</sup> However, increasingly,

<sup>203</sup> Furedi terms this policy trend as the New World Order: Frank Furedi, (1997), (*Footnote 85*), 173.

<sup>204</sup> The majority of the aids given are through Governmental and NGOs and are usually given to collect demographic data, support contraceptive research; the countries have over time become dependent on these aids and most times find it inauspicious to reject the conditionalities tied to the international economic assistance; Sonia Corr  a, (1994), (*Footnote 98*), 18-19.

<sup>205</sup> The policy was enacted into law in November 1999 and it came into effect in April 2000: Susan A Cohen, 'Abortion Politics and the U.S. Population Aid: Coping with a Complex New Law' (September 2000) 26(3) *International Family Planning Perspectives* 137-141, 137.

<sup>206</sup> Susan A. Cohen, (*Ibid*).

<sup>207</sup> O. Odumosu *et al* (1996), (*Footnote 193*), 11-16 and 26-31.

<sup>208</sup> At a gathering at the White House to discuss the importance of international family planning programmes in April 2000: Susan A. Cohen, (*Footnote 205*), 137-138 & 145.

<sup>209</sup> President W. J Clinton, Washington DC, April 7 2000 cited in: Cohen, Susan A. *ibid*. Note however that Clinton is a Democrat, which has always been known to believe in the rights of



'Third World women'<sup>210</sup> are being told what they can do with their body by the West in return for aid through the economic policies these countries are made to put in place. For example, President Clinton had revoked the "global gag rule" in 1993;<sup>211</sup> however, President Bush on assuming office re-imposed the rule<sup>212</sup> and used every UN meeting to gradually distance the USA from the worldwide consensus on reproductive and sexual health issues. This is despite the fact the United States itself was instrumental in forging the policy adopted at the 1994 International Conference on Population and Development in Cairo, and the 1995 World Conference on Women in Beijing.<sup>213</sup> The Bush administration have in recent times adopted the policy of refusing funding for any UN organisation seemingly promoting contraceptive or abortion services. In July 2002, the administration officially announced it was cutting off all U.S. support for the United Nations Population Fund (UNFPA) for example.<sup>214</sup> In Africa 44 percent of the population are under the age of 15 years,<sup>215</sup> in Nigeria, 42.3 percent are under 14<sup>216</sup> and by the age of fifteen 16 percent are sexually active;<sup>217</sup> despite these facts research has shown that most Nigerian adolescents distrust contraceptives

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women to control their reproduction through safe legal abortion and the use of contraceptives; President Reagan had first put the global gag rule in place in 1984.

<sup>210</sup> According to Johnson-Odim the term *Third World* is frequently applied in two ways: to refer to "underdeveloped"/overexploited geographical entities i.e., countries, regions and even continents': Cheryl Johnson-Odim, 'Common Themes, Different Contexts: Third World Women and Feminism' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres, *Third World Women and the Politics of Feminism* (Bloomington and Indianapolis: Indiana University Press, 1991), 314 the women of this region are Third World while those of the developed regions are First World.

<sup>211</sup> Susan Cohen, 'The President's Overseas Reproductive Health Policy: Think Locally, Act Globally' (August 2002) 5(3) *The Guttmacher Report on Policy* <http://www.guttmacher.org/pubs/tgr/05/3/gr050301.html> (accessed 26 June 2005).

<sup>212</sup> Eventually President Bush froze funds US Congress had appropriated for the UNFPA for the Financial Year 2002 and from then on the Bush government started using every meeting of the UN where USA funds were given to aggressively export its domestic 'abstinence-only' campaign as well as its antiabortion views: Susan Cohen, (August 2002) (*ibid.*) Ifenne of Nigeria at the White house had earlier commented on the 'global-gag-rule and said: "I believe that the global-gag-rule imposed by the US> Congress stifles robust debates on women's reproductive rights in developing countries. It is retrogressive. It is repressive. It is, indeed, undemocratic": Eyantu Ifenne, The White House, Washington DC, April 7 2000 in Susan A. Cohen, (*Footnote 205*), 145.

<sup>213</sup> Susan Cohen, (August 2002) (*Footnote 211*), <http://www.guttmacher.org/pubs/tgr/05/3/gr050301.html> (accessed 26 June, 2005).

<sup>214</sup> Cohen, Susan A., 'U.S. Global AIDS Policy and Sexually Active Youth: A High-Risk Strategy' (August 2005) *The Alan Guttmacher Report on Public Policy*.

<sup>215</sup> Susan A. Cohen, (August 2005) *ibid* 1.

<sup>216</sup> Center for Intelligence Agency (CIA): 'The World Factbook-Nigeria' <http://www.odci.gov/cia/publications/factbook/print/ni.html> (accessed 27 May 2005).

<sup>217</sup> Kenya Casey, 'Adolescent Reproductive Health in Nigeria: The Facts' (October 2001), *Advocates for Youths, Rights, Respect and Responsibility* 1-2, 1.



and prefer abortion instead.<sup>218</sup> Research has shown that Nigerian female adolescents would use the services of unqualified abortionists resulting in complications and sometimes mortality out of lack of knowledge about private abortion facilities, fear, panic, inexperience and denial of their pregnant state.<sup>219</sup> With these facts and the bad state of health facilities in Nigeria,<sup>220</sup> it would be unreasonable for Nigerian government to rely on the anti-abortion policy of the USA and use it as a condition not to reform its abortion law. This research shows that adolescents are aware of abortion and how to access the facilities, but the quality of the service they get depends on their income and the level of their knowledge about abortion. This research also shows that more parents now than in traditional times would decide on abortion for their daughters.<sup>221</sup> By their policy, USA is advocating reproductive health policies that would not be acceptable or practicable in their country for developing countries.

The lessons I believe Nigeria and other developing countries can learn from this is that reproductive health policies should be put in place by developing countries to suit the needs of their own people. They should avoid dependence on the benevolence of Western aid thereby becoming trapped by the ideology of the type of Western government in power willing to giving aid at a particular point in time on their own terms. Population control and reproductive autonomy should be seen as a means of empowering developing societies, such as Nigeria so they will not be

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<sup>218</sup> Valentine O. Otoide; Frank Oransaye, and Friday E., Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81.

<sup>219</sup> Paulina Makinwa-Adebusoye; Susheela Singh and Suzette Adam, 'Nigerian Health Professionals Perceptions about Abortion Practice' (December 1997) 23(4) *International Family Planning Perspectives* 155-161, 155 and 156.

<sup>220</sup> J. O. Oyebanji, 'Health Conditions In Nigeria' <http://www.onlinenigeria.com/health/> (accessed September 21 2005); though it is known that the reason for this is partly due to the fact that Nigerian-trained medical personnel leave the country (like other African professionals) for the better conditions of service USA and other European countries offer:

<sup>221</sup> In chapter 5, (chart 5.1) shows that more parents in contemporary times would choose abortion for their unmarried daughters. My interactions with secondary school and tertiary students shows that those in tertiary institutions were more aware and knew where to access safer abortion facilities, especially with the aid of medical student colleagues; on the other hand, students in secondary schools often did not know where to go for safe abortion except those in elite private secondary schools, (referred to as public schools in England). This is an aspect of this research that I hope to focus on later.

coerced and subjugated to the whims and caprices of developed nations in return for aid.<sup>222</sup>

In putting population control policies in place it is shown that the social and cultural perception of the people in the developing countries may not often conform to the demands of these richer Western donor nations.<sup>223</sup> The result is that we find people sometimes intuitively rejecting these reproductive contraceptives and aid when put in place, as another means of neo-colonialism.<sup>224</sup> Lawson and Stewart for example states that in parts of Nigeria, four children are considered too few and the ideal family size is seven children or more.<sup>225</sup> However, my research shows that there is generally an increasing desire for smaller family size than this.<sup>226</sup>

Nigeria is a developing country and a signatory to many international conventions touching on reproductive autonomy that she is obliged to include as part of her domestic laws. I believe however that there is a limit to how the Nigerian government can enforce the Western donor nations' fertility control policies without

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<sup>222</sup> My views appreciate the fact that developing nations also have to be responsible and responsible to their citizens, so that policies are put in place within an atmosphere of transparency and accountability, which sadly many developing nations are still trying to grapple with.

<sup>223</sup> For instance Bergström states that the failure of family planning campaigns seeks answers to the question 'who is planning the family? This is because the 'ideal family size' often advocated by Western donor nations is often at variance with the traditional perception of the ideal family size: Staffan Bergström, 'Fertility and Subfertility as Health Problems-Population Control Versus Family Planning by the Family in Lars Bondestam, and Staffan Bergström, (editors) *Poverty and Population Control* (Academic Press, 1980), 50.

<sup>224</sup> This was before the present USA government's new policy that advocates 'sexual abstinence' until marriage and those previously sexually active to be 'secondary abstinent i.e. become abstinent again. Under the US 'Presidential Emergency Plan for AIDS Relief' (PEPFAR) all countries receiving US aid are not to be given information about condom use or abortion: Susan A Cohen, (August 2005), (*Footnote 214*), 2. This, I believe is clearly an unrealistic policy and will have adverse health effect on the health of the population of Nigerians if followed.

<sup>225</sup> D. Lucas and A. Ukaegbu (1977) 'Other Limits of Acceptable Family Size in Southern Nigeria' (1977) 9 *Journal of Biosocial Sciences* 73-81, 75.

<sup>226</sup> Lucas and Ukaegbu's (*ibid*) research was carried out in 1977 and it is obvious that attitude of Nigerians are changing, because Aderibigbe's later research shows that the ideal family size averages at 4-5 children according to 34% of respondents, followed by 29.7% who said 2-3 children was ideal while only 5.3 said one child only was ideal: Titilayo Aderibigbe, *Will and Will Making Among Public Servants: A Case Study of the Nigerian Institute of Social and Economic Research*, (Nigeria: NISER 2001), 21. But my observation from this research shows the new generation of couples have found it more socially expedient and economically viable to have smaller families which averages at 2-3 children for the younger generation of about 20-40 year olds, while the older generation of 50 years and above still consider the ideal family size to be 4-5 children, though this finding is an ancillary finding from this research and was not my main focus.

infringing on the human rights of her people or going against their social and cultural values on issues of fertility control and reproduction. The government must put in place reproductive health policies that are compatible with the needs of the citizens. The statistical evidence on abortion occurrences in Nigeria shows that abortion policy demands urgent review. In doing so however, Nigerian government must be aware of the adverse effect of too liberal an abortion policy to avoid the effect some Western countries are experiencing.

### **Avoiding the Mistakes of the Developed Countries**

After thirty years of legalisation of abortion in most Western countries, some of them are experiencing adverse impact of liberal reform of abortion law on their population. An assessment of abortion law reform shows that focus on abortion and the rights of women to control their reproduction became prominent in the 1960s and 1970s across Europe. Several countries in Europe adopted liberal laws to make abortion accessible to its citizens at this time.<sup>227</sup> Population policies are believed to raise the standard of living and make for effective demographic planning by government just as rapid development in the West has been linked to fertility control.<sup>228</sup> Liberalisation of the law of abortion making it more readily available helped Western governments to control their populations and aided development of their societies.<sup>229</sup>

Since abortion became medically safer and accessible, it was often a contraceptive of choice in some countries such as Bulgaria and Hungary. In 1984, both these countries had an abortion rate of 98.5 and 122.8 per 100 live births

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<sup>227</sup> Rosalind Pollack Petchesky (1990), (*Footnote 28*), 116-121; Marianne Cithens and Dorothy McBride Stetson, (editors), *Abortion Politics Public Policy in Cross-Cultural Perspective* (New York and London: Routledge, 1996); 146-149; the differences in the abortion facilities in different European countries led to "a lively traffic" often called "abortion tourism" which has always been part of the European landscape; Cithens & Stetson *ibid*, 151.

<sup>228</sup> Frank Furedi, (1997), (*Footnote 116*), 77-78

<sup>229</sup> There is believed to be a connection between population and development, policy analysts have linked population growth with economic dynamism, it is believed the stabilisation of population size has led to economic development and planning in the West, while fast growing population of the South is believed to lead to their negative economic growth: Frank Furedi, (1997), (*Footnote 116*), 10-11; 32-33 & 72-73.

respectively.<sup>230</sup> With liberalisation of the abortion law and accessible contraceptive use these countries are, some three decades later, facing acute depopulation and gerontocracy.<sup>231</sup> In Britain also, the 2001 census showed that the birth rate has fallen to an all time low in England and Wales. The figures show that 'one in five pregnancies-one in three in some areas' end in abortion'.<sup>232</sup> The report further reveals that women are marrying later and waiting until an average age of 27 before they start a family. South Korea is another country where the legalisation of abortion has had the effect of a rapid dwindling population. Today, South Korea is an industrially advanced country but it has possibly the lowest birth rate in the world. The average South Korean woman has 'less than 1.2 children – well below the rate needed to keep the population at its current size'.<sup>233</sup> The effect of the continuation of this trend is a shortage of labour and lower economic growth.<sup>234</sup> The South Korean government has had to reverse its policy of population control by offering incentives to women to become pregnant in order to protect many rural communities from extinction. It has become necessary for "government...to share the economic burden, by providing more family allowances and tax breaks for couples. This should be part of an overall plan to encourage people to have more children".<sup>235</sup> All across the developed world, in countries like Japan,<sup>236</sup> Sweden, Switzerland and France<sup>237</sup> Governments are forced to offer citizens incentives to encourage them to have children.

Another consequence of government imposing fertility control methods on women without taking cognisance of the social value is gender imbalance. In societies

<sup>230</sup> Vasle Ghetau, *L'Evolution et la Fecondite en Roumanie, Population* (March-April 1978), Volume 33(2) 535-539, 536.

<sup>231</sup> Ibid.

<sup>232</sup> BBC NEWS 'Birth Rate at all-time low' <http://news.bbc.co.uk/1/hi/health/2570503.stm> (accessed May 6 2003); the fall in British birth rate was first noticed in the late 1930s: The Times: 'Figures of the birth-Rate: An Essential Bill, The Decline of the British Stock' December 3 1937 page 17 <http://economia.unipv.it/harrod/edition/editionstuff/rfh.413.htm> (accessed 16 November, 2005).

<sup>233</sup> BBC NEWS 'South Korea's dwindling population' by Caroline Gluck BBC correspondence in Seoul <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/asia-pac> (accessed May 6 2003).

<sup>234</sup> BBC NEWS (May 6 2003) (ibid).

<sup>235</sup> Ibid, Kim Seung-Kwon, population adviser of the Korea Institute for health and Social Affairs.

<sup>236</sup> Joyce Gelb, 'Abortion and Reproductive Choice: Policy and Politics in Japan' in Marianne Cithens and Dorothy McBride Stetson, (editors), *Abortion Politics Public Policy in Cross-Cultural Perspective* (New York and London: Routledge, 1996), 119-137.

<sup>237</sup> Marianne Cithens and Dorothy McBride Stetson, (editors), *Abortion Politics Public Policy in Cross-Cultural Perspective* (New York and London: Routledge, 1996), 108-109.



where male children are more valued than female ones, female children are routinely aborted through the misuse of ultrasound techniques. India and China are two countries where the female specie has become endangered because of sex selection and the use of in-vitro fertilisation to implant male embryos.<sup>238</sup> Traditional Nigerian value systems often place more importance on male than female offspring,<sup>239</sup> which may render Nigeria vulnerable to similar problems. An abortion law should make it impracticable to use ultrasound techniques as a means of sex selection and abortion of fetuses that are not the desired gender to avoid gender imbalance in the Nigerian society.

From the experiences of other countries discussed, I suggest that Nigeria would need to be pragmatic in adopting and implementing a liberal abortion law that will benefit the needs of women. The Nigerian government needs to avoid falling into the same quagmire as these economically advanced countries. The Nigerian government seeks to reduce the population of Nigerians under its NPP using the Primary Health Care system; this is the method whereby individual state governments at the local government level, are provided with the facilities by the federal government to implement its policies under the NPP.<sup>240</sup> The NPP defines family planning to include 'education, counselling, the provision of information on child spacing and fertility treatment, but most government facilities only distribute contraceptives'.<sup>241</sup> The Government needs to do more than this, it has to raise the level of consciousness of Nigerian women so that they are able to appreciate the benefit of being able to control their fertility and to choose the method by which they can best achieve this. My research shows that many young women are very conscious of their reproductive autonomy and demands legal avenues to exercise

<sup>238</sup> Ian Mackinnon 'The Rare Woman' *Newsweek* November 11, 2002, 38.

<sup>239</sup> Wale Okediran, 'MTN and the Girl-Child', *The Nigerian Guardian*, Tuesday December 21 2004; Chukwudifu Oputa J. (1989), (*Footnote 4*), 5-10, however, the adverse attitude towards female children is not as rigid in the south western part of Nigeria where there are female headed households and daughters inherit as equally as sons. It is only in the eastern part and to an extent, the north that such discrimination occur socially. There government is making effort to change people's discriminatory attitude against females in places where they occur through education and enlightenment programmes.

<sup>240</sup> CENTER FOR REPRODUCTIVE RIGHTS 'Nigeria: Laws and Policies Affecting their Reproductive Lives' [www.reproductiverights.org](http://www.reproductiverights.org) (accessed January 19 2003), 80; and it is not usually accessible to adolescent women who need it most because they have become sexually active despite marrying later: Valentine O. Otoide *et al*; (June 2001) (*Footnote 110*), 79.

<sup>241</sup> Valentine O. Otoide *et al* *Ibid*.



their right.<sup>242</sup> In the southern part of Nigeria, the girls marry later because they spend a lot of time in school acquiring education or some vocation.<sup>243</sup> The effect of this is that the women have less reproductive time-span for procreation thereby have smaller family sizes. This research also shows that many of the respondents say it is economically and socially expedient for them to have smaller family sizes.<sup>244</sup> I observe from this research that without undue pressure or overt interference from government, women are making reproductive choices and controlling their fertility in a natural and methodological way through societal changes. The role of Nigerian government therefore would be to encourage families to have the number of children they can adequately cater for through information and enlightenment programmes on fertility control and access to facilities to achieve it.<sup>245</sup> Nigerian women should be given the choice to choose the right to control their fertility within socially and culturally acceptable parameters of the law.<sup>246</sup>

As I stated, I recognise that the high rate of population growth in Nigeria (as in other Sub-Saharan African countries), is historical and it has been explained by Caldwell *et al* as the result of a peculiar 'culture of fertility' which suggests that African cultural traditions, particularly the attitude of men towards work, help consolidate a regime of high fertility; and 'unlike many traditional societies those in

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<sup>242</sup> An example is the statement in Text Box 5.7.

<sup>243</sup> Paulina Makinwa-Adebusoye; (December 1997 (*Footnote 219*), 156-7; Valentine O. Otoide; (June 2001) (*Footnote 110*), 77-81.

<sup>244</sup> See Text Box 5.9 for example, but what is a small family size varies from three to five children depending on the age and socio-economic level of the couple with those in the lower economic ladder preferring more children than those in the higher socio-economic ladder.

<sup>245</sup> Information on contraceptive use, enlightenment programmes can be accessed easily if made an integral part of the reformed abortion law for women from an age that is deemed appropriate by medical experts in fertility control. Madunagu states that the main reasons why women have many children in Nigeria is due to poverty and insecurity, therefore class structures and gender prejudices must be dismantled before substantive changes in the structure of Nigeria's population can become effective: B. Madunagu, 'Report from Population Round Tables' *Planeta Fémea*, Brazilian Women's Coalition, Brazil, October 1993' in Sonia Corrêa, (1994), (*Footnote 98*), 35; but class structure will be dismantled over time if women are given the means to have only the children they can care for adequately.

<sup>246</sup> I do not feel the outcome of allowing women to control their fertility through abortion when necessary will have the same adverse effect on Nigeria as is seen in the developed nations I mentioned; this is because the adherence to children as a form of social security in old age, status symbol is not likely to make Nigerians lower their population to the extent that the age distribution in the population will get to such alarming low rate that Nigeria is unable to regenerate her population.

Sub-Saharan Africa generally had no concept of having enough children'.<sup>247</sup> Government needs to re-orientate people's perception into accepting the fact that improved health care will lead to a reduction in child mortality, which negates the need to have so many children. Putting in place a reproductive health policy that includes access to abortion facilities will help women have children they can cater for and adequately maintain.

#### *Role of traditional leaders*

Presently, in Nigeria, the distribution of national resources by the federal government to states is based on population.<sup>248</sup> Many state governments may not diligently encourage their indigenous people to control their fertility to avoid reducing their resource allocation from the federal government. Nigeria therefore faces the added burden of fertility control becoming a tool in the hands of political leaders. My belief is that traditional and political leaders may discourage any programme that will reduce the population of the people, because in rural communities the people are more likely to listen to the dictates of their traditional and political leaders rather than some medical health service provider.<sup>249</sup>

I also feel the role of government will be to first convince and enlighten these traditional and political leaders to the benefit of encouraging citizens at the grassroots level of the benefits of having a family size that they can adequately cater for. The overall positive health effect on women, their children and the society as a whole as well as raising their standard of living should be stressed before laying emphasis on reproductive autonomy of women as basis for abortion

<sup>247</sup> J. C. Caldwell and P. Caldwell, 'Cultural forces tending to sustain high fertility' in G. T. F. Ascadi; G. A. Ascadi-Johnson and P. Bulatao, *Population Growth and Reproduction in Sub-Saharan Africa* (Washington D. C.: World Bank, 1990), 199.

<sup>248</sup> John Udeh 'Petroleum Revenue Management: The Nigerian Perspective' (October 2002), *World Bank Petroleum Revenue Management Workshop*, (October 24-25 2002), (Washington DC), 1-14, 3-7; Ike Oguine, 'Nigeria's Oil Revenue and the Oil Producing Areas' (2000) *The Centre for Energy, Petroleum and Mineral Law and Policy* <http://www.dundee.ac.uk/cepmlp/journal/html/vol4/article4-10.html> (accessed 22 November 2005).

<sup>249</sup> There are health service providers from international donor agencies as well as local medical personnel, but among the rural areas, if the traditional leaders do not endorse the activities of these health service providers the women may not accept the services offered to them. In an earlier research in 2000-2001 on reproductive health and leadership under the auspices of the Packard Foundation it was found that traditional leaders had greater influence on reproductive health of women especially in the rural areas than political leaders like Local Government Councillors: Titilayo Aderibigbe and Adebayo Ajala, 'Leadership and Reproductive Health' in Bola I Udegbe (editor) *Dynamics of Leadership in Contemporary Nigerian Communities* (Nigeria: The Social Sciences and Reproductive Health Research Network (SSRHN), 2001), 122-123.



law reform. I have put forward this modality based on informed knowledge of traditional leadership in Nigeria, where many traditional leaders are still paternalistic in their attitude towards women asserting any form of autonomy.<sup>250</sup> To be successful, it should be emphasised that access to legal abortion for women on more liberal terms is not to a means of eroding the traditional control of men over women at the nuclear and national level, but a means of improving the health of women and the standard of living of the nation.

Nationally, I recognise the effort of the Federal government to incorporate the population policy of the International Conference on Population and Development (ICPD) into its health care policy. According to the United Nations Population Fund (UNFPA), the present government has revised the NPP to take into account the ICPD. However, progress has been hampered by budgetary constraints and the limited capacity of the National and thirty six states' Planning Commission to integrate population factors into development plans to enable it translate the NPP into a multisectoral programme that can be implemented.<sup>251</sup>

In addition, even under the NPP, unmarried adolescent women are largely ignored in the present reproductive health service provision.<sup>252</sup> In this research, some respondents were opposed to sex education forming part of the curriculum in secondary schools.<sup>253</sup> This is a grave mistake in that adolescent needs for abortion services are just as imperative as those for married women. Their needs to make informed reproductive choices and the services to make them legally ought to be given. I believe the objectives of the NPP in line with the ICPD will

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<sup>250</sup> An instance is my experience on the field where a traditional leader chased my team and I away from interviewing the women in 'purdah' (seclusion) because he believed that educated women like me were having undue influence on their women encouraging them to imbibe Western ideals of challenging the authority of men, this view is not limited to traditional leaders alone but is shared by some educated men as I found out during the course of this and earlier research.

<sup>251</sup> United Nations Population Fund (UNFPA), 'Nigeria', <http://www.unfpa.org/profile/nigeria.cfm> (accessed September 21 2005).

<sup>252</sup> Findings from my research also shows that many of the older generation of respondents do not want reproductive health services made available to unmarried adolescents because they believe erroneously that it will encourage them to be promiscuous; Gage-Brandon and Meekers, have also found that population policies and fertility control in developing countries of Africa largely ignore the specific needs of adolescents especially if they are unmarried, but these adolescent women need to be helped to make informed reproductive choices: Anastasia J. Gage-Brandon, and Dominique Meekers, (1993) (*Footnote 202*), 18.

<sup>253</sup> I have not fully analysed the empirical data collected on this aspect of the research because it is not part of the focus of this thesis.

not be fully achieved unless a reform of the abortion law is conducted to enable women control their fertility.

## Summary

Alice Walker's statement is apt in depicting the ambivalence the modern Nigerian woman is going through in defining and controlling her sexuality under the prevailing socio-legal milieu. She said:

What has the white, male lawgiver to say  
to any of us? To those of us who love life  
too much to willingly bring more children  
into a world saturated with death?

Abortion, for many women, is more than  
an experience of suffering beyond anything  
most men will ever know; it is an act of  
mercy, an act of self-defense.<sup>254</sup>

Throughout this chapter I refer to the fact that the 'State social order is founded on ideals of Freedom, Equality and Justice' as entrenched in the Nigerian Constitution,<sup>255</sup> and judicially 'the traditional family is seen as a bastion of civilisation and a precondition for social stability and so remains immune to judicial reform'.<sup>256</sup> While acknowledging the rights of women to have control over their fertility, any amendment to the law on abortion needs to understand that children are central to the life of the Nigerian society.<sup>257</sup> Children act as unifying force

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<sup>254</sup> Alice Walker 'The Right to Life: What can the White Man... Say to the Black Woman?' *The Nation* 22 May 1989, in Katrina Vanden Heuvel (editor), *The Nation Selections from the Independent Magazine of Politics and Culture 1865/1990* (London: Pluto Press, 1991), 462-463.

<sup>255</sup> Constitution of the Federal Republic of Nigeria, 1999, S. 17(1).

<sup>256</sup> *Meyer v Nebraska* (1923) 262 U.S. 390.

<sup>257</sup> My finding is corroborated by Bergström who says: '...actual experiences of Third World realities will demonstrate that *in the marginal economies of subsisting poor families*, whether rural or urban, an additional child is most often a net benefit rather than the opposite, aside from considerations of security in old age': Staffan Bergström, (1980), (*Footnote* 223), 50. But this research shows respondents stating that it is the quality of the children they have (i.e. in term of

between husbands and wives, among relations, and act as a link between the past and future and a continuation of the Nigerian race. However, children should not also be used as instruments of subordination, of oppression or suppression of women's choice over their reproduction, because a woman who is given the capacity to make informed reproductive choice within the ambit of the law will be a better mother to the few children she has the capacity to maintain rather than an ineffective one to the many she does not. Therefore, amendments to the law on abortion need to consider all these and acknowledge that its reform will ultimately benefit the whole of society.

While I appreciate that Nigeria's legal system<sup>258</sup> was cast in the anti-abortionist view of nineteenth and early twentieth century Britain, I recognise also that Nigeria's entire legal system was fashioned along those of Britain without taking cognisance of Nigeria's socio-cultural values and attitude to important social issues. Even though Nigeria is a patriarchal society, women in pre-colonial Nigeria had greater independence and control over their reproductive autonomy. While the traditional social set up<sup>259</sup> probably did not need to emphasise autonomous control of reproduction by traditional women, the needs of contemporary women have evolved thereby making their access to autonomous reproductive choice imperative. This research shows that despite adherence to religion, women do not make abortion choices based on religion alone, but on the socio-economic environment surrounding their pregnancy. Contemporary Nigerian women are accessing abortion for reasons other than to save their lives despite its illegality. It is the duty of the Nigerian state to provide women the avenue to have legally safe abortion facilities to prevent the adverse effect experienced by thousands of women.

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how well maintained and educated) that is important today and not the number because it is better to have few well-rounded children than many who are a source of disgrace to the parents.

<sup>258</sup> Like other developing country with a British colonial past.

<sup>259</sup> Such as polygamy, long post-partum breast feeding made it possible for women to space their children, just as separation of adolescents on reaching puberty and the closely knit family and communal set-up but these facts notwithstanding; I have made references in this chapter to evidence from this and other research which suggests that abortion has been a part of all societies (including Nigeria), through the practise of natural abortifacients made from local herbs and plants which shows that even then traditional women exercised control over their reproduction.



However, the abortion law reform done, it should be socially compatible with present day Nigerian society bearing in mind that women and not men or medical doctors should be the ones to have the greater say in the overdue reform of the abortion law in Nigeria. These views form the basis of my discussion and the theme of my research in the following chapters.

# CHAPTER THREE

## SHE SITS OUTSIDE THE HUT: UNDERSTANDING THE SOCIO-CULTURAL CONSTRUCT OF NIGERIAN WOMEN'S REPRODUCTIVE AUTONOMY

It must not be forgotten that there is no known society in which the interdependence and complementarity of the sexes is not embodied in custom and sanctioned by law and morality. To consider the status of either sex without reference to the other is to distort the reality we are trying to understand.<sup>1</sup>

In this chapter I will discuss the theoretical issues of the traditional and contemporary perceptions of Nigerian women's autonomy, but I will pay greater attention to examples from Yoruba women of the Southwest where the study is situated and make references to different ethnic groups where those variations occur.<sup>2</sup>

The most outstanding feature of women of southwest Nigeria is their economic emancipation which has given them freedom without being subjugated to their husbands in domestic affairs. Economic independence had, in pre-colonial traditional times, given women greater access to participation in social and political affairs, and many women all over Nigeria in history as well as contemporary times have demonstrated the extent to which their economic independence was used to gain political ascendancy.<sup>3</sup> For example In history Queen Moremi of Ile Ife in the 16<sup>th</sup> Century helped in defeating Eastern invaders; so was Efunsetan of Ibadan acknowledged for standing up to the king and Colonial masters for women's rights

<sup>1</sup> M. Fortes, (1980) vol. Iv no. 2, 'L'uomo' Informants, 363 in Christine Oppong (editor) *Females and Males in West Africa* (London: George Allen & Unwin, 1983) inside cover page. The epigram is used because it projects the inter-dependence and distinctive but equal gender relationship which existed in traditional culture among Nigerians before colonisation.

<sup>2</sup> The other reason for using the Yoruba people as a reference point is because of the traits, religious beliefs and kinship relationships which has been acknowledged as one of the most developed in Africa and the world: Basil Davidson, *Old Africa Rediscovered* (Gollancz, 1959), 70; W. D. Hambley, 'Culture Areas of Nigeria' (1935) 3(21) Chicago: *Field Museum of Natural History: Anthropological Series*, 461; P. C. Lloyd, 'The Status of the Yoruba Wife' in Margaret Thompson Drewal, *Yoruba Ritual Performers, Play, Agency* (Indiana University Press, 1992), 189; Ullie Beier, 'Before Oduduwa' in G. J. Afolabi Ojo, *Yoruba Culture: A Geographical Analysis* (Nigeria: University of Ife and University of London Press Ltd., 1966), 270.

<sup>3</sup> Sudakasa gives a detailed account of the commercial migration of Yoruba women in the West African coast in her book and she gives detailed analysis of Yoruba women's pre-market economy in old Dahomey (page 65); this account is true of women in all parts of Nigeria which I will allude to in this chapter: Niara Sudakasa, *Commercial Migration in West Africa, with Special Reference to Yoruba Women in Ghana* (African Studies Center, Michigan State University, 1991).

in the 18<sup>th</sup> Century and Queen Emotan ruled over the Bini kingdom in the Midwest, while Queen Amina of Northern Nigeria was known for her valour in war during pre-colonial Nigeria. In contemporary times Funmilayo Ransom-Kuti single-handedly mobilised women and had King Ademola, the Alake of Egbaland deposed and exiled for his attempt at unfavourable tax impositions on the people.<sup>4</sup> Nigerian traditional society has evolved customs and moral values that accorded women recognition and respect for their fertility because they are believed to hold the secret of creation in their wombs.<sup>5</sup> Mystical rituals and rites acknowledge women's superiority over men in this regard.<sup>6</sup> In pre-colonial times, Nigerian women were keenly aware of their sexuality and society accorded them equal respect with men, because then respectability and recognition within society was based on seniority and not gender.<sup>7</sup> But Nigerian society is patriarchal<sup>8</sup> and despite the recognition and respect accorded women in traditional times, colonialism eroded this and today men still dominate in all other spheres of life and have since sought to subdue and coerce women out of fear of their total domination over them.<sup>9</sup> Everything, including the woman herself belongs to the man, she was considered part of his chattel and decisions were made on her behalf sometimes without reference to her.<sup>10</sup>

A folk-tale is told of a wealthy Benin woman whose wealth got into her head and she decided to challenge her husband who was poorer than her. The husband listened to her boasting of the extent of her wealth and influence and the number of slaves she owned to her beck and call. To her these made her superior to him.

<sup>4</sup> Elizabeth Isichei, *A History of Nigeria* (London & Lagos: Longman Group Ltd., 1983), 257-259; Nina Emma Mba, *Nigerian Women Mobilized Women's Political Activity in Southern Nigeria, 1900-1965*, (International and Area Studies (IAS): University of California at Berkeley and Nigeria: Crucible Publishers Limited, 1997), 157-158.

<sup>5</sup> Dominique Zahan, *The Religion, Spirituality, and Thought of Traditional Africa* (Chicago & London: University of Chicago Press, 1979), 41-42.

<sup>6</sup> Ibid.

<sup>7</sup> Among all ethnic groups in pre-colonial Nigeria wealth did not guarantee recognition or leadership in the community, it was age which carried with it wisdom and influence and leadership role which were accorded women and men equally: Judith Van Allen, "Sitting on a Man": Colonialism and the Lost Political Institutions of Igbo Women' in Grinker, Roy Richard and Steiner, Christopher B. (editors) *Perspectives on Africa A Reader in Culture, History, & Representation* (Blackwell Publishing, 2005), 538; C. K. Meek, *Law and Authority in a Nigerian Tribe* (London: Oxford University Press, 1957), (originally published 1937); J. S. Harris, 'The Position of Women in a Nigerian Society, *Transactions of the New York Academy of Sciences*, (1940) Series II Volume 2 Number 5; Sylvia Leith-Ross, *African Women* (London: Faber & Faber, 1939).

<sup>8</sup> Federal Republic of Nigeria: *National Policy on Population For Development, Unity, Progress and Self-Reliance* (hereinafter referred to as NPP), Sections 5.3 and 5.3.1.

<sup>9</sup> For example Allen says since colonisation Igbo women have not taken leadership roles in modern local government, nationalist movements and national government: Judith Van Allen, (2005), (Footnote 7), 536; also Nina Emma Mba, (1997), (Footnote 4), 38-59.

<sup>10</sup> Chukwudifu Oputa, (JSC). 'Women and Children as Disempowered Groups' in Federal Ministry of Justice Law Review Series, *Women and Children under Nigerian Law* (Federal Ministry of Justice: 1989), 8-9:



In an assured and dignified tone, her husband told her “you own the slaves I know, but I own you”.<sup>11</sup> I believe the husband’s statement depicts succinctly the cultural perception of the essence and place of women in Nigerian society. This perception is still apparent today and permeates the over 250 ethnic and cultural groups in the country. Patriarchal values, social interactions and structures also set control over women’s fertility and procreative potential through the insistence that women were designed to bear as many children as they could.<sup>12</sup> The Nigerian woman cuts the picture of one ‘who sits outside the hut’ waiting while the men stayed inside making decisions affecting her life for her.

I believe that reproductive decisions should reflect the needs of particular societies at particular stages in their social development. While it could be argued that men needed to control women’s reproductive choices in Nigeria during colonial times because ‘the historical antecedent for the desire for high fertility in women is as a result of high mortality rate in an era of harsh social environment plagued by diseases’;<sup>13</sup> moreover high fertility is associate with agrarian societies.<sup>14</sup> These needs have changed in contemporary Nigeria. In fact Nigeria is grappling with high population which has necessitated the need for government to set up a ‘Population Policy’<sup>15</sup> having realised that:

A large increase in the size of the population is mostly a function of past and present levels of fertility and mortality in any country. All available evidence indicates that the level of reproduction has been persistently high for the past three to four decades.<sup>16</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Robyn Roland, *Living Laboratories: Women and Reproductive Technology* (London: Cedar, 1992), 6; with colonialism women had to bear children in order to produce the manpower that would grow the agricultural produce sent to England.

<sup>13</sup> Odile Frank, ‘The Demand for Fertility Control in Sub-Saharan Africa’ (1987), 18(4) *Studies in Family Planning* 181-201.

<sup>14</sup> Bewley *et al* states that ‘in most agrarian societies high birth rate is equally balanced by high death rates traditionally. Women are valued for their procreative ability in society and family while male children are more valued because of the work they can contribute. A decrease in death rate without a parallel decrease in birth rates leads to rapid population growth’; Beulah Bewley; Judith Cook, & Penny Kane, *CHOICE NOT CHANCE A Handbook of Fertility Behaviour* (University College Cardiff Press, 1977), 13-15, (the effect of population on women’s reproductive choice is the focus of my discussion in chapter 3).

<sup>15</sup> Federal Republic of Nigeria: *National Policy on Population For Development, Unity, Progress and Self-Reliance* 1988, (NPP).

<sup>16</sup> NPP Section 2.2.

Despite government recognition that Nigeria's population is high; women are still without control over their reproduction because of the denial of free access to legal abortion. The reasons for this denial are historical, cultural and a consequence of colonial transplantation of Eighteenth Century perceptions of English womanhood to Nigerian women. These are issues I focus on in this chapter.

I begin this chapter by discussing the limited emancipation women have, and the effect of culture on their sexuality and reproductive choice. I also give a definition of and comparison with Nigerian women's sexuality in traditional, pre-colonial and contemporary Nigeria. Next I make a comparison between Nigerian and English laws on abortion before the enactment of the Abortion Act 1967. I follow this with an examination of the influence of Pre-1967 English society's attitude to abortion on Nigerian society and how it has shaped Nigeria's abortion law. Fourthly I make a detailed analysis of women's sexuality and procreative autonomy in modern Nigeria and examine issues why women's biological make-up has been used as an excuse to take away their reproductive choice under the influence of patriarchy. Finally I examine the moral and ethical issues surrounding abortion and reproductive autonomy within Nigeria's socio-cultural environment. The chapter concludes with a summary.

### 3.1 Emancipation with a Limit, Patriarchy as another excuse for controlling women's bodies in traditional society

Traditionally Nigerian men practised polygamy that was regarded as both economically and socially advantageous to society.<sup>17</sup> The number of children a man had determined his labour force and directly influenced his wealth. Women were encouraged to bear as many children as they could and the number of children a woman was able to produce determined not only her social status within her community, it also ensured her inheritance should her husband predecease her.<sup>18</sup> Among most ethnic groups, only women with children traditionally inherited from their deceased husbands through their children.<sup>19</sup> This cultural belief cuts across all ethnic groups, and elaborate cultural ceremonies were performed for women who were able to meet this societal expectation.<sup>20</sup> Women's fertility also gave them the right to remain in their husband's house if he predeceased her.<sup>21</sup> A childless widow on the other hand could only remain in her husband's house if she was considered to be of good character by her late husband's family; otherwise she would be required to return to her father's house. A childless woman had no status and no voice in the community. Barber observes: '...marriage or rather motherhood that was expected...A woman without children would be a more

<sup>17</sup> Many older respondents in this research said that this marital arrangement is equally advantageous to women because domestic chores and sexual duties were shared among the wives, thus leaving them enough time to attend to their independent economic pursuits. The youngest of the wives often had the responsibility for the personal care of their husband; otherwise household responsibilities were shared amongst them; but the older wives often did less housework and were closer to their husband in terms of having some one to consult on important issues; at menopause according to findings by Olawoye *et al* women on reaching menopause were accorded more respect than younger wives by the husband, immediate and extended family as well as the community: Janice E., Olawoye, E. Smaranda. Olarinde and Titilayo O., Aderibigbe, *Women And Menopause In Nigeria* (Nigeria: SSRHN, 1998), 29.

<sup>18</sup> Stella Omiyi, 'A Critical Appraisal of the Legal Status of Widows under Nigerian Law' in Federal Ministry of Justice Law Review Series, *Women and Children under Nigerian Law* (Nigeria: Federal Ministry of Justice, 1989), 71-72.

<sup>19</sup> This is in respect of women married under Customary law, though as children in their father's house all Yoruba children inherited properties equally regardless of their gender: *Salami v Salami* [1957] WRNLR, 10; *Baretto v Oniga* [1961] WNLR, 112; Succession under customary law was not uniform among all ethnic groups in Nigeria, for example women were previously not allowed to inherit land among the Igbo. But it has been held by the Supreme Court of Nigeria that the traditional practice of disinheriting females on the bases of their gender is repugnant to the Constitution in *Mojekwu v Mojekwu* (1997) 7 NWLR (Part 512), 283; Under Islamic law (which is the predominant religion in the northern states) male children were entitled to equal share while female children received half of what male children inherited: *Yinusa v Adesubukola* [1970] Volume 14 Journal of African Law; A. An Na'im (editor) *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Press, 2002), 161-162.

<sup>20</sup> Eleanor R. Fapohunda 'Female and Male Work Profile in Christine Oppong (editor) *Female and Male in West Africa* (London: George Allen & Unwin, 1983), 32-36.

<sup>21</sup> She is usually married to the deceased husband's closest relation in a form of Levitate marriage; if she chooses not to marry any of them she is allowed to remain in the house provided she is of good behaviour: E. I. Nwogugu, *Family Law in Nigeria* (Nigeria, Ibadan: Heinemann Educational Books, 1974).

unhappy being even than a man without a wife; she would have no voice, no influence and no respect'.<sup>22</sup> Childlessness has often been the cause of separation and divorce between couples in traditional and contemporary Nigeria.<sup>23</sup> For traditional Nigerian women therefore, their womb remains their greatest asset socially but it remains a source of control, denying them reproductive choice and equality with men. It can rightly be said of the Nigerian woman that '(it is) as if the Almighty in creating the female sex, *had taken the uterus and built up a woman around it*'.<sup>24</sup> Traditional women therefore used their procreative powers to define their sexuality as I show below.

### **Defining Nigerian women's sexuality**

Giving a clear meaning of Nigerian women's sexuality can be complex because it takes on different meaning depending on the period of Nigerian's historical development and also because sexuality is often confined to the social institution of marriage.<sup>25</sup> What is the meaning of sexuality? I will begin with the definition given by the African Regional Sexuality Resource Centre (AFRSC) which is also the WHO's definition:

Sexuality is a central aspect of being human throughout life and encompasses sex, gender, identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships.<sup>26</sup>

In pre-colonial times it is believed that women exercised authority over their sexuality in the sense that they were able to determine different aspects of their reproductive life within acceptable cultural dictates. For example, women could

<sup>22</sup> Karin Barber, *I Could Speak Until Tomorrow Oriki, Women And The Past In A Yoruba Town* (Edinburgh University Press, 1991), 109.

<sup>23</sup> Bridget Nketchi Onah, 'The Socio-Cultural Perception of Childless in Anambra State' in Mere N., Kesekka, *Women's Health Issues in Nigeria* (editor), (Nigeria: Tamazara Press, 1992), 185, also Smith, M. F., *Baba of Karo, a woman of the Muslim Hausa* (autobiography recorded), (London: Faber and Faber, 1954), 118.

<sup>24</sup> Professor Hubbard, cited in M. L. Holbrook, 'Parturition Without Pain: A Code for Escaping from the Primal Curse' (New York, 1882), 14-15 cited in Michael Thompson, *Reproducing Narrative Gender, Reproduction and Law* (Ashgate Dartmouth, 1998), 37. (Italics given as in the original).

<sup>25</sup> Eno Blankson Ikpe, *Human Sexuality in Nigeria: A Historical Perspective* Understanding Human Sexuality Seminar Series, (Nigeria, Lagos: African Regional Sexuality Resource Centre, 2004), 11; this is also true in traditional (and to a large extent) in contemporary time as I observed during this research.

<sup>26</sup> African Regional Sexuality Resource Centre (Nigeria, Lagos: ARSRC, 2003), 17.



refuse sexual intimacy from their husbands.<sup>27</sup> Also, barren women or financially stable women (especially after the nineteenth century), could decide to marry a younger woman (not in a lesbian sense) to bear off-springs for her who would inherit her property.<sup>28</sup> If the infertile woman was married the younger woman she married would have sexual intercourse with her husband, and the children she had would be regarded as the infertile woman's children, or the younger woman could be allowed to choose her own consult if the infertile woman was unmarried. This is a practice among the Yoruba, Ibibio, Edo, Urohobo, Igbo and Ishan ethnic groups which is dying out today.<sup>29</sup>

Traditional Nigerian women of all ethnic groups had equality with men<sup>30</sup> which is depicted in their traditional cosmology. For example there were male and female deities who worked together and sometimes their physical appearances were indistinguishable from each other. *Sango* the god of thunder is a deified national hero throughout Yorubaland,<sup>31</sup> and his consort the goddess *Oya* is indispensable in carrying out his mission and without *Oya*, *Sango* could do nothing.<sup>32</sup> She is known to wear a beard and 'Her face is so terrible that none dare to behold it, her wrath so devastating that it must be absolutely avoided'.<sup>33</sup> Sudarkasa further states that women had complimentary, rather than subordinate position to men in Pre-colonial Nigerian society. Power was based on seniority rather than gender and the absence of gender pronouns in many Nigerian (and African) languages

<sup>27</sup> This was often used as a form of protest, though wives found that her husband could shift his attention to his other wives who were more amiable: Janice E. Olawoye, *et al* (1998), (Footnote 17), 29.

<sup>28</sup> Hakeem B. Harunah, *A Cultural History of the Uneme from the Earliest Times to 1962* (Lagos: The Book Company, 2003), 98.

<sup>29</sup> Dimeji Ajikobi, 'What does an African 'New Woman' Want?' (Nigeria: Ikeja, Ark Publications, 2000), 84 and the accounts of Ifi Amadiume, *Male Daughters, Female Husbands* (London: Zed Books, 1986).

<sup>30</sup> Niara Sudakasa, 'The Status of Women in Indigenous African Societies' in Rosalyn Terborg-Penn; Sharon Harley and Andrea Benton Rushing, *Women in Africa and the Diaspora* (1990), <http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (accessed 20 November 2005).

<sup>31</sup> Karenga Maulana, *Odu Ifa: The Ethical Teachings* (Los Angeles: University of Sankore Press, 1999), 54-55.

<sup>32</sup> Douglas E. Thomas, *African Traditional Religion in the Modern World* (Jefferson, North Carolina & London: McFarland & Company, Inc., 2005), 91.

<sup>33</sup> Bolaji E Idowu, *Olodumare: God in Yoruba Belief* (Memorial edition), (New York: Wazobia, 1994-Originally published in 1962), 91; there were other equally powerful deities who were regarded lesser gods who carried out the will of Olodumare which means 'only heaven knows the meaning of salvation' he is said to be self-existing and an immortal supreme being: Douglas E. Thomas, *African Traditional Religion in the Modern World* (Jefferson, North Carolina & London: McFarland & Company, Inc., 2005), 90.

and the interchangeability of first names among females and males is a further evidence of gender equality.<sup>34</sup>

Findings from this research indicate that while sexuality was never openly discussed in traditional society, there is a keen awareness of sexual matters among Nigerians and especially among adolescents.<sup>35</sup> Ikpe states that sexuality was confined to marriage institutions in traditional times and it is certainly never spoken about in front of children until they perform the rites of passage to adulthood and even then it was spoken in a language that can only be understood by the initiated.<sup>36</sup> Even today sexuality is a topic not often discussed by 'respectable' contemporary African academics unless it has to do with diseases.<sup>37</sup> But my discussions with elderly respondents shows that the social interactions, religious dogma, traditional rites and rituals were so interconnected in traditional times that abortion was 'taken care of by women' when necessary<sup>38</sup> and never questioned because the sexuality of women was inter-woven with the totality of their being as wives and mothers within their culture. For example Nigerian women were known to practice long nursing periods, (sometimes as long as three years), this was an indirect mode of contraception because their menstruation is suppressed.<sup>39</sup> Sexual abstinence traditionally observed at this time was also for spiritual purposes.<sup>40</sup> The breastfeeding woman was believed to be spiritually pure

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<sup>34</sup> Niara Sudakasa, (1990), (*Footnote 30*); Allen gives similar account of the power and equality women had with men in her account of Igbo traditional political institutions: Judith Van Allen, (2005), (*Footnote 7*), 537-541.

<sup>35</sup> Other research has found that sexual matters is often discussed among pre-school adolescents who have a keen awareness of HIV/AIDS and other sexually transmitted diseases (STDs) and have changed their sexual behaviour by being more cautious during pre-marital sex but such knowledge is not acquired through the school curriculum: Donatus O. Owuamanam, 'Sexual Networking Among Youth in Southwestern Nigeria' (1995) (Supplement to Volume 5), *Health Transition Review* 57-66, 58 & 65.

<sup>36</sup> For example from my personal experience of the Yoruba culture, during traditional marriage ceremonies, a prospective bride must be 'asked for' in the traditional sense by the prospective grooms family from his proposed brides family for the marriage to be regarded as culturally valid; it is customary for him not to mention her name but to refer to her as 'the beautiful rose in her father's garden whom they seeks permission to pluck'; also during the traditional marriage blessings part of the prayer is that "just as the seed in a paw-paw is plenty, may your womb bring forth seeds like the paw-paw fruit" and "just as no-man knows how water gets into a coconut may you always have enough like the coconut to sustain your life". These prayers refer to sexual intimacy between married couples, but in veiled and non-overt language.

<sup>37</sup> Eno Blankson Ikpe, (2004), (*Footnote 25*), 6.

<sup>38</sup> Elderly respondents in this research confirmed that this was often done through consultation with traditional herbalists who knew the various herbs necessary to terminate an unwanted pregnancy, which could be because the woman got pregnant too soon after the birth of a previous child and because sexuality was not openly discussed such matters were mentioned in 'veiled language' understood by the adults in the community.

<sup>39</sup> Lawrence Adedokun, 'Marital Sexuality and Birth-Spacing among the Yoruba', in Christine Oppong (editor) *Females and Males in West Africa* (George Allen & Unwin, 1983), 129-130.

<sup>40</sup> It was to make the mother spiritually clean to take care of the infant she nursed because an unexpected pregnancy would be dangerous to the life of the nursing child. It was believed that the

at this period<sup>41</sup> and the inter-play of women's spiritual purity and mother-love are depicted in plays, rituals and ceremonies.<sup>42</sup> Sex could only be resumed when the child was weaned. I believe the traditional prohibition of post-partum sexuality was another way of determining women's sexuality. Marriage and sexuality were all institutionalised and furthered polygamy, since the husband could leave a nursing mother alone and turn to non-nursing wives for his sexual gratification.<sup>43</sup> Therefore sexual freedom and choice was guaranteed for women within traditional set-up. I observe however that within the social constructs almost every aspect of a women's sexuality that could necessitate their seeking an abortion had been taken care of by tradition unless it became mandatory.<sup>44</sup> This research shows that motherhood, nurturing and women's role in procreation could not be (and was seldom) questioned until recently when the influence of Western culture took it from the traditionally private affair to public awareness.

However, following colonialism the Nigerian female sexuality has undergone a process of re-modelling and I argue that their sexuality today is a mirror of English notion of sexuality. Over time, perceptions of women's sexuality has responded to a social stimulus reflecting English Victorian religiosity that framed women's sexuality in male terms; which is essentially one of domination by men and subordination of women. According to Tong 'sexuality is defined in contemporary times in terms of male dominance and female submission and it is regarded as the norm in other context as well and in all aspects of life-a state of affairs is not likely to be achieved as long as women's sexuality is interpreted in terms of men's sexuality...'.<sup>45</sup> The Victorians tied female sexuality to their biology, but Foucault

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foetus will indirectly dry up the mother's milk, make the nursing child sick and s/he may eventually die: D. B. Jelliffe, 'Infant Feeding Among the Yoruba of Ibadan' (1953) 2 (3) *The West African Medical Journal* 111-122; also Lawrence Adedokun, *ibid*.

<sup>41</sup> J. C. Cadwell and P. Cadwell 'The Role of Marital Sexual Abstinence in Determining Fertility: A Study of the Yoruba in Nigeria Population Studies' in Margaret Thompson Drewal (editor) *Yoruba Ritual Performers, Play, Agency*. (Indiana University Press, 1992), 188; also Lawrence Adedokun, (1983), (*Footnote 39*), 133-136.

<sup>42</sup> Cadwell & Cadwell (1992), (*Ibid*), see also Adedokun, (1983), (*Footnote 39*), 129-130.

<sup>43</sup> Elizabeth Isichei, (1983), (*Footnote 4*), 257-265.

<sup>44</sup> From the time of puberty adolescent girls were restricted from interacting with adolescent boys; marriages were arranged by parents and the couples did not meet until the wedding night where it was expected that they had to be virgins otherwise it brought disgrace and scorn to the girl and her family: Nathaniel A. Fadipe, *The Sociology of the Yoruba* (F. O. Okediji and O. O. Okediji (editors) (Nigeria: Ibadan University Press, 1970), 83-86; on the other hand married women only stopped procreation when their own children started having children of their own because it was considered a taboo for mother and child to have children at the same time: Lawrence Adedokun, (1983), (*Footnote 39*), 133-136, but I could find no literature on what happened when such women did become pregnant when their own daughters were too, I can only presume that women found ways of terminating such pregnancies through the use of herbs, but I believe further research would be needed to clarify this aspect.

<sup>45</sup> R. Tong, *Feminist Thought: A Comprehensive Introduction* (London: Unwin Hyam, 1989), 72.



went further by releasing sexuality from biology and relating it to power stating that 'To deal with sex, power employs nothing more than a law of prohibition';<sup>46</sup> he goes further to state that:

Sexuality must not be thought of as a kind of natural given which power tries to hold in check, or as obscure domain which knowledge tries gradually to uncover, it is the name that can given to historical conduct.<sup>47</sup>

Power wielded by colonial leaders found its way into traditional culture giving rise to prohibition and sexual taboos that defined female sexuality in Nigeria which have been the norm since colonisation.<sup>48</sup> I believe sexuality takes on the meaning that society and not nature prescribes to it, thereby changing as the history of society evolves. 'Human sexuality and gender relations are closely interrelated and together affect the ability of men and women to achieve and maintain sexual health and manage their reproductive lives'.<sup>49</sup> 'While gender is...used to describe the social condition of being male or female, it is an interplay of this dualism in human existence that sexuality is traditionally conceived, expressed, experienced or repressed'.<sup>50</sup> I opine sexuality is the totality of human bodily desires and includes sex, reproduction, but goes beyond sex in that it encompasses personal beliefs, culture, awareness and family relations with others. It is the centre of human existence and has therefore been subjected to manipulation by individuals and society throughout history.<sup>51</sup>

I will therefore describe contemporary Nigerian women's sexuality as encompassing the totality of their person, which includes their beliefs and culture, their bodily functions and desires, their struggle and search for recognition of their legal right to control their bodily functions within their socio-cultural environment,

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<sup>46</sup> Michel Foucault, *The Will To Know The History of Sexuality: Volume 1* (Penguin Books, 1998), 84.

<sup>47</sup> Michel Foucault, *The History of Sexuality: The Care of the Self* (New York: Vantage Books, 1990), 105.

<sup>48</sup> Such interplay of power and prohibition could be seen in the insistence that women were supposed to be in the home which was alien to the economically independent traditional Nigerian women, cultural taboos aided this by encouraging women to bear as many children as possible as a symbol of her success at womanhood, which was economically beneficial to the colonial masters and men because the children born were needed to till the land that produced the raw materials such as cocoa for the industries of England

<sup>49</sup> ICPD Plan of Action: paragraph 7.34, UNFPA: Key 'Concepts and Definitions' <http://lao.unfpa.org/defcon.htm> (accessed 24 November 2004).

<sup>50</sup> Eno Blankson Ikpe, (2004), (*Footnote 25*), 17.

<sup>51</sup> *Ibid*, 3.



reclaiming their sexual autonomy and repressed political and economic independence.

### **Male determination of women's sexuality in traditional society following colonisation**

Traditional Nigerian men accorded women respect and as I stated earlier women exercised control over their sexuality because cultural taboos and practices laid down for centuries justified the superiority of women in sexual matters.<sup>52</sup> Attitudes towards women's sexuality, womanhood and procreation were thus, traditionally determined, followed and accepted as a rigid pattern throughout generations for centuries before contact with Western culture. Accounts by Bascom,<sup>53</sup> Fadipe,<sup>54</sup> Adedokun,<sup>55</sup> Barber<sup>56</sup> and Apter<sup>57</sup> on social and cultural attitudes to sex and marriage in Nigeria point to the fact that society gave women ancillary, but 'equal' roles in society.<sup>58</sup> By equality I mean a system where men and women had ancillary social, political and spiritual groups along gendered lines, it was a system found in almost all Nigeria cultures during pre-colonial times referred to as a 'dual-sex-system'.<sup>59</sup> Okonjo states both men and women had their own kinship institutions, age-grade groupings, secret-societies...etc that were equally recognised and respected by the community.<sup>60</sup> Because there was very little physical contact between adolescents of both sexes once the girl reached puberty, young women did not engage in pre-marital sex since social control and surveillance along with cultural taboos ensured that about ninety per cent of

<sup>52</sup> Karin Barber, (1991), (Footnote 22), 110-111.

<sup>53</sup> Nathaniel A., Fadipe (1970), (Footnote 44), 62, especially if she was seen to be too independent minded and promiscuous. See also William Bascom, *The Yoruba of Southwestern Nigeria* (New York: Holt, Rinehart and Winston, 1969), 61-63.

<sup>54</sup> Fadipe, *Ibid.* 83-86.

<sup>55</sup> Lawrence Adedokun, (1983), (Footnote 39), 127-137.

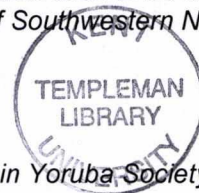
<sup>56</sup> Karin Barber, (1991), (Footnote 22), 110-111.

<sup>57</sup> Andrew Apter, *Black Critics & Kings The Hermeneutics of Power in Yoruba Society* (Chicago: The University of Chicago Press, 1992) 194-195;.

<sup>58</sup> Fapounda states that 'generally West African women of both agricultural and pastoral traditions...especially in polygynous societies must find independent ways to support themselves and their children' they were also expected to meet social expectations to maintain and solidify their link with their kin through gifts and other financial help: Eleanor R. Fapohunda (1983), (Footnote 21), 33.

<sup>59</sup> Kamen Okonjo, 'The Dual-Sex Political System in Operation: Igbo Women and Community Politics in Midwestern Nigeria' in Hafkin, Nancy J. and Bay, Edna G. *Women in Africa: Studies in Social and Economic Change*, (Stanford California: Stanford University Press, 1976), 45.

<sup>60</sup> Okonjo, Kamen *Ibid* ; Rojas also states that prior to colonisation, Nigerian women were not subordinate to their males, but had complementary roles and positions which was based on power and seniority rather than gender, but colonisation eroded the social and political independence women had through Christian teachings that encouraged women to be submissive to their men: Maria Rojas, 'Women in Pre-Colonial Nigeria' <http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (accessed 19 October 2005); Elizabeth Isichei, (1983), (Footnote 4), 257-259; states that this way of life and teaching became part of Islam and led to keeping women in seclusion (*purdah* or *kulle*) which was not done in traditional society also Nina Emma Mba, (1997), (Footnote 4,) 58-60.



adolescent girls were virgins on their wedding night; but such rigid restrictions were not placed on boys.<sup>61</sup> Recent research has however shown that virginity in brides is no longer valued and is sometimes considered 'backward' or shows the girl not to be 'modern' (despite efforts of Churches and Mosques to reverse this attitude) among the young because virginity is associated with infertility and considered impracticable in modern times.<sup>62</sup>

Following colonisation however, Nigerian women from adolescence to menopause faced a multitude of social and cultural vicissitudes that prevented them from exercising control over their reproductive autonomy. At adolescence the father dictated who she could marry;<sup>63</sup> she could be given off as a gift,<sup>64</sup> or given in marriage to cement friendship.<sup>65</sup> As a married woman her husband determined the timing of sexual intercourse and the spacing and number of children she could bear<sup>66</sup>. At menopause she fared no better; she faced socio-cultural taboos in relation to her reproductive rights. For example all forms of sexual activities must cease for a woman but not a man, for at this stage too cultural norms dictated her sexuality.<sup>67</sup> With colonisation patriarchy was used as a means of domination by

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<sup>61</sup> From accounts by elderly respondents during this research old women usually waited in hiding in the bedroom chamber on the first night between married couples after placing a white cloth on the mat the newly-wed couple would sleep on. If there was no red spotting on the white cloth after sexual intimacy between them the old women would announce the result to members of both families that night or in the morning through presenting the bride's family with an empty calabash, or broken calabash if she was found not to be a virgin, or a calabash filled with cowries (later money) if she was a virgin. The girl could be sent away in shame or compensation demanded from whoever is believed to have dis-virgined her, or the groom's family demanded the return of the gifts given to the bride's family. Owuamanam states that premarital sexual experiments were traditionally prohibited among both adolescent males and females, and adults supervised social contacts between them but the sanctions were less for males: Donatus O. Owuamanam, (1995) (*Footnote 35*), 58; William Bascom (*Footnote 53*), 1969), 61-63.

<sup>62</sup> E. P. Renne, 'Changes in adolescent Sexuality and the perception of Virginity in a Southwestern Nigerian Village' (1993) 3 *Health Transition Review* (Supplement) 121-133, 122.

<sup>63</sup> Oputa, Chukwudifu J. '1989), (*Footnote 10*), 8-9.

<sup>64</sup> In 1987 a twelve year old girl, Hauwa Abubakar, from one of the Northern states was given to her friend's father as a gift; there was national outcry when it was discovered that the 'husband' cut off one of her legs with an axe, to prevent her from persistently running back home: Tola Olu Pearce, 'Assaulting a Wife: Perspectives on Conjugal Violence' in N. Mere Kesekka, *Women's Health Issues in Nigeria* (editor), (Nigeria: Tamazara Press, 1992), 192 also recounted by Amina Mama, 'Sheroes and Villians: Conceptualizing Women in Africa' in M. Jacque Alexander and Chanda Talpede Mohanty, *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York and London: Routledge, 1997), 47.

<sup>65</sup> Nathaniel A., Fadipe (1970), (*Footnote 44*) 62, especially if she was seen to be too independent minded and promiscuous. See also William Bascom, *The Yoruba of Southwestern Nigeria* (New York: Holt, Rinehart and Winston, 1969), 62.

<sup>66</sup> Since time had to be allotted amongst his many wives to enable him satisfy his conjugal duties therefore the husband and wife had intercourse at fertile periods of the woman's menstrual cycle.

<sup>67</sup> In this earlier research we found that no ethnic group in Nigeria had a specific word for menopause, but a description of the women's physiological condition which meant that generally that 'she had become a man' i.e. '*o ti di okurin*'; the term could be superlative or derogatory depending on the number of children the woman had during her fertile years: Janice .E. Olawoye; E. Smaranda Olarinde and Titilayo O. Aderibigbe, (1998), (*Footnote 17*), 36-38.

men.<sup>68</sup> Preoccupation with women's sexuality is depicted in the fixation with the woman's clitoris which was seen as evidence of women's sexuality which had to be curbed resulting in clitoridectomy.<sup>69</sup> Ikpe states that in her research, women who were not circumcised but were culturally expected to were saved from clitoridectomy by their fathers even though their mothers insisted on it.<sup>70</sup> Ikemotos argues that men traditionally controlled conception, gestation and childbirth and constructing women as mothers and wombs was a way of expressing their control over women.<sup>71</sup> According to Foucault 'To deal with sex, power employs nothing more than a law of prohibition...which only has the force of the negative on its side',<sup>72</sup> which is seen in the abortion law that I believe tries to determine women's sexuality through prohibition of abortion and is an expression of State's exercise of power of control over women's sexuality.

Among the several areas in which the patriarchal society controlled women's right of reproductive choices<sup>73</sup> by far abortion has the most far-reaching effect on women, since their entire social, economic and psychological future is affected by a denial of fertility control. Jackson<sup>74</sup> argues that 'the exercise of reproductive choices within a society must be adequate and valuable and there must be freedom to exercise these choices... and a set of realistic and valuable reproductive opportunities must be available'<sup>75</sup> these choices or opportunities are absent for women in Post-colonial Nigeria as I show below.

<sup>68</sup> Whereas in pre-colonial times patriarchy was mainly used for social security social identification for people and a for devolution of property, the system protected women and children and not oppressed them; but with colonisation and awareness of the wealth agriculture could bring to a family within society, from the moment a woman is born to the time she can no longer procreate, (or must cease procreating) every aspect of her sexuality is traditionally determined and monitored to suit the benefit of men, society and economic benefit.

<sup>69</sup> The reasoning behind this was to prevent promiscuity among women and the operation ranged from minor removal of the tip of the clitoris (practised mainly in the Southwestern Nigeria) to almost complete extirpation of the female genitalia leaving a small opening for monthly menstruation. Though the practice is dying out it is still prevalent in some areas among the ethnic groups of Edo, Efik, Ibibio, Igbo, Urohobo and Yoruba: E. D. Babatunde, *Women's Rights versus Women's Rites: A Study of Circumcision Among the Ketu Yoruba of South Western Nigeria* (Laurenceville: African World Press, 1998), 58.

<sup>70</sup> Eno Blankson, Ikpe, (2004), (*Footnote 25*), 14; this raises the question whether traditional practices aimed at curtailing women's sexual desires are often not more protected by contemporary women than men, this is an area that needs further research.

<sup>71</sup> Lisa C. Ikemotos, 'The Code of Perfect Pregnancy: At the Intersection of Ideology of Motherhood, the Practice of Defaulting to Science and the Interventionist Mindset of Law', [1992] 53 *Ohio State Law Journal* 1205-1306, 1207.

<sup>72</sup> Foucault, Michel (1998), (*Footnote 46*), 84.

<sup>73</sup> The others are Female genital mutilation and early child (most times forced) marriages, and heterosexual intercourse.

<sup>74</sup> Emily Jackson, *Regulating Reproduction Law, Technology and Autonomy* (Oxford & Portland Oregon: Hart Publishing Ltd, 2001)

<sup>75</sup> This is a view shared by Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1986), 373.



### **Procreative control does not mean abortion never existed in traditional society**

Among the several areas in which the patriarchal society controlled women's right of reproductive choices<sup>76</sup> by far abortion has the most far-reaching effect on women, since their entire social, economic and psychological future is affected by a denial of fertility control. Jackson<sup>77</sup> argues that 'If people believe that women's reproductive capacity compels them to be endlessly self-sacrificing, it is unsurprising that the desire for abortion appears to be culturally unacceptable unless accompanied by an acknowledgement of maternal instinct and psychological distress.'<sup>78</sup> These choices or opportunities are absent for women in post-colonial Nigeria. Because children determine women's sexuality and social status there was therefore a great desire for children by women<sup>79</sup> sometimes at the risk of their health.<sup>80</sup> In the traditional polygamous family, women's procreative ability increased their importance within the family and community but the desire for children diminished with each additional surviving child.<sup>81</sup> This research shows that it does not mean traditional women did not look for ways to control their fertility; the practice was just not as widespread as it is in contemporary times.<sup>82</sup> For instance in this study 56 percent of female respondents between ages 31 and 77 (and only 10 percent of males in the same age group) said they were aware of abortion practice in contemporary societies. It is known that all traditional societies limit fertility through customary restrictions on sexual behaviour;<sup>83</sup> almost all

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<sup>76</sup> The others are Female genital mutilation and early child (most times forced) marriages, and heterosexual intercourse.

<sup>77</sup> Emily Jackson, (2001), (*Footnote 74*), 76; see also John Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* (Belmont, California: Wadsworth, 1994) 156-166.

<sup>78</sup> This is a view shared by Joseph Raz, (*Footnote 75*), at 373.

<sup>79</sup> Odile Frank, (1987), (*Footnote 13*), 181.

<sup>80</sup> Esther N Goody, *Parenthood and Social Reproduction, Fostering and Occupational Roles in West Africa* (Cambridge University Press, 1982), 250.

<sup>81</sup> Helen Ware, 'Female and Male Life-Cycles' in Christine Oppong (editor) *Female and Male in West Africa* (George Allen & Unwin (Publishers) Ltd., 1983), 22; Kennedy also states that this is not unusual because historically fertility rates in agrarian societies are usually high because infant mortality rates were high too as was the case in England and France 'based on the twin assumption that each child would enhance family labour force but that many of them would perish in their early years'. Because agrarian societies (like Nigeria) are in their first generation of enjoying a significant decrease in mortality rates it would take time for fertility rate to decline with industrialisation: Paul Kennedy, *Preparing for the Twenty-first Century* (HarperCollins Publishers, 1993), 24.

<sup>82</sup> See my discussion of findings from this survey in Chapter five especially Tables 5.1 & 5.2.

<sup>83</sup> In traditional society women's life-cycle (where husbands were at least ten years older than their wives, women were expected to practice sexual abstinence for much of their reproductive life, during pregnancy, two-and-a-half to three years between each child, during mourning and once she became a grandmother (which is likely to be in her thirties). Therefore, the only kind of women



civilisations had traditional knowledge of abortifacients by which women controlled their fertility,<sup>84</sup> and therefore their reproduction despite men's restrictive controls.<sup>85</sup> This was confirmed by some of the respondents in this research. One respondent said: "they even quietly killed children they believed would bring bad-luck (in traditional society) not to talk of pregnancies that the oracle confirmed to be an abomination or will bring bad luck to the village or community".<sup>86</sup> Many of the respondents said that abortion was not common in traditional times because child mortality rate was so high and they did not know which child will survive, therefore women resorted to abortion only when the pregnancy was as a result of a clandestine relationship.<sup>87</sup> Because 'the body is the first and most natural tool of man',<sup>88</sup> the traditional patriarchal nature of society, coerced and controlled women's reproductive choices through rigid social rules and taboos. But I believe while the socio-cultural and environmental conditions of traditional society may necessitate these restrictions the socio-cultural environment of contemporary Nigeria can no longer sustain or justify it. There is a realisation that modern women need to control their fertility which explains why abortion has long been the most widespread and clandestine method of fertility control in contemporary times<sup>89</sup> and I believe our law must meet this need through reform.

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who had a broad exposure to sexual intercourse were prostitutes or sub-fertile wives who are fortunate enough not to be divorced: Helen Ware, (1983), (*Footnote 81*), 23.

<sup>84</sup> Glanville Williams, *The Sanctity of life and the Criminal Law* (Faber & Faber, 1958) Chapter 5; J. T. Noonan, *The morality of abortion, legal and historical perspectives* (Harvard University Press, 1970).

<sup>85</sup> Devereaux shows from his study of 350 primitive, ancient and pre-industrial societies 'that there is every indication that abortion is an absolutely universal phenomenon, and that it is impossible even to construct an imaginary social system in which no woman would ever feel at least impelled to abort': George Devereaux, 'A Typological Study of Abortion in 350 Primitive, Ancient, and Pre-Industrial Societies' in Harold Rosen (editor) *Abortion in America* (Boston: Beacon, 1967), 98; also Rosalind Pollack Petchesky, *Abortion And Woman's Choice: The State, Sexuality, and Reproductive Freedom* (Boston: Northeastern University Press, 1990), 1-2; Gordon, Linda *Women's Body, Women's Right: A Social History of Birth Control in America* (Harmondsworth, England and Baltimore: Penguin, 1977), 47.

<sup>86</sup> Field Study Analysis: statement by a 57 year old female Civil servant with tertiary education.

<sup>87</sup> Frank says that the high child mortality rate as a result of disease usually balanced the population of the community: Odile Frank, '(1987), (*Footnote 13*), 182; see similar conclusions by Kennedy: Kennedy, Paul, *Preparing for the Twenty-first Century* (HarperCollinsPublishers, 1993), 24.

<sup>88</sup> Marcel Mauss quoted in Dominique Zahan, *The Religion, Spirituality and Thought of traditional Africa* (The University of Chicago Press, 1970), 53.

<sup>89</sup> C. Tietze, and S. Skewitt, 'Abortion' (1969), 220(1) *Scientific America* 21-27, 21.

## 3.2 Comparison between Nigeria and English Laws on Abortion before the Enactment of the Abortion Act, 1967

### Historical antecedence to the abortion law in England and Nigeria

The enactment of laws usually reflects the evolution of society as it passes through the various stages of its development. Modern day English society's attitude to abortion is traced to her historical development.<sup>90</sup> A look at the history of abortion shows that during the Roman Empire 'the regulation of abortion was almost non-existent'.<sup>91</sup> Legal regulation of abortion was also unknown under Roman law which categorically stated that the 'child was not a person and abortion was not murder'.<sup>92</sup> The fact that Pliny was able to give a list of 'prescriptions' that could be used for abortion during his time shows abortion to be prevalent.<sup>93</sup> This research also shows that abortion was practised where necessary in traditional Nigerian society.<sup>94</sup> One of the earliest reported cases on the illegality of abortion in Europe was around the seventh century in the case of *R v Webb*.<sup>95</sup> However, religion has affected perceptions of abortion in England and Nigeria.

In the Nineteenth century the church and its doctrines largely shaped the views of English society as reflected in the laws of the era. Under the Common law Lord Ellenborough's Act of 1803 is the first regulatory enactment on abortion in England.<sup>96</sup> The ecclesiastical influence could be perceived in that law, which did not just make abortion a criminal offence, it went further to distinguish between its punishment before and after 'quickening' of the foetus.<sup>97</sup> The 'Offences Against

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<sup>90</sup> The Romans had an influence on the British society during their reign over the then known world that included Britain. During the Roman era abortion was frequently practised. Authors such as Ovid, Juvenal and Seneca inform us about the practise of abortion at the time: Kristin Luker, *Abortion and the Politics of Motherhood*, (Berkeley, Los Angeles and London: University of California Press, 1984), 11-18.

<sup>91</sup> Kristin Luker, (1984), *ibid*, 93.

<sup>92</sup> *Ibid*.

<sup>93</sup> Kristin Luker, (1984), *ibid*, 11-18 and 264 note 3.

<sup>94</sup> The various abortifacients used in traditional times as stated by respondents are discussed in Chapter 5: 'The tired womb takes control: findings from the empirical study'.

<sup>95</sup> In this case Margaret Webb sought to abort the foetus through the use of abortifacients by eating a poison called "rattlebare...with the intention of spoiling and destroying the infant" in her womb and the prosecution sought to protect the unborn child in the womb, but the court held that the foetus could not be considered a legal entity until it is born alive: Calendar of Assize Records, Surrey Indictments, Elizabeth, I : reported in John Keown, 'Abortion, Doctors and the Law-Some Aspects of the legal regulations of abortion in England from 1803 to 1982', (Cambridge University Press, 1988), 512.

<sup>96</sup> Barbara Brookes, *Abortion in England: 1900-1967* (Beckenham: Croom-Helm Ltd., 1988), 24.

<sup>97</sup> Quickening was the point when the foetus was thought to be 'ensouled' that is; the soul was believed to enter the body of a foetus that made it a potential human. This was thought to be around the twelfth week of pregnancy, though for a male it was supposed to be earlier.

the Person Act 1837' removed this distinction and was followed in 1861 by the reformed 'Offences Against the Person Act' which regulated the form of abortion without stipulating the length of the punishment.<sup>98</sup> This later Act did not distinguish between early and late abortion, neither did it mention explicit exemption for therapeutic abortion.<sup>99</sup> The 1861 Act did however abolish the death penalty and substituted it with life imprisonment. It also abolished the distinction of the age of the foetus in judging the offence. The 1861 Act is the precursor of the modern law on abortion in England (and the Nigerian law on abortion also) which explains why the wordings of the 1861 Act and the abortion legislation in Nigeria are very similar.<sup>100</sup> Britain colonised what was to become Nigeria between 1861 and 1914,<sup>101</sup> and 'the general policy of the British Government in relation to Colonial Constitution seem to be to adopt the United Kingdom as a model and attempt to reproduce in the Colonies the historical development of the United Kingdom Constitution in a period appropriate to each particular colony'<sup>102</sup> which explains the similarities between the laws of both countries.

The southern parts of Nigeria are mostly of the Yoruba ethnic group,<sup>103</sup> they were the first to come in contact with the English and be influenced by English culture.<sup>104</sup> Yoruba women are traditionally regarded as the most independent and

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Procurement and attempt at miscarriage of a woman believed to be with child was a misdemeanour before quickening and a felony after.

<sup>98</sup> The medical profession were not satisfied that the quickening distinction was satisfactory because it was thought to rely on the woman's experience of pregnancy as seen from the comment in (1810) 6 *Edinburgh Medical and Surgical Review*, 249 in Barbara Brookes, (1988), (Footnote 96), 24-25.

<sup>99</sup> Sally Sheldon, *BEYOND CONTROL* Medical Power and Abortion Law (London & Chicago: Pluto Press, 1997), 15; the Act did not do so probably because therapeutic abortion was still yet unknown or medical knowledge had not advanced to that stage at the time.

<sup>100</sup> This is because almost all the laws in Nigeria have their precedence in pre-1900 British laws.

<sup>101</sup> Lagos and its hinterland were colonized around 1861 and 1897; the Eastern parts of Nigeria with the declaration of the Niger Coast Protectorate took place in 1894, the declaration of the Northern areas in 1900. By 1906 the colony of Lagos and the Protectorate of Southern Nigeria were joined together to become the Colony and Protectorate of Southern Nigeria. Finally in 1914 the Southern and Northern protectorates of Nigeria were amalgamated giving birth to modern day Nigeria; 'Nigeria: Government and Politics' <http://www.country-data.com/cgi/query/r-9429.html> (accessed 19 October 2005).

<sup>102</sup> D. C. Holland, 'Constitutional Experiments in British West Africa' (1953) 6 *Current Legal Problems* 62-81, 63; however in Nigeria at the governmental level, the British form of government was discarded for federalism (possibly because of the huge diversity of the people), but the British laws were adopted generally into the country: *ibid*, 64.

<sup>103</sup> The Yoruba people are found in South-western Nigeria. They speak a language called 'Yoruba' that belongs to the dialectic cluster of the Kwa languages of the Sudanic family. The word 'Yoruba' is thus an ethnic and linguistic description of a people who trace their ancestry to a common progenitor called Oduduwa and source in Ile-Ife that is regarded as the cradle of the Yoruba race. There are about 200 sub-groups of the Yoruba: Daryll Forde, *The Yoruba-Speaking Peoples of South-Western Nigeria* (London; International African Institute, 1969), 5;

<sup>104</sup> The language belongs to the dialectic cluster of the Kwa languages of the Sudanic family: Daryll Forde, (1969), *ibid*; Nathaniel A. Fadipe, (1970) (Footnote 44), 29-30; The Kwa language is derived from the Nok culture and historians have said that 'Between 500 and 200 B.C. the Nok



emancipated among all the women in the other ethnic groups found in Nigeria.<sup>105</sup> They engaged in independent economic activities without their husbands, earning and possessing properties of their own which ensured a greater say in the decision making in the home for them.<sup>106</sup> Lloyd is of the view that Yoruba women did not suffer the same legal disabilities English women in the nineteenth and earlier centuries suffered because women exercised control over their fertility through the laid down socio-cultural set up of society where men and women had separate but equal kinship roles in society. Traditionally, Yoruba women could enter into contract and obtain divorce much more easily than their English sisters of the same era, whose emancipation only occurred in the last century,<sup>107</sup> but Nigerian women's emancipation changed with colonisation as I discuss below.

### **She is shut out of the homestead and is still knocking to get in**

The enormous social and political power Nigerian women wielded in the past which was taken away when the enforcement of English laws and statutes occurred during colonisation, thus eroding their independence and forcing them to take subordinate role to men in society as did British women of that era.<sup>108</sup> The British administrators were products of strict late Victorian and Edwardian middle-class society which believed in women's duties being in the home while men were duty-bound to insulate them from the pressure of public life, but the subordination and exclusion from public life was alien to Nigeria women. Nigerian women from all ethnic groups fought against this alien ideology but were subdued by the military and administrative force of colonialism.<sup>109</sup> Mba states that 'Colonialism is

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culture, in what is today's Nigeria, was one of the richest and most advanced ancient civilizations in west Africa': *The International Encyclopedia of Sexuality Volume I - IV 1997-2001*, (Edited by Robert T. Francoeur), (The Continuum Publishing Company, New York, 1997), 3; <http://www2.hu-berlin.de/sexology/IES/index.html> (accessed 27 November 2005).

<sup>105</sup> The Yoruba people are found in South-western Nigeria and they are about the largest or second largest ethnic group in Nigeria and they speak a language called 'Yoruba' the word 'Yoruba' is thus an ethnic and linguistic description of the people: Rowland Abiodun, 'The Concept of Women in Traditional Yoruba Religion and Art' (Paper presented at the Conference on "Nigerian Women and Development in Relation to Changing Family Structure" (University of Ibadan, April 26-30, 1976, in Margaret Thompson Drewal, *Yoruba Ritual Performers, Play, Agency* (Indiana University Press, 1992), 188

<sup>106</sup> Niara Sudakasa, *Where Women Work: A Study of Yoruba Women in the Marketplace and Home* (Ann Arbor: University of Michigan, 1973), Eleanor Fapounda, 'Female and Male Work Profiles' in Christine Oppong (editor), *Female and Male in West Africa* (London: George Allen & Unwin, 1983), 33-34.

<sup>107</sup> P. C. Lloyd, *Africa in Social Change* (Penguin Books Ltd., 1967), 23.

<sup>108</sup> Niara Sudakasa, *Where Women Work: A Study of Yoruba Women in the Marketplace and Home* (Ann Arbor: University of Michigan, 1973), Eleanor Fapounda, 'Female and Male Work Profiles' in Christine Oppong (ed), *Female and Male in West Africa* (London: George Allen & Unwin, 1983), 33-34; Rojas, Maria 'Women in Pre-Colonial Nigeria' <http://www.scholars.nus.edu.sg/landow/post/nigeria/precowon.html> (accessed 19 October 2005).

<sup>109</sup> Nigerian in all parts of the country women resisted the curtailment of their political powers and consequently their subordination with mass protests. In the West women had the 'Ijemo' uprising in



not just a system of administration but a whole way of living and thinking...after 1900, when the machinery of colonial administration was set up, it was as though women had been rendered invisible to the exclusively male colonial administrators'.<sup>110</sup> Having colonised Nigeria for over a hundred years during the course of which the English put in place legislation that was almost word for word as laws enacted in England; Nigerian women lost their freedom to control all aspects of their lives. In this way the English colonial leaders imposed upon Nigeria English social values, which are clearly reflected in Nigerian legislations as well as administrative policies on marriage, the civil service and religion.<sup>111</sup> Consequently the Colonial government transferred the perception and attitudes of the English society to their colonies without regard to the culture, historical antecedents, perceptions and attitude of the people that they governed.<sup>112</sup> Colonialism changed the roles of women through legislation; the focusing of colonial economies on men;<sup>113</sup> and refusing women political roles in the economy just as was the case for English women.<sup>114</sup> Above all it took away their reproductive control beginning with the English OAPA, 1861.

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1914 against forced taxation imposed by the British which led to a Commission of Enquiry into the massacre that followed: 'P8; P31: 16/20. C.92/1918: Minutes of Evidence of Commission of Enquiry into the Egba disturbances', 1918 in Nina Emma Mba, (1997) (*Footnote 4*); also in the east women embarked on a mass protests that emanated from clashes between the indigenous and colonial systems through their secret societies between 1917-1924, flu epidemic, 1918 and the 1927 'spiritual movement': A. E. Afigbo, *The Warrant Chiefs: Indirect rule in South-Eastern Nigeria 1891-1929* (London: Longman, 1972), 290-295; throughout colonisation and up until independence Nigerian women did not stop protesting their subordination in domestic, political and economic sphere under the umbrella of the 'Federation of Nigerian Women's Societies (FNWS) which was described by its first President-General, Funmilayo Ransom-Kuti at its first conference as 'a parliament of the women of Nigeria 'where the voices of all Nigerian women will be heard and known' N. E. Mba, (1997), (*Footnote 4*), 173.

<sup>110</sup> Ikemotos noted that in the late 19<sup>th</sup> and early 20<sup>th</sup> Century the ideology of perfect motherhood had a 'Code' that focused on pregnant women. The ideology of motherhood was first expressed in laws which clear restrictions that speaks to women's biological capacity to conceive and bear children, not with laws confining to the private sphere-These laws affected women's reproductive liberty and the twin values of bodily integrity and decisional autonomy...this solidifies assumptions of subordination and prevents liberating ideology, introducing a set of choices not regulated before and doing so in the name of "fetal interest" Ikemotos, Lisa C., [1992] (*Footnote 71*), 1221; also Nina Emma Mba, (1997), (*Footnote 4*), 38.

<sup>111</sup> It is observed that all the former British colonies before their independence from Britain had almost exactly the same laws showing that this was a general policy for all British colonies as stated by Holland: D. C. Holland, (1953), (*Footnote 102*), 93, see also Nina Emma Mba, (1997), (*Footnote 4*), for a review of how colonisation devalued and replaced the traditional social, political and economic roles of women for the British societal values in these spheres of life.

<sup>112</sup> The majority of the statutes in place in Nigeria before her independence in 1960 were the various laws in England before 1900 and many of them are still in use today; the Criminal and Penal Codes being two of such statutes. Whenever there is a lacuna in the laws in Nigeria today, the judges have sought direction from the pre-1900 laws of England which is referred to as 'Statutes of General Application'.

<sup>113</sup> Maria Rojas, 'Women in Pre-Colonial Nigeria'

<http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (accessed 19 October 2005).

<sup>114</sup> Mba, Nina Emma, (1997), (*Footnote 4*); for Northern women colonisation started the seclusion of women i.e. *purdah* which was a status symbol as only wives of rich men could be secluded. Islamic ideology was thus used to give religious sanction to the dependent status of women

## The Effect of the 1861 Offences Against the Persons Act on Nigerian Women

The imposition of English statutes led to the assimilation of western culture and colonial morality thus making abortion an important social and moral issue just as it is in England that has found its way into the Nigerian statute books in the form of the Criminal and Penal Codes.<sup>115</sup> The abortion law was adopted and modified in the Penal Code to reflect Sharia teaching without the prescribed Sharia criminal penalties being incorporated into it. While different Islamic scholars give different interpretation to abortion, what is clear is that most Islamic scholars agree that a child is not recognised as person until it is born and abortion becomes prohibited when the foetus has acquired a soul.<sup>116</sup> The precise time when this happens is difficult to determine since different scholars interpret the Koran differently. It is generally agreed that the soul enters a foetus at about 40 to 120 days after conception.<sup>117</sup> The precise effect of the Act on society is not fully known because discussion of procreation is alien to the traditional Nigerian culture whatever the religious conviction of the people; as a result there is very little literature on the topic especially before Nigeria's independence in 1960.<sup>118</sup> However, from copious literature on marriage rites, death and gender attitudes and divisions of roles in the home, it is observed that a strict code of practise was followed by men and women in sexual matters as dictated by society that left no chance for premarital sex or

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because it enhanced the political and social status of their husbands. Seclusion however took away women's autonomy, but Northern women circumvented these restrictions to an extent through using their children to sell wares in the market, thereby gaining access to the market economy: Enid Schildrout 'Dependence and Autonomy: the Economic Activities of Secluded Hausa Women in Kano' in Oppong, Christine, (editor) *Sex Roles, Population and Development in West Africa: policy-related studies on work and demographic issues*, (London: George Allen & Unwin, 1983), 107-108.

<sup>115</sup> The Criminal Code was applicable in the largely Christian southern parts of Nigeria, while the Penal Code was applicable to the largely Muslim northern parts of Nigeria. In the Nigerian case of *Akinyele v Cole* (1960) 5 FSC 84, at 84: the court confirmed this erosion when it stated that: 'However the Colonial masters imposed their western morality on the people'.

<sup>116</sup> But at an advanced stage of its development in the womb, if it is born prematurely, it will be accorded full burial rights given to a full term stillborn child. The age of the foetus is where opinions differ. This area of law is recondite and several contemporary literatures I consulted dwelt on what Islam says about procreation but do little justice to what Islamic women do when they do not want anymore children. Hussain however has given a detailed analysis of how contemporary Islamic women in the slums of New Delhi in India are physically assaulted by husbands when they take contraceptives or have abortions forcing many in desperation to resort to hysterectomy or tubectomy: Sabiha Hussain, 'Gender and Reproductive Behaviour: A comparative Study of Two Religious Communities in Delhi Slum' in Engineer, Asghar Ali *Islam, Women and Gender Justice* (New Delhi, India: Gyan Publishing House, 2001), 240-243; what steps Islamic women in Nigeria will take in similar situation I believe, will depend on their socio-economic status and the extent of their adherence to strict interpretation of fertility control under Islam. This is an area which needs further research and did not form the specific focus of this research.

<sup>117</sup> Muata states that in Islam [In the mother's womb] the sperm drop becomes a blood clot and the blood clot becomes a lump of flesh... When forty-days periods pass, the lump of flesh becomes worthy of becoming connected to the spirit' Sachiko Muata, *The Tao of Islam A Sourcebook on Gender Relationships in Islamic Thought* (State University of New York Press, 1992), 248; Buchie Okosieme, 'Before we legalise abortion', Nigeria: *The Guardian*, October 24, 1991, 15.

<sup>118</sup> Francis M., Coeytaux (1988) (*Footnote 108*), 186.



the necessity for frequent abortion.<sup>119</sup> But that is not to say abortion was totality absent in the community.<sup>120</sup>

After independence education of women gave contemporary Nigerian women social emancipation and some economic independence, but women's self-determination, does not extend to their reproductive freedom because women are still subordinated to their men reinforced by the patriarchal Nigerian system. Therefore, men determine and control sexual freedom of women as dictated by the evolved and assimilated British culture and patriarchal Nigerian system. There does not seem to be a shift in this perception despite modern Nigerian women's educational attainments and socio-economic emancipation. However, societies are dynamic and many of the traditional, social and cultural checks and balances, which hitherto made abortion less frequent socially in pre-independence time, are no longer in place. I argue that when abortion became necessary, the traditional society had acceptable traditional methods to deal with unwanted pregnancies, but because tradition family values and structures in Nigeria have broken down due to the influence of Western ideals and assimilation of Western culture, abortion has become an important social and moral issue that has found its way into the statute books.<sup>121</sup> Abortion law in Nigeria has remained unmodified since 1958 when it was first made a criminal offence under the title "Offences Relating to Morality";<sup>122</sup> however I believe that abortion in contemporary Nigeria is no longer simply a moral issue. Abortion has become an important social issue that society, government and the Legislature must deal with because of the statistical evidence pointing to the fact that many Nigerian women have lost their lives or suffered irreparable biological damages as a result of illegally procured abortion.<sup>123</sup> Apart

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<sup>119</sup> Lawrence Adedokun, (1983), (*Footnote 39*), 131-132; gives a very detailed account of child spacing among the Yoruba and the time when post-partum sex could resumed among married couples without social stigmatisation from non conformity; Nathaniel A. Fadipe, (1970), (*Footnote 44*, )72; and William Bascom, (1969), (*Footnote 53*), 61-63; both Fadipe and Bascom state that premarital pregnancy was avoided or if discovered the young girl was promptly married off to avoid social stigmatisation.

<sup>120</sup> Many of the respondents in this research also mentioned the fact that abortion was practised in traditional society too, this is discussed in Chapter 5, which is confirmed by the earlier research by Bleek who also states that traditional forms of abortifacients were used to get rid of unwanted pregnancies, though his research was done in rural Ghana as a West African Colony of Britain with similar history, this would be true of Nigeria also: Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 110-111.

<sup>121</sup> Many of the respondents in this research are of the view that abortion has become more frequent in contemporary Nigeria because of the influence of Western culture and values especially on young Nigerians through the media.

<sup>122</sup> Criminal Code 1958 (Chapter 42) Section 228 and 229 Laws of the Federation of Nigeria; the law is similarly worded in the Penal Code 1963 (Caption 89) s 232 and 235 under the heading "Offences Affecting the Human Body" applicable in the northern part of Nigeria. The laws have been included in the revised Laws of the Federation of Nigeria, 1990.

<sup>123</sup> THE ALAN GUTTMACHER INSTITUTE 'Unsafe Abortion Common in Nigeria According to New Study by American and Nigerian Researchers' <http://www.agi->

from this there are economic, religious factors that have made abortion an important issue that society must address. International political issues that have become apparent over the years following the Second World War have also influenced abortion and reproductive freedom of women in Nigeria as well as in other parts of the world. Therefore, the direct influence and subtle coercion by developed countries to curb the population of 'third world countries' cannot be ignored when abortion is discussed in developing countries like Nigeria.<sup>124</sup> These factors influence how Nigerian society view and address the reproductive freedom of women and abortion in particular as I discuss under the next heading.

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[usa.org/pubs/archives/newsrelease2404.html](http://usa.org/pubs/archives/newsrelease2404.html) (accessed 12 November 2002) A joint study of abortion by The Alan Guttmacher Institute (AGI) and the Nigerian Campaign Against Unwanted Pregnancy (CAUP) found that there were 610,000 abortions in the country, which is a rate of 25 per 1,000 women aged 15-44 It stated that "60% of these are performed by non-physicians or by the women themselves...often under unsanitary conditions...the remainder are performed by physicians".

<sup>124</sup> The mainstream institutions such as Ford and MacArthur Foundations Reproductive Health Programmes had by the end of the 1980s integrated into population discourses the concept of reproductive health into policies in developing countries: Sonia Correa (in collaboration with Rebecca Reichmann) *Population and Reproductive Rights: Feminist Perspective from the South* (London & New Jersey: Zed Books Ltd., 1994), 62; this issue is the focus of my earlier discussion in Chapter two 'National and international politics of abortion in Nigeria: Giving Nigerian women a voice'.



### 3.3 The Influence of Colonial English Society's Moral and Ethical Attitude to Abortion on Nigerian Society and its Effect on Contemporary Nigerian Women's Sexuality

#### How Westernisation changed Nigerian women's sexuality leaving a gaping hole

Abortion is a very personal issue that would otherwise not be openly discussed in public in Nigeria.<sup>125</sup> In recent times however abortion has been catapulted into the public arena as a result of modernisation, the influence of Western culture and a gradual breakdown of traditional ethics and moral codes that made it an otherwise veiled topic meant only for elders and close family members. This probably explains why there is little or no literature on abortion prior to Nigeria's independence.<sup>126</sup> The lack of literature is made more difficult by the criminalisation of abortion in the statute books since 1914 when Nigeria was under English colonial rule, as a result we can only conjecture the extent and frequency of abortion use from oral accounts.<sup>127</sup> But for contemporary Nigerian women (like all women the world over), 'the universal risk factor is the fact of being female',<sup>128</sup> and I argue that it is that fact of being female that became a weapon for women's subjugation and confinement of discussions of their sexuality to the darkness of the bedroom in colonial Nigeria which has precluded them from freely expressing their needs today.

Judging by the wordings of both the Criminal and Penal Codes (and observing their similarity with the 1861 Offences Against the Persons Act), it can be argued

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<sup>125</sup> Public discussions and calls for abortion law reform have only recently gained public attention in Nigeria due to the huge scale of mortality resulting from complications from illegally procured abortion: See Godwin Haruna 'Forum Calls for Review of Abortion Laws' ThisDayNews: <http://www.thisdayonline.com> (accessed 17 July 2005); Sola Ogundipe 'Good Health: Unsafe Abortion: The Pain, the Reality', (Nigeria: Vanguard Newspaper, 27 July 2004, page 8; Chinedu Eze, 'Unsafe Abortion Causes 40 Percent Maternal Mortality' (Nigeria: ThisDayNews: <http://www.thisdayonline.com/news.php?n=27269> (accessed 5 June, 2005).

<sup>126</sup> Francine M. Coeytaux, (1988) (*Footnote 118*), 186. This is further compounded by the fact that persistent and obtrusive theme in ethnographic literature on West Africa is the stress placed on parent-child relationships, reflected in the great desire for children and in women's child-bearing powers: Esther N. Goody, (1982), (*Footnote 80*), 250.

<sup>127</sup> I believe that since abortion is a criminal offence academic writers in colonial times did not see the need to engage in discussions on it and the courts had very few cases on abortion brought before them. Coeytaux also states that one of the problems facing Sub-Saharan Africa on abortion is the gap in existing literature that does not give exact information on the magnitude of the problem: Francis M. Coeytaux, (1988) (*Footnote 118*), 186; this issue has been discussed in my introduction to chapter one.

<sup>128</sup> Rebecca Cooke, 'International Human Rights and Women's Reproductive Health' (1993) 24(2) *Studies in Family Planning* 73-86, 73.



that they reflect the English society's attitude to abortion at that time<sup>129</sup> which I believe is an imposition of Victorian English societal attitude and values to abortion on Nigeria.<sup>130</sup> Because colonisation and the Christian evangelisation of Nigeria influenced the attitude of Nigerians to reproductive issues, over time it became difficult to separate the attitudes of the indigenous people from their colonial leaders' society.<sup>131</sup>

We know from the account of Southall<sup>132</sup> that a new class of modern elite who were educated in England and other Western countries shaped the moral attitude of Nigerians towards sexual issues in the early 1950s and 1960s on their return to Nigeria. Much of these traditional attitudes and moral value towards sexual matters at this time is still apparent today, while the traditional values are not reflected to a large extent in the laws enacted and adopted by independent Nigeria.<sup>133</sup> As a result both the Criminal and Penal Codes locate abortion as a crime against morality which was the societal attitude of the English society at the turn of the Nineteenth century. This does not suggest that even at this time abortion was absent in society. Greer states that women throughout the ages have always sought to control their fertility<sup>134</sup> and I demonstrate that Nigerian women were no different.<sup>135</sup> Though women were expected to be chaste and pre-marital

<sup>129</sup> Brookes has given detailed account of attempts by English women to control their fertility and reduce family size during this period while there existed a wide 'gap between statute law and the social practice of abortion in the early twentieth century' which caused public concern and debate: Barbara Brookes, (1988), (*Footnote 96*), 1-15, 2.

<sup>130</sup> Victorian England viewed abortion as a moral crime as seen in the account of Brookes: Barbara Brookes, (1988) *ibid*.

<sup>131</sup> Maria Rojas, 'Women in Pre-Colonial Nigeria' <http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (accessed 19 October 2005); Elizabeth Isichei, (1983), (*Footnote 4*), 257-259; on the changes that colonisation brought to Nigerian women see also: Nina Emma Mba, (1997), (*Footnote 4*), 58-60; I also believe the imposition of English laws on abortion has also clouded the moral attitude of Nigerian society to abortion. Through colonisation English laws, the ecclesiastical attitude and moral value of England in the nineteenth century (reflected in the common law); have been imported into Nigeria's moral value judgement on abortion.

<sup>132</sup> Monogamy was considered a status symbol by the educated elite, because educated women took a longer time in acquiring education, therefore the strict sexual prohibition and insistence on virginity before marriage could not be sustained and enforced, because pre-marital sex was common and social values on traditional rites of marriage gradually diminished: Aidan Southall, *Social Change In Modern Africa* (Oxford University Press, 1961), 53.

<sup>133</sup> P.C. Lloyd, (1967), (*Footnote 107*), 157.

<sup>134</sup> This was used as a means of aborting unwanted pregnancies through the use of herbs administered by people who knew of such things: Germain Greer, *Sex and Destiny: The Politics of Human Fertility* (London: Secker and Warburg, 1984), 181.

<sup>135</sup> See my discussion from the field survey in Chapter 5.1 also earlier research in Nigeria points to the evidence that abortion and traditional contraceptive devices were practised through the use of herbs and plants as stated by Olusanya: P. O. Olusanya, 'Cultural Barriers to Family Planning Among the Yorubas', in John C. Caldwell; N. O. Addo; A. Igun; S. K. Gaise and P. O. Olusanya (editors), *Population Growth and Socioeconomic Change in West Africa* (New York and London: Columbia University Press, for Population Council, 1975), 214-215).

pregnancy and illegitimate children carried a social stigma, educated women at this time were beginning to assert their emancipation. These educated women often sought to get the same sexual freedom as men through the use of abortifacients common at the time. Contraceptives were not easily available, therefore women found alternatives in spirits, quinine and native herbs to prevent unwanted pregnancies.<sup>136</sup> The dilemmas modern women faced were that monogamy was considered a social status but men had to ensure that the woman they were going to marry were fertile.<sup>137</sup> As a result many women had to risk getting pregnant before marriage, relying on their partner to make good his promise to marry them once they had proven their fertility. The disadvantage in this was that if the man changed his mind or the time the woman became pregnant was inauspicious for him, she risked being abandoned, which often happened. Even at this time Nigerian women had constitutional equality with men that in reality were a farce.<sup>138</sup> The Christian and Muslim faiths and societies dictated a certain set of rules for women to follow made for the convenience of men, while at the same time expecting women to conform to the traditional sexual role assigned to them. While men embraced Western, social and cultural ideals of monogyny, they still indirectly insisted on the traditional perception of assessing a woman's worth through her ability to procreate. Unfortunately the few educated women at this time did not assert their right through participation in public office. I believe a concerted effort on women's part could have brought awareness on reproductive issues to the public attention as was happening in England prior to the Abortion Act, 1967 possibly the legalisation of abortion might have been achieved at the same time as England since England still influenced a lot of political and social issues in Nigeria, overtly or subtly. In fact women 'refrained from participation in

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<sup>136</sup> Aidan Southall, (1961), (*Footnote 132*), 53-55; also Conference: First International African Seminar (Kampala, Uganda, 1959) 'Social Change in Modern Africa, Studies Presented and discussed at the First International African Seminar, Makerere College, Kampala, 1959', (London ; New York : Published for the International African Institute by the Oxford University Press, 1961); Aidan Southall; Peter, J. M. Nas and Ghaus Ansari, (*editors*), *City and Society Studies in Urban Ethnicity, Life-style and Class* (Institute of Culture and Social Studies, University of Leiden, 1985).

<sup>137</sup> Michael Banton, 'The Restructuring of Social Relationships' in Aidan Southall, (editor) (and Forward by Daryll Forde), *Social Change in Modern Africa*, (Oxford University Press, 1961), 122-123; Allison Izzett, 'Family Life Among the Yoruba, In Lagos, Nigeria' in Aidan Southall, (editor) (and Forward by Daryll Forde), *Social Change in Modern Africa*, (Oxford University Press, 1961), 314-315.

<sup>138</sup> Federal Republic of Nigeria Constitution, 1963 S. 28; this was Nigeria's first constitution following independence and it guaranteed non discrimination on account of sex, ethnicity, religion or manner of birth.

any public debate or campaign about rights of women,<sup>139</sup> to their own disadvantage.<sup>140</sup>

I also believe the political instability in Nigeria has also affected the codification and review of Nigeria's laws to reflect present day changing views on a number of issues that are already legislated. Following independence, Nigeria had only six years of democratic governance before the military took over government. From January 1966 when the first military coup took place, Nigeria has had only a total of thirteen years of democratic governance out of the forty-three years of her independence. During the remaining thirty years the successive military junta were more concerned with legislation that would consolidate their hold on power for most of the time rather than enacting laws that directly affected the changing attitudes of society on a number of issues, including abortion. All military leaders have been men whose lack of concern about the reproductive choices of women has meant that abortion is not a focal issue on the political agenda.

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<sup>139</sup> Nina Emma, Mba, (1997), (*Footnote 4*), 53.

<sup>140</sup> Ibid: There were a few exceptions in women such as Chief Funmilayo Ransome-Kuti and Margaret Ekpo. Ransome-Kuti led Yoruba-Egba women against unjust taxation and was the only female delegate to the constitutional conference in London in 1947. Ekpo was committed to women's political emancipation. Both women fought for women's rights but not for sexual freedom in the manner women's liberation movements were done in Western societies during this period, *ibid*.



### 3.4 Women's Sexuality in Present Day Nigeria

This research shows that the English society's attitude of the 'type of women' who will seek an abortion has influenced Nigerian society's attitude also. The type of woman who would seek abortion is stereotyped as promiscuous, uncaring and lacking the finer motherly instinct every woman is expected to have towards the child she is carrying in her womb.<sup>141</sup> While it is probably true that there are women in Nigeria today who fall within these two categories identified by the English Parliamentarians, respondents in this research have stated that there are many respectable women with motherly instincts who would consider abortion.<sup>142</sup>

Despite the fact that the Abortion Act, 1967 gives English women a greater choice to legally terminate an unwanted pregnancy, that choice is not without limits.<sup>143</sup> Bridgeman and Millns claims that all the Abortion Act 1967 has achieved is that it 'succeeded in achieving a compromise between diverse and conflicting interests'.<sup>144</sup> While the Act does not protect the right of English women to choose abortion at will, nor protect the right of a foetus to life, it is the opportunity of being able to have the choice of having a legal abortion on wider terms that are socially acceptable to Nigerian women (though limited in scope) that Nigerian women can aim for. What these acceptable social reasons are I believe should be reflected in a review of the Nigerian law on abortion, which is the aim of this study. Sadly however, while England, from whom Nigeria's law on abortion was transmitted, has reformed its law to reflect more permissive attitudes, Nigeria has tenaciously held on to the same law in its unmodified form since colonial times. The reason for this in my opinion is partly due to Nigerian women's respect and adherence to their traditional role as child-bearers given to them by the patriarchal society. The changes in the social, political and economic roles Nigerian women play today is

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<sup>141</sup> This is reflected in this study as I discuss in Chapter 6; also Sheldon in her review of the Parliamentary Debate that preceded the passing into law of the Abortion Act, 1967 said that members of Parliament presented the picture of the type of woman seeking abortion as 'marginal and deviant, standing against a wider norm of women who do not need/desire abortion: .Sally Sheldon, 'Who is the Mother to Make Judgement?: The Constructions of Women in English Abortion Law' 1 *Feminist Legal Studies*, 3 (1993), 3-5, 4.

<sup>142</sup> For many economic considerations are often more compelling when making abortion choice: this is discussed in Chapter 6.

<sup>143</sup> After twenty-four weeks gestation of her pregnancy, the choice of an abortion is taken from the woman and given to the doctor. The Act gives the doctor guidelines when he can ascertain that an abortion can be performed to save the life of the pregnant woman or I the interest of existing children she might have had.

<sup>144</sup> Jo Bridgeman and Susan Millns, *Feminist Perspectives on Law, Law's Engagement with the Female Body*, (Sweet & Maxwell, 1998), 250.

not reflected in their capacity to exercise control over their reproduction. Men still dictate the reproductive choices of women and their right to select abortion.

My interaction with respondents, especially during the in-depth-interviews shows that the sexual perceptions of Nigerian women in society have altered<sup>145</sup> thereby eroding much of the traditional and post-independence perceptions of women's sexuality.<sup>146</sup> Societal changes have made it imperative for the perception of the sexuality of women to change because women are already controlling their fertility despite legal restrictions which shows that the women have moved ahead of the law. For instance, research has shown that it is no longer economically viable for women in public service employment where fixed salaries are paid, working hours are specific and working leave are regulated, to have large families.<sup>147</sup> Research has also shown that while contemporary women engage in sex at about the same time as traditional women did, contemporary women do so without wanting the resultant pregnancy which makes them resort to abortion often with dire consequences to their health.<sup>148</sup> When law no longer serves the purpose for which it is intended, I believe there must be a need to reform it to meet such needs.<sup>149</sup>

The patriarchal nature of Nigeria's society still demands that a child must have an identity to be accepted into that society and it is only a man who can provide this

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<sup>145</sup> As I stated earlier this is due to modernisation, the influence of Western culture, the assimilation of Western ideals and education of women.

<sup>146</sup> Odumosu noted that the break down of traditional requirement for pre-marital chastity is due to rapid urbanisation, unguarded socializing between adolescents and education of women: Olakunle Odumosu 'Knowledge, Beliefs and Attitude to HIV/AIDS in Southwest Nigeria', 11 *NISER: Monograph & Series*, 2001), 12-13.

<sup>147</sup> Titilayo Aderibigbe, *Will and Will Making Among Public Servants: A Case Study of the Nigerian Institute Of Social and Economic Research (NISER)*, (Nigeria: NISER Monograph Series Number 2002), 20; in this research Aderibigbe found that most respondents were of the view that a couple should have an average of four or five children (which is considerably less than the average of 6 children per woman now), but which the Nigerian government hope to reduce to 4 per woman: Federal Government of Nigeria, National Population Policy, 1988, Section 4.3.4.

<sup>148</sup> Stanley K. Henshaw; Susheela Singh, Boniface A. Oye-Adeniran; Isaac F Adewole; Ngozi Iwere and Yvette P. Cuca, 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164, 157; Valentine O. Otoide; Frank Oransaye, and Friday E. Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81. Generally, sexual chastity is no longer regarded as a significant attribute of a good wife and the need for a bride to be a virgin on her wedding night (even though some churches still encourage and preach it) because is impossible to control. Young men and women are exposed to sex through the media at an earlier age and sexual permissiveness has impacted adversely on the traditional value system in sexual matters.

<sup>149</sup> Due to education, adolescent girls marry at a later age than they used to in the traditional Nigerian society and one-third of women who obtained abortions in Nigeria are adolescents: Valentine O. Otoide *et al*, (June 2001), (*ibid*), 77; also most young girls not wanting to disrupt their education and also to avoid the stigma that comes with unwanted pregnancy, find themselves having to make the difficult decision of seeking for an abortion.

identity.<sup>150</sup> Without such identity the mother and baby (when born) will be social outcasts<sup>151</sup> despite the non-discriminatory clause in the Constitution.<sup>152</sup> The non-discriminatory clause is more theoretical than practical because illegitimate children cannot inherit their father's property under customary law or be identified and claimed by their father's family.<sup>153</sup> The problem of the culture of silence on reproductive issues makes it difficult to assess the extent of the changes that have occurred in the perception of a woman's sexuality in the Nigerian society today or its effect on illegitimate children.<sup>154</sup> To get round this difficulty, the respondents in this research were not asked details about abortion but the focus was on their perceptions and attitudes to the various aspects of abortion issue instead.<sup>155</sup> I also observe that public awareness and discussion of this type of sexual issue could not be permitted some years ago, but attitudes to the social construct of women's sexuality have changed over the years because Nigerians discuss reproductive issues in the media more freely.<sup>156</sup>

<sup>150</sup> Findings from this research shows that one of the main reasons women resort to abortion is due to non-acceptance of responsibility for the pregnancy by the putative father as I show in chapter 5.2.

<sup>151</sup> This is the theme discussed throughout this thesis in particular Chapter 6 and 8. Under customary law illegitimacy exists and the status is a denial of succession to property unless his rights are 'legalised by an acknowledgement of paternity' by the father: G. B. A. Coker, *Family Property Among the Yorubas* (2<sup>nd</sup> edition), (Sweet and Maxwell, 1966), 266; in other parts of Southern States in Nigeria especially among then Igbos such children are referred to as '*ime nkpuke*' which means 'pregnancy out of the matrimonial home' however children born through such circumstances are regarded as belonging to his maternal grandfather and can thus exercise a right of succession with other children of the grandfather: S. N. C. Obi, *Modern Family Law in Southern Nigeria* (Sweet and Maxwell, 1966), 294.

<sup>152</sup> Section 42 of The Constitution of the Federal Republic of Nigeria, 1999, states that '... no one should be discriminated against on account of his sex or circumstances of his birth...'

<sup>153</sup> In essence a pregnant woman who lacks support from her sexual partner has no other choice than to seek an abortion or have the baby with its attendant psychological, economic and social impediments and stigma. By the fact that a man must acknowledge the paternity of a child for him and his mother to be acceptable to society means it is still the man who decides a woman's reproductive choice as dictated by society. (Note however that writing a will makes this traditional method of devolution of property unnecessary if it involves personal properties of the testator, but the courts have stated that traditional property cannot be disposed off by will as discussed in an earlier research by Aderibigbe: Titilayo Aderibigbe, (2002), (*Footnote 147*), 1-2.

<sup>154</sup> In this research I could not ask direct questions on abortions because the respondents would not be forthcoming with the answers. This has also been the experience of other researchers. For instance Caldwell during his research removed aspects of abortion from his research in order not to jeopardise his entire research because information about personal details of respondents' lives could not be obtained from them: J. Charles Caldwell, *Population Growth and Family Change in Africa: The New Urban Elite in Ghana* (Canberra: Australian National University Press, 1968), 181. Though the mass media and adoption of western ideals to an extent, has made sex a more topical issue in modern day Nigeria, within the home sex is still a topic not easily discussed. Sex education is confined to schools and not the home in most cases. The HIV/AIDS pandemic has also made it imperative for government, educational institutions and the media to educate the public on sexual permissiveness and avoiding unrestricted indiscriminate sex.

<sup>155</sup> This can be seen from the format of the questionnaire in the appendix.

<sup>156</sup> With the increase in HIV/AIDS, there are several programmes in the print and visual media to create awareness among people about reproductive health, one of such is the advert called 'zip up' on Nigerian Television Authority (NTA) on prevention of HIV/AIDS and the use of condoms to prevent sexually transmitted diseases. It shows a group of adolescents encouraging each other to 'zip-up' i.e. advocating sexual abstinence to prevent HIV/AIDS and secure a healthy future for

This study aims to determine whether changes in societal attitude towards women's sexuality is wide enough for society to acknowledge that women should have control over their sexuality and have rights to demand abortion under less restrictive conditions hitherto than is available under the abortion law.

### **The Moral and Ethical Issues of Abortion within Nigerian Social and Cultural Perspective**

In the opening paragraph I show how the interplay of historical, cultural and religious factors have shaped social perceptions of contemporary Nigerian women's sexuality. In discussing ethical issues of abortion in Nigeria, the influence of these factors cannot therefore be ignored. Nigeria is a pluralistic society in many aspects of her daily life and the country still holds on to traditional, moral codes and ethics in sexual matters while laws relating to sexual issues do not necessarily conform to present realities of sexual experiences of women. As a result I believe the abortion law that has its origin in 1861 cannot in actuality reflect present day perceptions of the people.<sup>157</sup>

Sexual permissiveness; modernisation brought about through acculturation with Western ideals; high abortion rates and global HIV/AIDS pandemic have thrown sexuality and abortion issues from the arena of being a purely personal affair to one that is crying out to be dealt with in the public arena because of the adverse health effect on the population.<sup>158</sup> The health consequences on women who choose avenues outside law to exercise their right to control their fertility through abortion warrants Nigerian society to look at the issue of abortion urgently. In Nigeria an average of 60 percent of abortions are performed by non-physicians and it is reported that there are about 366,000 non-physician abortion-induced complications (either by women themselves or an unskilled persons) that required hospital management yearly in Nigeria.<sup>159</sup> However, I agree with Furedi that abortion should not be turned into a political debate<sup>160</sup> for different reasons than

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them. Other programmes are presented in the radio and television on reproductive matters that many respondents informed me did not happen some ten years ago which I also observe from personal knowledge of Nigeria.

<sup>157</sup> The Abortion law in Nigeria is a re-enactment of the 1861 English Offences Against the Peoples Act.

<sup>158</sup> It is estimated that only 40 percent of induced abortions in Nigeria are done by physicians and for every 1000 women about 25 have induced abortion at a point in their reproductive life:

Henshaw, et al ' (1998) (*Footnote 148*), 162.

<sup>159</sup> Stanley K. Henshaw, *et al* Ibid, 160.

<sup>160</sup> Furedi states that while the British public might be interested in the tabloid coverage of issues relating to unplanned pregnancies, there is little public demand for abortion to be placed at the centre of political debate mainly because it is an issue that cannot be resolved either way: Ann



she put forward. My reason being that abortion concern in Nigeria might be hijacked from women by men, religion and culture if it is made a political issue that might eventually result in a backlash on women. Also, because there are still very few women holding public, religious (or heading traditional) offices it is the dictates of men and not the experiences and voices of women who will determine the legal framework for abortion. According to Scheppelle 'passing laws restricting abortion clearly counts as state action (and all of the constitutional abortion cases begin when a law regulating abortion is challenged)'.<sup>161</sup> Under the patriarchal social system in Nigeria, and the present strong influence of religion and masculine views on social issues, it is unlikely that women will be able to challenge or achieve abortion reform by throwing it open to public debate. Besides, 'making abortion a purely constitutional problem changes how abortion can be represented and how competing arguments can be staged this tends to eliminate gradualist or compromise solutions to contentious problems'.<sup>162</sup> I believe abortion reform in Nigeria needs the effort of committed policy makers who will be willing to use statistical evidence from the medical field to show the adverse health effect of illegal abortion on women and use it to make abortion a component of party political manifesto as was done in South Africa.<sup>163</sup> This is because abortion is an issue that Nigerian society cannot ignore due to its prevalence among women and the large adolescent population who have more recourse to illegal abortion because it is presumably their only avenue for circumventing a law that does not conform to their felt needs of access to safe legal abortion.<sup>164</sup> From the many cases brought to hospitals resulting from complications due to illegal abortion,<sup>165</sup> it

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Anne Furedi, 'Wrong but the Right Thing to Do: Public Opinion and Abortion' in Ellie Lee (editor) *Abortion Law And Politics Today* (Great Britain: PALGRAVE, 2001), 159-171.

<sup>161</sup> Kim Lane Scheppelle 'Constitutionalizing Abortion' in Marianne Cithens, and Dorothy McBride Stetson, (editors), *Abortion Politics Public Policy in Cross-Cultural Perspective* (New York and London: Routledge, 1996), 46.

<sup>162</sup> Kim Lane Scheppelle, *ibid*, 30.

<sup>163</sup> Abortion reform divided the ANC government among the Pro-choice and Pro-life advocates because there were many members who were devout Muslims and Christians despite their commitment to women's equality, speculation has it that the reformed law was passed because party members were directed to vote in accordance with the party manifesto instead of in accordance with members conscience: Sally Guttmacher,; Kapadia, Farazana; Naude, Jim Te Water and de Pinho, Helen 'Abortion Reform in South Africa: A Case Study of the 1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 191-194, 193.

<sup>164</sup> Hospital based studies show that about 80 percent of patients with abortions-induced complications in Nigeria are adolescents: Valentine O. Otoide, *et al* (June 2001 (*Footnote 148*), 78.

<sup>165</sup> *The Center for Reproductive Law and Policy*, (CRLP Women's Reproductive Rights in Nigeria: A Shadow Report, 1998), [www.reproductiverights.org](http://www.reproductiverights.org) (accessed January 19 2003). Studies have shown that complications from illegal abortions account for approximately 50 per cent of maternal deaths in Nigeria- World Health Organisation, Maternal Health And Safe Motherhood Programme, Abortion: A Tabulation of Available Data on the Frequency and Mortality of Unsafe Abortion 33 (2d edition), 1994).

is a growing problem that the Nigerian government needs to address to prevent continued unnecessary deaths among females.<sup>166</sup> Throwing abortion subject to public debate will also be compounded by the different moral and ethical views of abortion and reproductive freedom within society.

The Western feminist views of abortion I believe is different from that of traditional Nigerian society, but are similar in contemporary Nigeria albeit for socially different factors.<sup>167</sup> The ethical perceptions of abortion in Western society are premised along two broad views. Those who believe that abortion is a choice women should have the freedom to choose on the basis that it is their body, that is, those who are 'Pro-choice'.<sup>168</sup> There are those who simply on moral grounds, believe abortion should not be acceptable because the foetus is a distinct person from its mother upon conception and should be given the chance of existence; that is, the 'Pro-life' advocates.<sup>169</sup> I believe however, that we should understand that within the contemporary Nigerian social construct, abortion cannot be discussed predominantly along the feminist Western terms of Pro-choice<sup>170</sup> and Pro-life<sup>171</sup> as enunciated by advocates and writers on either side of the abortion debate without taking into account the overriding economic environment which makes contemporary Nigerian women make their choice of abortion. Some of the Pro-choice justifications of abortion are as old as history. Soranos of Ephesus gives three main reasons why abortion can be justified: 'to conceal the consequences of adultery; to maintain feminine beauty and to avoid danger to the mother when her uterus is too small to accommodate the full embryo'.<sup>172</sup> Aristotle and Plato justified

<sup>166</sup> As I discuss in Chapter eight, the Nigerian government since 1991 under its 'National Population Policy' realised that there is a need to give women access to control the timing, spacing and number of children they want in order to improve their standard of living and prevent unnecessary maternal mortality; but government have failed over the years to provide the enabling laws that will actualise this intention in concrete terms.

<sup>167</sup> I stated in paragraph 3.1 that cultural factors dictated women's sexuality in traditional Nigeria where there had more control, however a combination of economic factors and male control through law affects women's reproductive choices which is similar to what obtained in England during the Victorian era where before the 1967 Abortion Act 'the legitimacy of abortion as a solution to an unwanted pregnancy... 'was accepted socially but not legally (as it is today in Nigeria as I discuss in Chapter six): Barbara Brookes, (1988), (*Footnote 96*), 8.

<sup>168</sup> Such as: Judith Javis Thomson, 'A Defence of Abortion' in R. M. Dworkin, (editor) *The Philosophy of Law* (Oxford University Press, 1977); Sally Sheldon, (1997), (*Footnote 99*); Sheila McLean, *A Woman's Right To Choose* (Rivers Oram, 1999).

<sup>169</sup> Such as Noonan, John T. (1970); (*Footnote 84*); Don Marquis, 'Why Abortion is Immoral', 76(4) (April 1989) *The Journal of Philosophy* 183-202.

<sup>170</sup> Sally, Sheldon, (1997), (*Footnote 99*); Furedi, Ann, (2001), (*Footnote 160*); Mary Boyle, *Re-Thinking Abortion: Psychology, gender, power and the law* (London and New York: Routledge, 1997).

<sup>171</sup> John T. Noonan (1970) (*Footnote 84*).

<sup>172</sup> Soranos 'Gynecology', (editor) J. Ilberg, in 4 *Corpus Medicorum Graecorum* 1.19.60 (London and Berlin, 1927) John T. Noonan, (1970), (*ibid*), 4-5.

abortion as a way of population control.<sup>173</sup> None of these reasons realistically apply to contemporary Nigerian women because this research shows their choice is often based on economic necessity and other socio-cultural factors which I show throughout this study.

For Nigeria while these two broad camps will be found within society, my research shows that other pertinent social factors have to be considered in showing that it is not such a clear cut choice for women to make and society to legislate to control. Such other overarching factors that sometimes determine abortion choice are poverty, lack of education, socio-economic imbalance, poor medical facilities and ignorance of contraceptive use as well as lack of adequate information about abortion generally, which are factors that affect the standard of life of women and consequently their children.<sup>174</sup> But these are factors that only individual couples can evaluate and ameliorate if women are given the enabling law to control the number of children they can adequately maintain within their resources.<sup>175</sup> These social factors present the need to address abortion along a 'pragmatic-practical' and not 'ethical considerations'<sup>176</sup> only. Furedi analysed the two when she observed that 'ethical considerations' 'problematizes' abortion presenting it as an abstract 'moral wrong' which should be minimized. The 'pragmatic-practical' consideration accepts that unwanted pregnancies occur and that abortion is an appropriate means to manage at least some of them.<sup>177</sup> This is because as rightly pointed out by Adler; un-coerced termination of pregnancy is often linked to other

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<sup>173</sup> Plato in his *Respublica* V.460 advocated the killing of imperfect children, children of mentally unstable parents and children born by citizens 'who have passed the age assigned for presenting children to the States'. Aristotle followed Plato in his advocacy of population control by asserting in his *Politica* ii 6 1265 that children born in the State should not exceed the number the State can take care of 'in order to avoid poverty and its concomitants, sedition and other evils', in Bernard M. Dickens, *Abortion and the Law* (Great Britain: MACGIBBON & KEE LTD, 1966), 14-16.

<sup>174</sup> These are issues that the government of Nigeria recognised which prompted them to put in place a national policy on population: Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988 (referred to as NPP). I have not addressed the low level use of contraceptives among women in this research because it is not the main focus of my research, however research has shown that the low level of contraceptive use among adolescents especially is due to a mistrust of contraceptives as a source of infertility, and also because health care workers do not as a rule provide contraceptives to adolescents and the unmarried even though there is no law stipulating that they should not be provided: see the findings of: S. K. Henshaw *et al* (June 2001) (*Footnote 148*), 77-81.

<sup>175</sup> The Forward to the NPP (*ibid*) aims to adopt 'the Nigerian approach' with the main feature being 'respect for the right of each couple to determine voluntarily the number and spacing of their children...through a broadly-based national programme..'. My opinion on this is that abortion law reform ought to form part of the approach needed to solve these problems.

<sup>176</sup> These are terms used by Furedi in her analysis ethical/moral and practical considerations of the abortion debate: Ann Furedi, (2001), (*Footnote 160*), 159.

<sup>177</sup> Furedi, (*ibid*), 159-160.



characteristics of 'unwantedness'<sup>178</sup> associated with pregnancy. These characteristics might be "unintended pregnancy", 'unplanned pregnancy', 'adolescent pregnancy', and 'out-of-wedlock pregnancy',<sup>179</sup> all of which I believe are culturally anti-social, but are realistic reasons that must be addressed when assessing a legal framework for abortion reform. Harding says we need to go 'beneath the surface of the abortion dispute'<sup>180</sup> and ask questions that affect the particular woman's life which necessitated her need for abortion such as:

Why are adult women not treated by law  
or custom as full social persons with  
equal rights...? How can a woman or  
child exercise her "right to life" or  
"freedom of choice" in the face of poverty,  
unemployment, racism, legal and individual  
sexism, and the whole gamut of material  
conditions attributable to these material  
restrictions on social personhood?<sup>181</sup>

Applying the two considerations to Nigeria, moralising offers no solution to the problem of unnecessary death and complications resulting from illegal abortion by our female population. The pragmatic-practical solution is to enlarge the conditions under which legal abortion can be procured because women will continue to seek ways of aborting unwanted pregnancies for whatever reason, and the only practical thing to do is to make it available legally and medically 'safe' within acceptable social and cultural parameters. This is especially appropriate because this study shows that many women feel that abortion and morality are separate and distinct issues which affect different aspects of their lives. Most of the respondents in this research stated that choosing abortion is not based on religion,

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<sup>178</sup> Nancy E. Adler, 'Unwanted Pregnancy and Abortion: Definitional and Research Issues' (1992) Volume 48, Number 3, *Journal of Social Issues*, 19-25, at 20.

<sup>179</sup> *Ibid*, 20.

<sup>180</sup> Sandra Harding 'Beneath the Surface of the abortion Dispute' in Sidney Callahan and Daniel Callahan (editors) *Abortion: Understanding Differences* (New York & London: Plenum Press, 1984), 214.

<sup>181</sup> Sandra Harding (1984), *ibid*, 214; these are issues also raised by Ikemotos where she points out the disparity of abortion rate and facilities in her own country, (the USA) among poor women of colour and middle-class white women and states that: 'According to other fronts of patriarchy, motherhood is color-coded, class-coded, and culture-coded': Ikemotos, Lisa C., [1992] (*Footnote* 71), 1207.



but on the factual needs of the pregnant woman within her social environment at that point in time.<sup>182</sup>

My research shows that for Nigeria where abortion choice and facility is economically dependent and class-coded, the rich and poor alike seek illegal abortion, but while rich women have access medically to safe abortion facilities, poor women seldom do. Rich daughters don't often die from unsafe abortions but poor ones make up the bulk of statistics that form mortalities from illegally procured abortion. In dealing with abortion I believe there is a need to look beneath the influence of tradition, culture, and societal dictates and observe that before colonisation women did exercise reproductive freedom. This is the freedom they need to reclaim by giving women a voice on an issue that affect them personally through access to legally safe abortion facilities irrespective of their socio-economic status.

One the aims of this study is to see if Nigerians will be willing to address the issue of abortion,<sup>183</sup> therefore Nigeria's willingness to move away from the past where men dictated to women the circumstances under which they can exercise their abortion choice must of necessity give way to one where both women and men's views can be heard, but women's louder because while 'social reality is patriarchally constructed'<sup>184</sup> women's needs should implicitly shape the legal framework of abortion law in Nigeria.

### **Defining the Bodily Autonomy of Nigerian women socially and constitutionally**

Abortion can be discussed along feminist theory of individualism and women's right to bodily self-determination and right of ownership over their body; however, this theory giving women rights of reproductive choice may be unconvincing within Nigeria's socio-cultural set-up. Nigerian men believe, that they 'own' their women, whether she is a daughter, wife, or sister,<sup>185</sup> as evidenced by many different traditional rites and proverbs which allude to this belief.<sup>186</sup> It has been

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<sup>182</sup> This is discussed in Chapter 5.2 and 5.3.

<sup>183</sup> Like in the opinion poll carried out by MORI for the Birth Control Trust Fund in February 1997), Ann Furedi (1998), (*Footnote 160*), 162.

<sup>184</sup> Lisa C. Ikemotos, [1992] (*Footnote 71*), 1207.

<sup>185</sup> The only exception may be mothers, but they too in turn are 'owned' by their husbands. Chukwudifu Oputa, J. (1989), (*Footnote 10*), 8-9.

<sup>186</sup> Among the Yoruba for example, traditionally a wife does not call her husband by his name as a sign of respect and acknowledgement of his superiority over her even, if she is older or richer than he is. It is customary for a woman to greet her husband by referring to him as '*Olowo ori mi*' which means 'the owner of my head' or 'the one who has paid dowry for my head'. 'Head' here signifies the totality of a woman's 'personhood'; it also signifies that the husband has paid a bride price for her ownership and gratitude to her parents for her previous maintenance. But note that payment of

acknowledged by government that Nigeria is a patriarchal society where children are given identity through their fathers.<sup>187</sup> The contemporary social construct does not accept the fact that women have 'natural right to ownership of and control over her own body-self, a right inseparable from women's intelligent existence' as enunciated by Ezra Haywood since 1870,<sup>188</sup> nor does society accept that she should determine the number of children she bears, this according to government is even the man's decision.<sup>189</sup> Nigerian women find it hard to exercise bodily autonomy under these social circumstances which is articulated by Petchesky that 'women make their own reproductive choices, but they do not make them just as they please; they do not make them under conditions they create but under conditions and constraints they, as individuals are powerless to change'.<sup>190</sup> While social dictates do not accept (or at least make it impracticable) that women have rights to enforce their 'bodily integrity' or 'bodily self-determination, the Nigerian Constitution,<sup>191</sup> unwittingly denies women the equality with men that is entrenched in section 42.<sup>192</sup> Sexual intercourse with a minor is unwittingly sanctioned, but the law offers her no avenue to terminate the pregnancy to save her mental health,<sup>193</sup>

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bride price is dying out among the Yorubas and brides' parents often return the token money to the groom stating that they have returned it to purchase whatever cane he may be tempted to use on their daughter, i.e. the husband should never assault her when she annoys him because she is given to him free on trust to love.

<sup>187</sup> Federal Government of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988 Section 5.3.1; and for this reason this research has shown that women would choose abortion if the putative father does not acknowledge the pregnancy. The perception is also evidenced in the Yoruba proverb that *Eni ti ko ni igi obi, kii ni eso* i.e. 'One who does not own a kola tree cannot have its fruits'. This means the kola tree (representing the woman) and the fruits it bears (representing children) belong to the man: William Bascom, (Footnote 53), 60. The proverb further emphasizes the fact that children are accorded recognition from their father. These are issues I discuss in chapter 5.2 and 5.3: 'Social factors impacting on women's abortion choice.'

<sup>188</sup> Quoted in Linda Gordon, (1977), (Footnote 85), 66.

<sup>189</sup> Federal Government of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988 Section 5.3 states: 'In our society, men...take far-reaching decisions including the family size...'

<sup>190</sup> Rosalind Pollack Petchesky, (1990), (Footnote 85), 15, quoting and paraphrasing Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (New York: International Publishers, 1963), 11.

<sup>191</sup> Because it states further in section 45 that 'a married woman shall be deemed to be of full age': The Constitution of the Federal Republic of Nigeria, 1999, Section 42.

<sup>192</sup> What this means is that a young girl, regardless of her age, (even if she hasn't reached puberty), is considered an adult for the purposes of marriage. Even if her physiological and biological development have not reached the age when she can be recognised as an adult. If such an under-aged girl becomes pregnant she cannot have an abortion unless a doctor can certify that the pregnancy is injurious to her health: Titilayo Aderibigbe, 'Legal Rights and Constraints for Women's Empowerment and Reproductive Health', in Layi Erinoshio, Babatunde Osotimehin and Janice Olawoye, (editors) *Women's Empowerment and Reproductive Health* (Nigeria: Social Sciences and Reproductive Health Research Network, 1996) 47-56.

<sup>193</sup> In the English case of *R v Bourne* [1938] 3 All ER 615 abortion was allowed under the 1861 Offences Against the Persons Act section 58 and 59 (which is similarly worded under the Nigerian Criminal Code Section 230 because the term 'unlawful' could also mean that there are instances when abortion could be lawful, and in this case it was lawful because 'the continuance of the pregnancy will be to make the woman a physical or mental wreck'. However the court in *R v Edgal* (decided in Nigeria in the same year) had the unique opportunity to determine whether saving a

self-esteem, and possibly her life when complications occur, (unless a medical doctor certifies that the continuation of the pregnancy is injurious to her health).<sup>194</sup> Also destructive to women's autonomy is the guideline given to medical practitioners by the Nigerian Medical Association (NMA) which endorses that 'other relative' or the doctor can give consent on behalf of the patient.<sup>195</sup> The effect of the NMA directive could be analysed using McLean's words that the assumption that 'law is a morally neutral enterprise (one which is not shared by doctors themselves) and to assert that, at worst, individuals and collective values are threatened by the continuing absorption into medicine of matters which are truly substantially if not wholly matters of human rights'.<sup>196</sup> I believe society under the sanctity of law, a throw-back from their cultural and traditional domination; thereby violate the bodily integrity of female minors because the NMA directive is a reflection of social attitude to minor patients' autonomous right to give consent to medical treatment; which is also the attitude of most respondents in this research.<sup>197</sup> Other ways in which women's bodily integrity is violated is through its focus on the 'other party' to abortion.<sup>198</sup>

It is clear that Nigerian women are not able to fully exercise their autonomy in terms of selecting abortion but this problem is increasingly compounded by the emphasis being shifted towards 'the other party' in the abortion debate, who is usually the foetus, the doctor or the putative father,<sup>199</sup> which has been challenged by Western feminist writers.<sup>200</sup>

This research shows that contemporary Nigerian women have however demanded that when it comes to abortion choice, the ultimate choice must remain with them even though married women believe the putative father should have a say in the

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pregnant woman's life also means saving her mental health, but the court did not make any categorical statement on this issue. Their Lordships dwelt on the meaning of 'unlawful' in the law.

<sup>194</sup> Titilayo Aderibigbe, (1996), (*Footnote 193*), 47-56. This research however shows that majority of the respondents accept that a pregnant minor should be allowed to terminate her pregnancy; but ironically, the majority state that it is the parents of the pregnant girl who should give consent for the termination and not the pregnant girl herself regardless of her competency to give consent. This is contrary to the decision in *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402, reversed by House of Lords on appeal-(1985) 2 BMLR 11 (HL (though dealing with consent for contraceptive advice, and treatment the decision on the issue is pertinent here) ; I discuss this further in Chapter 8.2.

<sup>195</sup> See my discussion in Chapter 8.1.

<sup>196</sup> Sheila McLean, *Old Law New Medicine, Medical Ethics and Human Rights* (London and New York: Rivers Oram Press, 1999), 25.

<sup>197</sup> Most of the respondents feel that the mother and father of a pregnant girl rather than the pregnant girl herself should give consent for an abortion as I discuss from my findings in chapter 8.

<sup>198</sup> I discuss other parties to the abortion issue in chapter 7.

<sup>199</sup> Ellie Lee, (editor) *Abortion Law And Politics Today* (New York: PALGRAVE, 1998), xi-xii.

<sup>200</sup> Linda Gordon, (1977), (*Footnote 188*); Rosalind, Pollack Petchesky, (1990), (*Footnote 85*); Bonnie Steinbock, *LIFE Before BIRTH The Moral and Legal Status of Embryos and Fetuses* (New York: Oxford University Press, 1992); Sally Sheldon, (1997) (*Footnote 99*); Ellie Lee, (1998), (*ibid*), xi-xii.

abortion decision. This is slightly different from the decisions in cases in England and Europe where the putative father is given no right of consultation.<sup>201</sup> There are however no decided cases on this issue in Nigeria yet.<sup>202</sup>

Apart from the putative father emphasis has also been on the opinion of the doctor rather than the woman<sup>203</sup> because in England as well as in Nigeria it is the doctor's opinion formed in good faith<sup>204</sup> that will determine if a woman can have an abortion. This shows that abortion cannot be divorced from morality because 'Scientists are at least no better and no worse than the society of which they are members'.<sup>205</sup> Sheldon believes by giving doctors this right, women are therefore treated like minors who lack the capacity to rationalise why an abortion is best for them under their own particular circumstance.<sup>206</sup> While the woman makes the choice under English law, it is not clear who makes the choice to terminate under Nigerian law,<sup>207</sup> but ultimately in both jurisdictions the doctor decides whether it is acceptable. This research has however shown that while Nigerian women recognise the specialised knowledge of doctors, they insist the ultimate choice must be theirs.<sup>208</sup>

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<sup>201</sup> This is discussed in chapter 7.4. In *Paton v Trustee of the British Pregnancy Advisory Service* [1978] 2 All ER 987 a husband sought to have an injunction restraining his wife from carrying out an abortion. Sir George Baker held that a husband had no legal right to prevent his wife from doing so. On appeal, the European Commission for Human Rights stated that the Paton had no right to be consulted nor any right to make applications about a proposed abortion: *Paton v United Kingdom* [1980] 3 EHRR 408. See also the similar decision in *C v S* [1987] 1 All ER 1230.

<sup>202</sup> This is the focus of my discussion in Chapter 7.

<sup>203</sup> Linda Gordon, (1977), (Footnote 85).

<sup>204</sup> Sheldon terms the giving of abortion determination to the medical doctor as a 'medicalisation of abortion': Sally Sheldon, (1997), (Footnote 99), 16, 80 & 52-54. In *R v Bourne* [1938] 3 All ER 615, Dr Borne was acquitted because he made his opinion to terminate the 15 year old girl's pregnancy because he did so in the honest belief of saving the girl's life, further still in *R v Bergmann and Ferguson* BMJ 22 May 1948, 1008-9, the court held that Dr Ferguson (a psychiatrist who formed the opinion for termination) need not have formed a correct opinion but an honest one; also the emphasis on good faith of the doctor is exhibited in the different verdict given to the doctors in the case of *R v Newton and Stungo* Criminal. Law Report [1958] 469; Dr Stungo was judged to have acted in good faith in accordance with regular medical practice and acquitted while Dr Newton the Psychiatrist was found guilty of not acting in good faith in accordance with good medical practice, clandestinely carrying out an operation for profit, and being an accessory before the act. He was convicted under S. 58 of the Offences Against the Person's Act 1861 and for manslaughter.

<sup>205</sup> J. Schimidtke 'Who Owns the Human Genome? Ethical and Legal Aspects' 44(Supplement 1) *Journal of Pharmacy and Pharmacology* 205 at 205; the English Abortion Act 1967 recognising that medical personnel have their own moral objections to certain surgical operations confers in S. 4(1)-(2) a right to abstain from participation upon those persons who hold a conscientious objection to abortion.

<sup>206</sup> Ibid, a notion endorsed by the NMA-see my discussion in Chapter 8.1.

<sup>207</sup> This is because under S. 297 Criminal Code and S. 232 Penal Code it is the doctor who takes the initiative to terminate the pregnancy if he forms the opinion in good faith that termination is necessary to preserve her life, but in accordance with the NMA guideline it is mandatory for the pregnant woman to give her consent as with any other operation, but in the case of a minor (i.e. a person under age 18, the practice in hospitals as I discovered from this research is for a *male* relative to sign the consent form.

<sup>208</sup> See my discussion from the survey in Chapter 7.5.



Between mother and foetus there arises some divergence of opinion about the rights of the mother and those of her foetus which are tied to the moral status of the unborn. The differences of opinion between 'Pro-choicers' and 'Pro-lifers'<sup>209</sup> affect the way they think about the foetus as either clumps of cells or very small babies.<sup>210</sup> McLean<sup>211</sup> states there is no maternal/foetal conflict, however because there is only one person-the pregnant woman, unless the foetus is given a distinct status there are no adversaries because there is one person and one potential person.<sup>212</sup> However Johnsen<sup>213</sup> opines that treating the foetus as independent creates the perception that the pregnant woman is hostile towards the foetus, choosing abortion is a manifestation of her hostility towards the foetus and making a choice that is at variance with her foetus.

Despite the high regard placed on children in Nigeria, between mother and foetus, the concern traditionally is always for the mother.<sup>214</sup> While we can argue that such concern could be due to the utilitarian purpose the mother serves<sup>215</sup> as 'bearers of fetuses',<sup>216</sup> the fact remains the recognition is always for the preservation of the mother's life before her foetus. This is because ultimately the foetus is neither a patient nor a person and using McCullough and Chervenak's<sup>217</sup> argument I believe Nigerian society appreciates that the interest the mother has is of greater value to society than the yet to accrue interest of the foetus. This is because:

the foetus cannot be thought to possess subjective  
interest...[it] has no values and beliefs that  
form the basis of such interests...Hence there  
can be no autonomous-based obligations to  
the foetus. Hence, also there can be no meaningful  
talk of foetal rights, the foetus's right to life in part,

<sup>209</sup> Bonnie Steinbock, (1992), (*Footnote 200*), 44.

<sup>210</sup> Ibid.

<sup>211</sup> Sheila McLean, (1999), (*Footnote 169*), 52.

<sup>212</sup> Ruth Macklin holds a similar view that attempting to determine the morality of abortion from a conception of the status of the unborn amounts to question begging: Ruth Macklin 'Personhood and the Abortion Debate', in Jay Garfield and Patricia Hennessey, (editors) *Abortion: Moral and Legal Perspectives* (Amherst, Massachusetts: The University of Massachusetts Press, 1984), 97.

<sup>213</sup> Dawn E Johnsen, 'The Creation of Fetal Rights: Conflict with Women's Constitutional Rights to Liberty, Privacy and Equal Protection', (1986) 95 *Yale Law Journal*, 599-625, 599.

<sup>214</sup> My conclusion is made based on my survey discussed in Chapter 7.2.

<sup>215</sup> For example it is a common saying among the Yoruba when a woman miscarries a pregnancy, or loses a child at birth, to console her with the words, 'O san ki omi danu ju ki amu fo lo'. This means, "It is better for the water to pour away than for the water-pot to be broken". A woman who survives childbirth can always try to have another child if the previous one dies, but if the woman dies, such hope is lost forever.

<sup>216</sup> (Borrowing Johnsen's term): Dawn E Johnsen, (1986) (*Footnote 212*), 560.

<sup>217</sup> L. B. McCullough and F. A. Chervenack, *Ethics in Obstetrics and Gynaecology* (Oxford University Press, 1994), 100-101.

What has changed the attitude towards the foetus more generally is advancement in medical technology that has increasingly made it possible to treat the foetus as a patient. But the maternal/fetal relationship remains the same and for this reasons it is the mother whose life is of paramount interest and she should not be denied abortion choice merely to sustain the life of the foetus.<sup>219</sup> A woman's reasons for choosing abortion will be peculiar to her individual circumstances, and that choice should be respected, and not determined on the sole interest of the foetus, the putative father, doctor, society or tradition.

The last of the person important to the abortion debate is the Judge. Though not directly involved in the abortion, he interprets the law and adjudicates between those found to have violated the law and the State. A review of Nigerian cases on abortion involving doctors shows that judges have always relied on the opinions of medical doctors in assessing the culpability of defendant doctors in abortion cases since most of the cases have primarily been concerned with whether doctors should be sanctioned for participating in performing abortions.<sup>220</sup> This is truer of Nigeria, where since 1938 there has not been reported any case where a doctor has been convicted of the offence of abortion under the law. Judges have found it more expedient to refer culpable doctors to their peers the NMA.<sup>221</sup> McLean has observed that judges were always hesitant to intrude on medical matters not only because of unfamiliarity with the ways physicians work, but also for the sake of professionals and in the best interests of patients.<sup>222</sup> However, I believe judges are part of society and not immune to the social environment and conditions under which Nigerian women choose abortion; this explains why no pregnant woman (who survives the attempt at termination) or doctors have been found guilty of illegal abortion. Judges can however, act as vehicles of change in the ways and manner in which they interpret the law within extant social environment

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<sup>218</sup> L. B. McCullough and F. A. Chervenack, (1994), (*ibid*), 102.

<sup>219</sup> This is the same argument put forward by Thompson based on bodily self-determination that having a right to life by the foetus does not entitle it to use the body of another (the mother) to stay alive, because just as the foetus has a right to life, the mother has a right to bodily self-determination that must not be infringed upon by the foetus: Judith Javis Thomson, (1977), (*Footnote 168*), 119.

<sup>220</sup> For example: *Commissioner of Police v Modebe* (1980) 1 NCR 367; *State v Johnson Oke and Dr Kehinde Shomope* (1975) 9 CCHCJ 1305 where the issues before the court was the participation of the defendant medical doctors in abortion cases. This is also true of English case on abortion *R v Bourne* [1938] 3 All ER 615; *R v Smith* [1974] 1 All ER 376.

<sup>221</sup> See my discussion in Chapter 7.5.

<sup>222</sup> J. Katz, *The Silent World of Doctor and Patient* (New York: The Free Press, 1984), 59.

necessitating the pregnant woman's choice as Macnaughten J did in the *Bourne* case<sup>223</sup> this can only be beneficial to society and opens up avenue for law review.

### **Analysing Nigeria's perception of abortion within contemporary literature**

For the majority of Nigerian men and women abortion brings up much the same moral and ethical debates that have been at issue in the Western societies ever since abortion became a lawful option for removing an unwanted pregnancy.<sup>224</sup> In Nigeria Traditional beliefs exist side by side with Western Christian and Moslem beliefs.<sup>225</sup> Each of these religions upholds the sanctity of human life to be sacred. Brody states that 'One of the characteristics essential to a human being is the capacity for conscious experience, at least at a primitive level. Before the sixth week, as far as we know, the fetus does not have this capacity. Thereafter, as the electroencephalographic evidence indicates, it does. Consequently that is the time at which the fetus becomes a human being'.<sup>226</sup> But Steinbock however states that the term 'capacity for conscious experience' is ambiguous because brain functions is not a sufficient condition for even the most rudimentary mental state; other views are that the moment of implantation is 'the decisive moment of humanization'.<sup>227</sup> The attitude towards a foetus in the traditional society is similar to that of the Christian and Moslem philosophy. All three religions teach followers that abortion is to be abhorred unless it is to save the life of the mother but the focus is on the woman and not the foetus.<sup>228</sup> In all three beliefs abortion is usually discouraged after the second trimester of the pregnancy because physically at this time the foetus closely resembles a child.<sup>229</sup> If the foetus is still-born before term but after the third trimester Moslems will give it the same type of burial rites that would be given a full term child that dies. However, this is not so under the

<sup>223</sup> *R v Bourne* [1939] 1 KB 687; [1938] 3 All ER 615.

<sup>224</sup> Linda Gordon, (1977), (*Footnote 85*), 47; see also Rosalind Petchesky, (1990), (*Footnote 85*), 1-2.

<sup>225</sup> Robin Horton, *Patterns of Thought in Africa and the West: Essays on magic, religion and science* (Cambridge University Press, 1997), 171-172; Idowu states that the fact that African traditional religion accepts that there exists lesser gods who acts as intermediaries between man and the supreme God points to the fact that their belief in a Supreme deity is akin to the Western concept of God: Bolaji E. Idowu, *African Traditional Religion: A Definition* (London: SCM Press Ltd., 1973), 173.

<sup>226</sup> Baruch Brody, *Abortion and the Sanctity of Human Life: A Philosophical View* (The Massachusetts Institute of Technology, 1976), 83.

<sup>227</sup> Steinbock, Bonnie (1992), (*Footnote 200*), 49-51.

<sup>228</sup> Traditional Nigerian society sanctioned abortion to save the mother's life. Before 1803 there was no legal prohibition of induced abortion before quickening, i.e. movement in the womb (a theological doctrine when the soul was supposed to enter the body of the unborn child) which was believed to be around about the 16th week: Glanville Williams, 'The Law of Abortion' (1942) 5 *Current Legal Problems* 128-147.

<sup>229</sup> Baruch Brody, (1976), (*Footnote 226*), 111.



traditional Yoruba belief where only full term babies though still-born are given traditional burial rites.<sup>230</sup> Therefore if a pregnancy will affect the mother's life, traditional society will not hesitate to save the life of the mother, including the termination of the pregnancy where necessary. What all these divergent views show is that the point at which a foetus can be regarded as possessing the capacity of humanity is an issue that can not be resolved satisfactorily; which explains why the gestational age of the foetus as a determinant of time for abortion is important in all legislations where abortion is legal.

### **Gestation age of the foetus as a determinant of the right time for abortion**

Abortion can be addressed from two broad perspectives. It can be seen as a purely moral and ethical issue or a social problem needing attention. That is, the conservative and the liberal views represented by the Pro-life and Pro-choice advocates respectively. Often both competing views can use the same arguments to either reject or justify abortion. What is important to this discussion is how these views affect Nigerian society's attitude towards abortion and how the views expressed conform to social reality.

Each view must be able to find solution to the growing problem of unwanted pregnancy and resultant complication and sometimes death that procurement of illegal abortion brings. The reality of the problem should find expression in the law on abortion and related reproductive health issues. Both Pro-life and Pro-choice views are based on the sacredness and sanctity of human life.<sup>231</sup> Where they differ is on who the focus of attention should be between mother and foetus and at what point in time and under what situation abortion is justifiable. Advocates of these approaches generally tend to agree that the later in pregnancy abortion is performed, the more sentient the foetus is, and the less morally justified the termination.<sup>232</sup> Philosophers like Dworkin<sup>233</sup> believe that abortion will become less

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<sup>230</sup> This is because in Yoruba mythology it is believed that while the foetus is still developing in its mother's womb it has its own karma (otherwise referred to as 'ori' in Yoruba). In Yoruba mythology 'ori' depicts the totality of a person's entire being and destiny. This belief accepts that the foetus has its own pre-destination that will be fulfilled when it is born. Aborting it will amount to trying to undo what God has destined. An unborn child's 'ori' protects it from harm while the foetus is developing but it is not however, recognised as human until it is born. (Culled from Olusegun Obasanjo, *I See Hope: Adult Version* (Nigeria: Intec Printers Limited, 2002); but the mother is the focus in that the concern is for her to be well enough to be able to produce another child and conform to the role expected of her: Bolaji E. Idowu, (1973), (*Footnote 224*), 70 & 87.

<sup>231</sup> Judith J. Thomson, (1977), (*Footnote 168*), 122.

<sup>232</sup> Stuart Derbyshire *The Science and Politics of Fetal Pain*

<http://www.prochoiceforum.org.uk/comm53.asp#top>: It is assumed that since neonates feel pain foetuses too must feel pain. Medical technology has made it possible for a foetus to be capable of living at earlier times than before. That is, a foetus is viable at 24 weeks which is the time limits for legal abortion in England under the Human Fertilisation and Embryology Act (HFEA) 1990. Note



morally justified at a later stage of pregnancy than at an earlier one.<sup>234</sup> At this stage termination becomes not only emotionally and practically difficult but also increasingly less justifiable. This is the reason why the Infant Life (Preservation) Law, 1929 section 1(2) prohibited termination at twenty-eight weeks. The Abortion Act 1967 also includes the 28 weeks limit but this has been amended by the Human Fertilisation and Embryology Act 1990. The limit is now 24 weeks but termination for reason of 'serious foetal abnormality is permissible throughout the pregnancy. At this gestation stage the baby is believed to be capable of being born alive.'<sup>235</sup>

This research has however shown that respondents are opposed to termination of late term pregnancy since the majority prefer termination to be done at or before twelve weeks of gestation.<sup>236</sup>

Determining the appropriate gestational age when abortion is acceptable have been propelled further by the use of new scientific technology that shows that the foetus is sentient and feel pain at an even earlier gestation period than it is stipulated by the 1929 Act which propels the debate further along moral lines. But there are divergent views on the time of viability. Viability means the capability that the foetus will be capable of independent life outside the womb.<sup>237</sup> Under English law viability has been described in the case of *C v S*<sup>238</sup> as the "capacity to breathe by the use of one's own lungs, with or without the use of a ventilator".<sup>239</sup> Under English and Nigerian legislation, a foetus is not considered a human being

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however that there is an ongoing public consultation to further amend the HFEA laws governing fertility treatment and embryo research for the first time in 15 years: <http://news.bbc.co.uk/go/pr/fr/-/1/hi/health/4153538.stm> (accessed 16 August 2005); see also the British Medical Journal educational debates in: Stuart W. G. Derbyshire and Ann Furedi 'Fetal Pain is a Misnomer' (September 1996) 313 *BMJ*, 795 and Adrian R. Lloyd-Thomas and Maria Fitzgerald 'Reflex responses do not necessarily signify pain' (September 1996) 313 *BMJ* 797-798; however there are many Pro-choice advocates who support the view that women should have the right to choose abortion at any stage of the pregnancy, though the majority public support is for early abortion according to Furedi: Furedi, Ann, (2001), (*Footnote 160*), 163, which is also my finding in this research as I discuss in chapter 8.3.

<sup>233</sup> R. Dworkins, *Life's Dominion: An Argument about Abortion and Euthanasia* (London: Harper Collins, 1993), 88-90.

<sup>234</sup> This is also the view of Bonnie Steinbock; 'When Can it Feel Pain?' *Newsweek Technology and Science* <http://www.msnbc.com/news/920618.asp?0bl=-0> (accessed 6 June 2003).

<sup>235</sup> At least there is some concession in the medical community that the knowledge of the gestational age of a foetus makes it easier to determine its survival chances *ex utero*: Steinbock, Bonnie (1992), (*Footnote 199*), 83.

<sup>236</sup> My findings are discussed in Chapter 8.3: 'Gestational period when abortion is acceptable'.

<sup>237</sup> Note however that Paediatric and Neonatal medicine can today rescue infants born at 22 weeks gestation occasionally, but this is really at the limit of medical technology: *Medical News Today* 'BMA Does Not Lower Upper Gestational Limit on Legal Abortion to 20 Weeks', <http://www.medicalnewstoday.com/medicalnews.php?newsid=26918> (accessed January 3 2006).

<sup>238</sup> *C v S* [1988] QB 135.

<sup>239</sup> In *Rancer v Mid-Downs Health Authority and Storr* [1991] QB. 587, Brooke J. held that the word "viable is a convenient shorthand for "capable of being born alive". The neonate itself can only determine the proof of viability when it is born alive and is capable of breathing independently outside of its mother's womb.

until it is born alive,<sup>240</sup> it is not recognised as a human being until then.<sup>241</sup> If we accept this definition, I argue therefore that viability is determined by physiology and the state of neonatal/paediatric medicine, that is, the ability of the medical profession to maintain the pre-term infant. The fact that improved ultrasound techniques enable more experts, and untrained people to visualise the foetus before birth and demonstrate that it has developed fully and physically and be able to move limbs etc, does not therefore have much bearing on viability.<sup>242</sup> This breakthrough could be interpreted by Pro-life advocates as further evidence that the foetus should be regarded as a life worthy of respect, and deserving of societal protection; while Pro-choice advocates will assert that the discovery makes it more probable for foetal defects to be detected earlier than before making abortion more justified and for time limit for late abortions to be extended.<sup>243</sup>

Thomson<sup>244</sup> criticises abortion legislation (like that of Nigeria), whereby the determination of a foetus as a human being is based on the time of its gestation. Under Nigerian law at a certain legally undefined period, the foetus is regarded as a human being whose deliberate termination is to be regarded as murder.<sup>245</sup> This to Thomson is “slippery-slope- argument(s)” that does not follow logically that a foetus is human or not human depending on the time of its gestation.<sup>246</sup> It is either human from the moment of conception giving it full legal rights accorded a living person or it is not.

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<sup>240</sup> This is known as the ‘born alive rule’ under Common law which according to Kennedy & Grubb was suited for the time when medical knowledge found it difficult to determine when a foetus in vitro was alive at the time it sustained an injury; a situation which medical advancement has made it easy to determine therefore making the rule unnecessary, ‘outdated and indefensible’: Ian Kennedy, and Andrew Grubb, *Medical Law*, (Butterworths, 3<sup>rd</sup> edition, 2000), 950.

<sup>241</sup> S. 5(2) of the Criminal Code states that ‘A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not’; S 306 of the Penal Code is similarly worded, this does not however mean that the foetus does not have accrued rights because S. 309 of the Code goes further to state: ‘When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child’.

<sup>242</sup> Steinbock gives a detailed discussion on the various arguments of the moral and legal significance of viability that further elucidates this discussion: Bonnie Steinbock, (1992), (*Footnote 200*), 82-88.

<sup>243</sup> Abortion in cases of foetal disability is discussed in Chapter 7.4.

<sup>244</sup> Judith Jarvis Thomson, (1977), (*Footnote 168*), 112.

<sup>245</sup> Note that S.228 & 229 of the Criminal Codes (which prohibits attempts to procure a miscarriage by another person and the woman) and S. 232 of the Penal Codes which prohibits ‘causing a miscarriage do not state any gestational age limit when the attempt at ‘a miscarriage’ is regarded a crime.

<sup>246</sup> Judith Jarvis Thomson, , (1977), (*Footnote 168*), 112.

The humanity accorded a foetus at conception had been forcefully put forward by Pope Pius XII<sup>247</sup> but throughout history abortion has been part of fertility regulation by all societies with different faiths.<sup>248</sup> The historical demographer Wrigley states that 'it is clear that abortions were attempted at times by all populations'.<sup>249</sup> My argument is that morality and religion are intimate convictions between persons and their Creator; it is not the duty of State legislation to dictate citizens' moral decisions especially when overwhelming social problems necessitate the need to make abortion a choice for women. There should be an enabling law that gives them the option to exercise this choice, because law ought to be non-secular since Nigeria is a secular State<sup>250</sup> every woman regardless of her faith should be able to find solution to an unwanted pregnancy within an enabling law. Her ultimate decision to use the law as a solution might be influenced by her religion, but that is personal to her within the confines of her faith which should not be imposed by State restriction.

The question one may ask is of what relevance are the opposing views to reform of abortion law in Nigeria? Viewed against the background of my earlier discussion of the esteem with which Nigerian society regards children, abortion would not be willingly accepted unless it is to save the life of the mother. This view tallies with the conservative moralistic opinion of Pro-life advocates like Noonan and Ramsey.<sup>251</sup> It is also in conformity with Christian, Moslem and Traditional orthodoxy to an extent. Christianity upholds the sanctity of human life from the

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<sup>247</sup> Pope Pius XII in his allocution address to the Italian Catholic Society of Midwives on October 29 1951 said "The baby in the maternal breast has the right to life immediately from God.-Hence there is no man, no human authority, no science, no medical, eugenic, social, economic or moral 'indication' which can establish or grant a valid juridical ground for a direct deliberate disposition of an innocent human life, that is a disposition which looks to its destruction either as an end or as a means to another end perhaps in itself not illicit.- The baby, still not born, is a man in the same degree and for the same reason as the mother": R. Dworkin, (1993), (*Footnote* 233), 45; see also J Finnis, 'The Rights and Wrongs of Abortion: A Reply to Judith Thomson' in, R. M. Dworkin, (editor) *The Philosophy of Law* (Oxford University Press, 1977), 129.

<sup>248</sup> Herbal preparations used as abortifacients are found in Chinese writings dating back to nearly three thousand years before Christ, ancient Greek and Roman literature have abortion methods written in them just as it is found in writings of Islamic medical writers of the Middle Ages, in Nigeria further research needs to be done on herbal preparations used for inducing terminations of pregnancies especially since contemporary women in this research informed me about the various herbal preparations they used to induce abortion: see my findings in Chapter 5.1.

<sup>249</sup> E. A. Wrigley: *Population and History* (New York: McGraw-Hill, 1969), 125.

<sup>250</sup> The caption to S. 10 of the Nigerian constitution states: 'Prohibition of State Religion', and it stipulates that: 'The Government of the Federation or of a State shall not adopt any religion as State Religion': FGN: The Constitution of the Federal Republic of Nigeria; note however this has been a contentious issue in Nigeria's federal political structure due to the absence of 'Religion' being placed among the items in the 'Exclusive Legislative List' which some state governors in the Federation has interpreted as giving them the constitutional right to introduce a specific religion for citizens in their state.

<sup>251</sup> John T. Noonan (JR.) (1970), (*Footnote* 84), 60.



moment of conception, and that the foetus should not be destroyed at any stage of its gestation period, unless it is to save its mother's life. The belief follows 'ancient law made by male-dominated societies [that] maintained that the foetus was part of the woman...and animated by a special misogyny, as though a conspiracy against womankind had designed the punishment of the risk of pregnancy as a condition for coitus'.<sup>252</sup> Pro-life concept is linked to conservative Catholic belief that coitus is for procreation, and a woman should accept pregnancy as a consequence of coitus. Pro-life advocates<sup>253</sup> argue essentially that women should take responsibility for their action and should not be allowed to escape the consequences through abortion. I believe this argument is unfair to women (and their right as equal partners with men) in that since coitus takes place between men and women, both parties should share the consequences of the pregnancy which often lies on the woman alone. I am of the opinion that because men created the law on abortion, because sex and procreation are interwoven, it is a gender-biased position not to expect women to engage in sex for enjoyment purposes, but only for procreation.

### **Foetal viability and the law**

The Nigerian attitude to and legislation on abortion has been conditioned by the common law. The common law has for centuries refused to accord any legal status to the foetus even when it is a viable one. The fundamental question we need to find out is whether the majority of Nigerians see the foetus as a human being whose life should be protected at any stage of its conception. Or is the foetus just a part of the woman's body and she should therefore be allowed to do what she please with it, including termination? In essence should a pregnant woman be accorded the recognition that she has sufficient mental and moral capacity to make informed choice over another life inside her, on the basis that it is her body; or conversely she should not because the foetus is an independent life with equal rights as her own? Considering the fact that she will live with the consequence of that decision either way for the rest of her life only she is competent to make the choice. Answers to these questions will determine if the foetus has rights and privileges as a living child and a right equal to its mother's

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<sup>252</sup> John T. Noonan JR. 1970), *Ibid*, xv.

<sup>253</sup> Mary Ann Warren, 'On the Moral and Legal Status of Abortion' reprinted in Joel Feinberg, (editor) *The Problem of Abortion* (2<sup>nd</sup> edition) (Belmont, California: Wadsworth Publishing Company, 1984), 102-119 and Michael Tooley *Abortion and Infanticide* (Oxford: Clarendon Press, 1983). 100.



own; although I believe these are issues that can never be resolved conclusively either way. But determining when 'humanity' can be accorded a foetus would help in resolving the legality of abortion at a particular gestational age.

### **The foetus' moral and legal status**

A cardinal moral and ethical puzzle that has remained unanswered, but is at the basis of the abortion debate is at what point can a foetus *in vitro* be considered a human being?<sup>254</sup> The answer becomes all the more elusive with each advance in medical science which has made scientists marvel as one looks 'from one embryo to another... what strikes you is the fidelity of the [development] process'.<sup>255</sup> We now know that 'an embryo is capable of building not just a protein or a patch of tissue but a living entity in which every cell functions as an integrated part of the whole'.<sup>256</sup> This argument is becoming harder to sustain as modern science and technology have made it easier for foetus to survive outside of its mother's womb at earlier stages of development than ever before. Research in foetal development has shown that the weight and length of a foetus are not uniform but vary from foetus to foetus at the same stage of development and are indeed influenced by the nutrition of the mother.<sup>257</sup> Evidence from research has indicated

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<sup>254</sup> The difficulty in determining the answer to this question is illustrated with a recently concluded case in America. Between December 23 and 24 2002 Laci Peterson was murdered in the United States of America by her husband Scott, who has since March 2005 been sentenced to death for the murder. Her unborn child named Connor who was nearly eight months old in the womb was found in the river along with its mother's body. Prosecution argued that Connor, though a few weeks from delivery is entitled to some protection from the law where several American states has since 1999 enacted Unborn Victims of Violent Act that offers legal protection to the unborn child at any stage of its development, from the mother, doctor or any third party : Fetal Homicide Laws - What You Need to Know, <http://womensissues.about.com/cs/parentingfamily/a/aafetalhomicide.htm> (accessed, 30 November 2004), the decision of the American jury seems to accord the unborn child legal recognition through its decision to charge Scott for their son's murder as a separate count from his wife's; however, Gloria Feldt president of the Planned Parenthood Federation said of the prosecution's argument that 'If they are able to make fetuses people in law with the same standing as women and men, then Roe will be moot': MSNBC NEWSWEEK 'The War Over Fetal Rights', <http://www.msnbc.com/news/920645.asp?cpl1=1> (accessed June 6 2003), my opinion is that while a foetus can be given restitution for injuries it sustained while in the womb, its right to do so does not accrue until he has an independent existence outside its mother's womb because that is the time the law accords him legal recognition as a human being.

<sup>255</sup> Thomas Jessell, (Columbia University Neurobiologist in TIME Magazine (November 18, 2003), 61.

<sup>256</sup> J. Madeleine Nash, Nash, Madeline J., 'Inside the Womb' TIME Special Report, November 18, 2003.

<sup>257</sup> A US based study showed that foreign born black mothers of African-Caribbean origin had a birth weight advantage over US-born African-American mothers (10.0% vs 16.7%), though evidence suggests that socio-economic levels of mothers contributed to the birth weight of babies and 'In fact, Caribbean and African-born black mothers had birth increase generally similar to, and in poor communities even more favourable than those of white'; however US born black mothers had lower birth weight than US-born white mothers: Jing Fang MD; Shantha Madhevan DrPH and Michael H. Alderman, MD, (Department of Epidemiology and Social Medicine, Albert Einstein



for instance that the foetus of people of black ethnic origin mature faster than foetuses of people of white ethnic origin,<sup>258</sup> which makes viability even harder to determine across racial lines.<sup>259</sup> I argue it also makes it difficult for policy makers to specify a precise time limit for abortion.

The importance of this to the Pro-choice argument is that if a foetus is considered a human from conception as Pro-life advocates argue, then abortion is wrong at whatever stage of development. On the other hand if there is a particular gestational stage at which a foetus can be accorded humanity, then at any stage prior to that abortion is not an offence. However an extension of the argument by Pro-choice advocates is that put forward by Thompson who states that having a right to life (if we assume the foetus does at any stage) does not necessarily entitle that person (foetus) to whatever it needs and certainly not to the use of another's body to stay alive by compulsion.<sup>260</sup> She illustrates this with the example of a person waking up to find himself strapped to an unconscious violinist who has a fatal kidney ailment.<sup>261</sup> A Pro-life justification for rejecting abortion under any circumstance (except when the mother's life is in danger) is because the foetus derives its 'humanness' from its conception by human parents. Philosophers like Tooley<sup>262</sup> have assessed the humanness of a foetus on a cognitive psychological basis. Tooley believes that a foetus acquires the status of a human being when it has 'a continuity of consciousness of itself as having wants or purposes, before it can have a right to a life in which it can further those purposes and before it can be said its death is a harm to a person'.<sup>263</sup> The problem with this definition is that it assesses the foetus as an already living and conscious entity capable of independent sentience and perception of itself autonomous of its mother.<sup>264</sup>

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College of Medicine, Bronx, New York, 1999), 'Low Birth Weight: Race and Maternity Nativity-Impact of Community Income' 103(1) (1999) *PEDIATRICS*, 1; see also S. Suthutvoravut S; C. J. Hogue; B. Guyer; M. Anderka and M. W. S. Oberle 'Are preterm black infants larger than preterm white infants, or are they more misclassified?' [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list\\_uids=2808471&dopt=Abstract](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=2808471&dopt=Abstract) (accessed 25 November 2005); and the earlier findings of Peter Gruenwald, 'Growth of the Human Foetus' (1966) 94 *American Journal of Obstetrics and Gynecology* 1112.

<sup>258</sup> Jing Fang (*et al*) *Ibid* and the earlier findings of J. Edgal Morison, 'Fetal and Neonatal Pathology' (1963), 99-100 in J. T Noonan JR (1970), (*Footnote* 84), 52.

<sup>259</sup> MSNBC *NEWSWEEK* 'The War over Fetal Rights', <http://www.msnbc.com/news/920645.asp?cpl1=1> (accessed 6 June 2003); which confirm my earlier argument that viability cannot be determined by gestational age alone. (page 53).

<sup>260</sup> Thomson, Judith Jarvis, (1977), (*Footnote* 168), 119.

<sup>261</sup> Thomson, Judith Jarvis, (1977), (*ibid*), 113.

<sup>262</sup> Michael Tooley, *Abortion and Infanticide* (New York: Oxford University Press, 1983), 347-407.

<sup>263</sup> *Ibid*, 347.

<sup>264</sup> Which I believe is not so because the foetus is dependent on its mother for survival up to the point when medical science can sustain it further if born pre-term.

Increasingly the foetus is seen as 'individuals...a patient just like its mother.'<sup>265</sup> But this argument is not so in law which continues to regard the foetus as a dependent entity until it is born.

The recent biomedical revolution that shows that the foetus while still in its mother's womb is directly affected by everything that she does shows its dependence on her. All aspects of the environment of the womb are directly related to and affected by what the mother does in the exterior environment.<sup>266</sup> 'The 'foetus' genes engage the womb in an elaborate conversation, a two-way dialogue that involves not only the air its mother breathes and the water she drinks but also what drugs she takes, what diseases she contacts and what hardship she suffers'.<sup>267</sup> Whatever the physiological state of the foetus in the womb, its capacity to be a human being is acquired when it is sentient. Accordingly, Sumners believes that it is the 'capacity for feeling or effect, or *sentience* rather than consciousness of self that determines the humanness of a foetus' that can make an argument for or against abortion.<sup>268</sup> In essence 'morality requires the existence of sentience in order to obtain a purchase on our actions'.<sup>269</sup> Summer's view buttresses my argument that a pregnant woman is affected by that pregnancy as much as the foetus and she should be the one to decide to keep it or not and not men under that dictates of society. This is because if the environment in which the mother is exposed does not favour her physiologically or psychologically, it will not favour the foetus either. She is the only one who can determine the beneficial effect or otherwise of the environment to her foetus at that point. It would be fatuous for society; men or doctors, to assume they can determine her choice to react to the pregnancy through legislation because it is based on her personal experience of how her immediate environment affects her.

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<sup>265</sup> M. R. Harrison, 'Unborn: Historical Perspectives of the Foetus as a Patient' (Winter 1982) 19 *The Pharos* 23-24; Ikemotos states that viewing the foetus as a patient has only succeeded in taking autonomy from women and this does not in fact protect the foetus but subordinate women: Ikemotos, Lisa C.[1992] (*Footnote 71*), 1208.

<sup>266</sup> J. Madeleine Nash 'Inside the Womb' *TIME Special Report*, November 18, 2002, 58.

<sup>267</sup> J. Madeleine Nash (*ibid*) 58, Goldstein however faults Tooley proposition as being too restrictive in that it excludes all fetuses, neonates and possibly the mentally handicapped fetuses Robert D. Goldstein, *Mother-Love And Abortion* (London, Los Angeles & Berkley: University of California Press, 1988), 106.

<sup>268</sup> L. W. Sumner, *Abortion and Moral Theory* (Princeton: Princeton University Press, 1981), 142.

<sup>269</sup> *Ibid*.

## Summary

This research shows that for the average Nigerian woman abortion is usually not about academic sociological debates about the right of the unborn child that they carry in their womb. These are abstract though relevant moral terms that are extraneous to her extant situation. Women's decisions either way may not strictly be of free volition but are determined by her social environment and findings from this research shows that her choice is determined more on economic considerations and other social factors affecting her.<sup>270</sup> Naturally, her educational level and religious convictions will influence her decision, but this research shows that social and economic considerations impact more forcefully on abortion decisions than moral ones. For the majority of women these socio-economic considerations are necessary to sustain decent living standards, but these are choices they are powerless to make because law has castrated their decision-making abilities by its restriction on abortion.

Abortion can be a traumatic experience that women need to carefully consider within their individual social, economic and cultural environment, and usually these are situations that women have no control over, but ultimately weigh upon their decision. These variables are determined by society on the political and social level through the course of State history. Men and society through law treat women as insipid, indecisive minors incapable of informed judgement; that is, the law is infantilising to women, this is wrong because regardless of their socio-demographic differences most women with full mental capacity are capable of making a reflective choice. In England, (where the law originated) although still controversial, the legalisation of abortion has granted women the right to abortion in more liberal ways.<sup>271</sup> In Nigeria however, there exists hegemony of conspiracy between society and law which effectively blocks any right of choice of abortion for women. Some academics could argue that this is entirely appropriate since law ought to reflect the prevailing social attitudes, structures and morality which are issues this research elucidates. I appreciate these are formidable obstacles Nigerian women must face without losing the essence of motherhood and dignity for which even colonial leaders have acknowledged as their attributes for

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<sup>270</sup> Her decision will usually be based on the availability of affordable medical services, her ability to feed the unborn child as well as previous ones; and the support from the putative father.

<sup>271</sup> Sally Sheldon, (1997), (*Footnote 99*), 24-29; Ikemotos makes similar comparisons: Ikemotos, Lisa C., [1992] (*Footnote 71*), 1221.



centuries.<sup>272</sup> I believe that this can only be achieved through law reform to meet women's needs.

In the next chapter I will discuss the methodology adopted in the empirical survey.

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<sup>272</sup> Elizabeth Isichei, (1983), (*Footnote 4*), 260.

# CHAPTER FOUR

## METHODOLOGY

The alternative paradigm concept of uniqueness brings the focus of research back to individuals and groups in the particular social context being investigated. The purpose of research is shifted from constructing grand generalizations for control and predictability by detached outsiders in a particular context...to understand their realities.<sup>1</sup>

Abortion subject is influenced by individual's deeply personal feelings that are prejudiced by culture, social dictates and religious beliefs as the opening quotation shows. These characteristics are possibly the ones that distinguish a pro-life from a pro-choice believer in the abortion issue. There are people however, who without necessarily camping on either of these divides do hold perceptions of abortion and when it should be available depending on the individual and peculiar circumstances of pregnant women and not because they are pro-choice or pro-life. Abortion is primarily a health concern that has implications for women and their reproductive health. For this reason, government should see it as a primary concern due to its implications for national welfare.

The methodology adopted in this survey addresses fundamental and current issues of abortion in Nigeria that need to be properly discussed by the people to enable us address my hypothesis that the present abortion law in Nigeria needs reform. A number of issues that the present law does not make provisions for are covered by the questionnaire. Some of these issues are:

- what should be the gestation age of the foetus when legal abortion could be performed;
- should abortion be granted for so called 'social grounds';<sup>2</sup>
- should husbands have a say in married women's choice to terminate their pregnancy as was canvassed in *Paton v UK*?<sup>3</sup>
- should women be prohibited from performing acts that could jeopardise the well-being of their foetus?<sup>4</sup>

<sup>1</sup>P. Maguire, *Doing Participatory Research: A Feminist Approach* (Massachusetts: University of Massachusetts, Center for International Education, 1987), 26.

<sup>2</sup> This is provided for under section 1(1)(a) of the British Abortion Act 1967.

<sup>3</sup> *Paton v UK* (1981) 3 EHRR 408.

- should abortion be sanctioned when there is the fear that the child would be born physically or mentally handicapped?

Most of these issues are provided for under the British Abortion Act 1967 or they have been judicially settled in court, but are absent under both the Criminal and Penal Codes in Nigeria. Some other issues raised in the study are not culturally specific but are of universal concern, but the responses to it have culturally specific implications in Nigeria due to the patriarchal system in Nigeria. Such issues are 'whether a putative father should have a say in the termination of pregnancy of an unmarried woman', and who has the right to give consent for legal abortion of a girl under the age of 18 years. I discussed the theoretical and legal implications of these issues in Chapter three while this chapter discusses the practical effects and attitudes of the people towards them.

I observe from information gathered during the field study that most medical doctors have a procedure when performing any form of operation that they insist on a *male* relative of the patient signing the consent form. Even though no specific law requires this, since the guidelines for medical practitioners allow consent for an operation to be given by 'a competent relative'.<sup>5</sup> From field study analysis, this is also the attitude of the people though the law does not stipulate the gender or age of a person signing the consent forms for any operation including abortion. The procedural guideline by the Nigerian Medical Association as well as the attitude of the people clearly do not fit with medical ethics and the notion of individual autonomy which is Constitutionally guaranteed under Chapter Four<sup>6</sup> as well as under Articles Two and Three of the African Charter on Human and Peoples' Rights<sup>7</sup> to which Nigeria is a signatory. Extensive literature exists on the issue of 'informed consent' that is beyond the purview of this study, however within the issue of abortion, regardless of her age, a mentally competent pregnant woman must be given the autonomous freedom to choose what should be done to

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<sup>4</sup> The state of Utah in USA has recently promulgated a law that states that a woman can be prosecuted if she kills or harms her foetus through her lifestyle, drinking or drugs, Ellie Lee 'Whose C-Section is it Anyway' [www.prochoiceforum.org.uk](http://www.prochoiceforum.org.uk) (accessed 2 May 2004).

<sup>5</sup> The issue of consent is discussed in chapter 8.1.

<sup>6</sup> The Constitution of the Federal Republic of Nigeria, 1999. Chapter IV deals with 'Fundamental Rights' of citizens and Section 42(1) guarantee a right to freedom from discrimination on account of ethnicity, gender, religion etc.

<sup>7</sup> The African Charter on Human and Peoples' Rights: Article 2 stipulates non discrimination on bases of gender, colour, ethnicity etc., while Article 3(1) states 'Every individual shall be equal before the law'; and 3(2): 'Every individual shall be entitled to equal protection before the law'.



her body.<sup>8</sup> This is because 'self-determination is the inalienable right of every human being'.<sup>9</sup> I believe women ought to be able to give consent for abortion on their own without seeking approval from anybody. The pregnant minor should also have the same right as an adult except with the proviso that she must be counselled. In practice therefore, the medical profession does not accord women equal recognition as men in such instances. In practice also, I observe that for illegal abortion done in private medical centres, consent is usually given by a male relation of the pregnant woman but, the hospital records do not however state specifically that an abortion is performed.<sup>10</sup> From the foregoing, I observe that there are myriads of reason why abortion reform is necessary in Nigeria, but such a reform should conform to the socio-cultural needs of the society. Abortion law reform is necessary as a means of preventing the tragic consequences of unnecessary deaths of women so that legally safe medical abortion is made available and accessible to them.

This study argues for an abortion law that does not just follow laws enacted in developed countries such as Britain, as the present law does,<sup>11</sup> but one that is compatible with the socio-cultural needs of the Nigerian society because 'law is the most powerful vehicle by which fundamental social changes can be brought about and in it lies the power to vindicate human rights'.<sup>12</sup>

In carrying out a study on abortion in a patriarchal, multi-ethnic and religiously diverse country like Nigeria, I am conscious that culturally, sex and reproductive issues are not openly discussed. The survey method adopted therefore was unobtrusive and inoffensive, but encompassing enough by focusing on the people, their thoughts and beliefs within their particular social context. This is because abortion is known to be prevalent in societies throughout the history of

<sup>8</sup> Re SG (a minor), (1991), 6 BMLR 95 (Fam Div) where the court allowed the next of friend (SG's father), to apply for an abortion because SG lacked the mental capacity to give consent. SG is severely mentally disabled with the mental capacity of a 7 to year old. Compare to *Gillick v West Norfolk and Wisbech Area Authority* [1986] AC 112, [1985] 3 All ER 402, [1985] 2 BMLR 11 (HL) where the court held that a 16 year old had the mental capacity to give consent for contraceptive.

<sup>9</sup> Marj Milburn, *Informed Choice of Medical Services: Is the Law Just?* (Aldershot: Ashgate, 2001), 15; see also T. L. Beauchamp and J. F. Childress, *Principles of Biomedical Ethics*, (4<sup>th</sup> edition), (New York: Oxford University Press, 1994), 121-126.

<sup>10</sup> Asking medical doctors for records of the number of abortion they perform was not within the framework of this study which is rather to understand the social attitudes to abortion and its implications for law reform.

<sup>11</sup> As stated in chapter two, the present abortion law is almost word for word with the section 58 of the 1861 Offences Against the Persons Act which was enacted for the British society and transported to the former colonies of Britain of which Nigeria was one.

<sup>12</sup> Sheila McLean, *Old Law, New Medicine: Medical ethics and human rights* (Pandora Press, 1999), xii; see also S. McVeigh and S. W. Wheeler 'Introduction' in S. McVeigh and S. W. Wheeler, (editors) *Health and Medical Regulation* (Aldershot, Dartmouth, 1992), iv.

humankind<sup>13</sup> despite cultural or religious dictates, because it provides a social need for women.

I am fully aware that a woman's attitude to abortion will be influenced by all the socio-cultural variables within her environment and her economic state at the time a decision on abortion is to be made. By asking respondents questions, I was able to assess my hypothesis that abortion law reform is needed in Nigeria. The method of asking questions on abortion was done like a building block. I first asked respondents to focus on the past and gradually built up to the abortion issue itself and finally focused on the law and their attitude towards it. My reason for this approach is supported by Adler<sup>14</sup> when she observes that:

Deeply held beliefs and assumptions may affect research in this area more than in others, influencing which questions are asked about abortion and the ways in which questions are framed. In addition, abortion inevitably occurs in the context of pregnancy, and assumptions and beliefs about the nature of such pregnancies can influence research. Because of this, it is particularly important to make explicit the assumptions underlying different research approaches.<sup>15</sup>

It is my belief that we cannot appreciate the present and hope to shape the future without a clear understanding of the past. I therefore seek to find answers to the questions fully conscious that the answers are to be found within the social context of contemporary Nigeria, especially since the law does not provide room for women to exercise choice for abortion.

This chapter discusses the methodology used to buttress the main hypothesis on which this study is based. It seeks to understand what ordinary Nigerians expect

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<sup>13</sup> Glanville Williams 'The Law of Abortion' (1948) *Current Legal Problems* 128-147, 129-130; George Devereaux, 'A Typological Study of Abortion in 350 Primitive, Ancient, and Pre-Industrial Societies' in Harold Rosen (editor) *Abortion in America* (Boston: Beacon, 1967), 98; Rosalind Petchesky 'Abortion Women and Choice: The State, Sexuality and Reproductive Freedom' (Boston: Northeastern University Press, 1990), 1-2; Linda Gordon, *Women's Body, Women's Right: A Social History of Birth Control in America* (Harmondsworth, England and Baltimore: Penguin, 1977), 47.

<sup>14</sup> Nancy E. Adler, 'Unwanted Pregnancies and Abortion: Definition and Research Issues' (1992) 48 *Journal of Social Issues* 3, 19.

<sup>15</sup> *Ibid* 19.

of a socio-culturally acceptable abortion law if they accept that reform is necessary.

After introducing the chapter, I follow by discussing the rationale for the study, which includes the aims and objectives and how I arrived at the research problem identification. Next, I discuss the research methods adopted and include discussions on the design of the questionnaire and interview; ethical issues the study raises; informed consent; confidentiality and resources for the study. Sub-section three focuses on the pilot study and related issues such as choice of the study site, training of interviewers, selection of research subjects and sample size and fieldwork experiences. I discuss the limitations of the study and resources in sub-section four. The final sub-section discusses the result/outcome of the pilot study and its analysis. Here I briefly touch on the method used for data analysis of the final survey, which I based on the analysis of the pilot survey. The chapter concludes with a summary.

## 4.1 Rationale for the Study

### Aims and objectives of the study

The methodological approach used in gathering information goes a long way in determining the ultimate results one gets and its usefulness in achieving the aims and objectives of the research. Accordingly, Bryman<sup>16</sup> observes that methods are not simply neutral tools, but they are closely linked with the way in which social scientists envision the connection between different viewpoints about social reality and how it should be examined. The approach adopted in this study is exploratory; it is a fact-finding exercise with the aim of gathering information from ordinary people about a burning social problem especially because legal sanctions further compound and inhibits women's rights to have control over their reproductive functions.

Since Nigeria is a culturally diverse country it is expected that cultural norms will have an effect on people's perceptions and attitude to the need for reform of abortion law and the other related issues I raise. I observe that educational attainment and religious leaning as well as economic circumstances will influence people's attitude to specific questions on law reform; implicitly addressed in my argument are issues of what reforms the law need to address, the most appropriate gestation period when abortion should be allowed and who should give consent for abortion. These are issues that will generate differences of opinion and attitude across social, economic and religious differences of the population studied. My aim is therefore to address these issues and arrive at a conclusion about whether abortion should be restricted or should remain as it is, or liberalised through reform.

Collecting information on a sensitive subject such as abortion is fraught with difficulties mostly because the type of baseline data needed to carry out the study are often not readily available.<sup>17</sup> I found this to be the case especially in a developing country like Nigeria where record keeping is not as advanced as other developed nations such as Britain. Fox and Tracy<sup>18</sup> have stated four main problems researchers are likely to encounter when collecting data on sensitive

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<sup>16</sup> Alan Bryman, *Social Research Methods* (Oxford University Press, 2001), 4.

<sup>17</sup> It was difficult for example to get appropriate data on the ownership of a household on a street or local government area, their number and age range, profession etc of people living in it, in some of the Local Government Locations.



subjects (which were difficulties I encountered during this study). Of all the problems enumerated, the ones I had to overcome were those of 'logistical problems surrounding the use of records (and) the study population (being) so geographically dispersed that the use of records may not be feasible'.<sup>19</sup> I found that to enable me begin the research at all, I had to first visit the identified study sites and carry out physical counting of the houses in a particular area in some local government areas where there are no government planning of the area and was therefore not easily accessible.<sup>20</sup> We discovered that most of the houses in the indigenous areas are built haphazardly as they had been since ancient times. This we found to be the case in the ancient sites of Bere and Sabo. Both areas are ethnically enclosed areas inhabited by the indigenous Yoruba and Hausa/Fulani people respectively. Physical counting of households and actually marking the walls with numbers was necessary to enable me to identify and keep proper record of respondents used for the survey.

Earlier research on abortion in Nigeria has been done from a medical point of view aimed essentially at finding the frequency and incidence of abortion and its effect on pregnant women and medical practice.<sup>21</sup> This earlier research has identified that abortion is a growing medical and social problem in Nigeria that has increasingly had severe adverse effects on the health of thousands of women because of its illegality. This research focuses on the potential need for reform of abortion law in order to address a problem that has far-reaching health and social implications for women especially and society in general. This survey therefore goes further than previous research by not focusing on abortion solely as a medical problem, but looks at it as a social problem that requires a legal solution. It therefore aims at gathering information on people's experiences and perceptions to liberalisation of abortion law as a way to stem recurrent deaths of women from illegally procured abortion because of its continued illegality in Nigeria.

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<sup>18</sup> James Alan Fox & Paul E. Tracy, *Randomized Responses A Method For Sensitive Surveys* (SAGE publications, 1986), 7.

<sup>19</sup> *Ibid.*

<sup>20</sup> Physical counting of houses was done to be able to use random sampling method in the two sites of Bere and Sabo that are inhabited by particular ethnic groups of low income levels, (though some wealthy people with mansions lived side-by-side within the same area as the poorer inhabitants). This further added to the time spent on the empirical data.

<sup>21</sup> Stanley K Henshaw, *et al* 'The Incidence of Induced Abortion in Nigeria' *International Family Planning Perspectives*, December 1998 Volume 24 Number 5; E. I. Archibong, 'Illegal induced abortion-a continuing problem in Nigeria, (1991) Volume 34(3), *International Journal of Gynaecology and Obstetrics*, 261-265; O. A. Ladipo, 'Illegal abortion and effect on medical practice and public health-Nigeria' in Renee E, 'Changing patterns of child-spacing and abortion in

As such, this survey is non-prescriptive, it is a socio-legal attitudinal survey whose aim is to analyse the attitudes of ordinary Nigerians towards abortion, the law and its continued illegality generally with the end result of being able to offer recommendations to reform abortion law. The survey therefore focuses on the human population of southwestern Nigeria taking account of their diverse socio-economic, educational, religious and ethnic differences. By doing this, the study hopes to arrive at a solution to the present abortion law that will be socio-culturally compatible with the people's needs. This is in keeping with Holdaways' reasoning that '...methods of research imply ideas about the extent to which the thoughts and behaviour of human beings, as individuals and/or as members of groups, institutions and societies, are determined by external social forces (or internal states)'.<sup>22</sup> Because a reformed abortion law should be socio-culturally compatible with contemporary Nigerian values; this research aims at filling these identified gaps in earlier research by focusing on the people, their attitude towards abortion and asking them questions about the form and content a reformed abortion law should take. It is only then that arguments can be made for abortion law reform, which will conform to the expectations and extant social, cultural, religious and developmental needs of contemporary Nigeria.

Gathering information across a wide selection of ethnically and culturally diverse population as I have chosen by middle-class researchers has sometimes been said to be a problem because the researcher may not have experiences of poverty and may not be as effective and sensitive to problems faced by people of poorer backgrounds. However, in rejecting this argument Pratt and Loizos<sup>23</sup> said:

Membership of a particular class is at best only a rough-and-ready guide to how people think, and to their moral values. The most important question to ask about a particular researcher regarding their appropriateness and competence to work with poorer people is not, what is their class origin, but what are their human qualities? Do they have empathy? Are they sensitive to the needs of others?

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a northern town, Working Paper Series, Princeton, New Jersey: Office of Population Research, Number 97-1, 1997.

<sup>22</sup> Simon Holdaway, 'Theory and Method in Qualitative Research' in Dawn Burton (editor), *Research Training for Social Scientists* (SAGE publications, 2000), 157.

<sup>23</sup> Brian Pratt and Peter Loizos, *Choosing Research Methods Data Collection for Development Workers* (Oxfam, 1992), 19.

Do they have the imagination to grasp what life is like...Above all, good researchers have to be good listeners, and be willing to control their own egos sufficiently to grasp what other people can tell them, and draw appropriate conclusions. These skills are not confined to any particular class or subculture.<sup>24</sup>

Whatever finding I get from the empirical study will give a clear guideline on what policy recommendation to make to government, which is my ultimate aim. Whatever policy changes are recommended resulting from the outcome of this survey will affect ordinary Nigerians more and not the elite or policy makers who have the means to procure safe abortions without being inhibited by the illegality of the abortion law.

### **Identification of the Research Problem**

Embarking on a particular research for a researcher is often because of personal experiences, motivation or desire to effect a change. From experience, the death of women through illegally procured abortion has devastating effect on families who engaged non-professionals to procure abortion due to its illegality under the laws of Nigeria. My motivation for a study on abortion in Nigeria is borne out of personal contact and experience with women, adolescent girls and men I have come across while studying different aspects of reproductive health as a member of the Social Sciences and Reproductive Health Research Network (SSRHN).<sup>25</sup> Further motivation came through the different research carried out by NISER<sup>26</sup> in the area of gender studies. Also, under the auspices of the International Federation of Women Lawyers (FIDA) especially under the 'Legal Aid Clinic'<sup>27</sup> scheme we women lawyers have had to deal with different aspects of reproductive health matters that women are often reluctant to discuss openly for fear of reprisal,

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<sup>24</sup> Brian Pratt and Peter Loizos, *Choosing Research Methods: Data Collection for Development Workers* (Oxfam, 1992, 19).

<sup>25</sup> A non-governmental organisation based in the southern part of Nigeria at the University College Hospital that has carried out research in different areas of reproductive health in the past 13 years in all parts of Nigeria. Their focus is to look at the identified reproductive health problem from a multi-disciplinary focus. It gets its funding from multi-national organisations such as the Ford Foundation and MacArthur Foundation. Her web-site is <http://www.ssrhn.org.ng/>.

<sup>26</sup> NISER is the oldest research institute in Nigeria created under statute (see Laws of the Federation of Nigeria, 1999). Her duties (*inter-alia*) are to carry out research and advice the federal and state governments on social and economic issues in Nigeria towards development of the country. NISER's web-site is: <http://www.niser.org.ng/>

<sup>27</sup> As a member of FIDA (Oyo State Chapter) I was able to offer advice to young girls and women under the 'Legal Aid Clinic' scheme that is funded by the Johns Hopkins University since 1999 and is still on-going.

condemnation or ostracism, or worse still, prosecution by the law. I found that women and young girls often find it easier to discuss with other women who will be willing to offer advice in confidence.

Through these interactions with women and men of different socio-economic levels in Nigeria, I observed that abortion is a practice among women of all ages regardless of their marital status or socioeconomic class.<sup>28</sup> Abortion is a prevailing practice that law has clouded with a culture of silence due to its illegality but which most people would prefer reformed.

Another rationale for this study is that religious dogma, ignorance and lack of political will have further aggravated the problem of abortion through the legislator and society's unwillingness to address the problem. Nigerians are reluctant to discuss abortion whether at government or legislative levels; this study would open up the debate. It is hoped that ultimately the results emanating from the study would open a window of opportunity for law reform through a policy change.

Past Policy makers, the legislature, and especially military leaders<sup>29</sup> concentrated on political and economic problems of governance and survival of the Nigerian State over the years since independence that only a perfunctory attention has been given to reproductive issues and especially abortion. Reproductive health issues and abortion specifically have been left to non-governmental organisations to deal with at the primary level. There is no policy statement on abortion by any Nigerian leader since independence and the legislature has blocked all discussions on the issue in the past.<sup>30</sup>

Another rationale for this study is that after 45 years of independence the law on abortion still being judicially applied by Nigerian courts to date have been in the statute books before 1900 when Britain transposed it to their colonies statutes without assessing its compatibility with the people's needs. There exists no

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<sup>28</sup> My assertion is corroborated by earlier medical based results. See: Stanley K Henshaw; Susheela Singh; Boniface A Oye-Adeniran,.; Isaac F Adewole, Ngozi Iwere, and Yvette P Cuca, 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164, 158; CENTER FOR REPRODUCTIVE RIGHTS 'Women's Reproductive Rights in Nigeria: A Shadow Report' (<http://www.reproductiverights.org>), (accessed 11 November 2002); AllAfrica.com 'Nigeria Records 200,000 Abortions Yearly', (<http://allafrica.com/stories/200204040081.html>) (accessed 25 November 2002).

<sup>29</sup> Military leaders have ruled mostly in Nigeria since her independence from Britain in 1960. Out of 43 years of Nigeria as an independent State, the military have ruled for 29 years.

<sup>30</sup> Nigeria's first Parliamentary attempt at abortion law reform did not even past its first reading in the House of Representatives in 1981 through a Bill by a medical doctor: Adetoun Ilumoka, 'Reproductive Rights: A Critical Appraisal of the Law Relating to Abortion in Nigeria', in Mere N



democratic organised imperative by people for abortion law reform even though it affects their social and private lives intimately. Besides, I believe it is a social problem that has emanated because of westernisation, development, and the breakdown of traditional family system.<sup>31</sup> The present abortion law does not reflect the perception of Nigerians on the issue today, which makes this study an opportunity to learn their true feelings.

The literature survey took a little over a year, and the different research questions that came up were noted. I made two short visits to Ibadan to interview key informants<sup>32</sup> to test their reactions to the different research questions to be investigated at the field survey stage. The most poignant observation the literature survey brought out is that while there is a mass of literature on abortion in developed countries going back centuries, there is almost nothing on abortion in Nigeria except for a few studies in the last decade.<sup>33</sup> These earlier researchers were concerned with finding out the prevalence of abortion in Nigeria and its effect on female mortality.<sup>34</sup> The literature survey shows that there is a gap in the knowledge about current perceptions of and attitudes to abortion generally and its continued illegality and especially whether a reform of the law would be welcomed by Nigerians.

The totality of the literature search and personal experiential knowledge and contact leads me to the identification of the following main research objectives that are address in this study:

- Is there a need for a reform of abortion law in Nigeria and what should an appropriate abortion law consider?

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Kesekka, (editor) *Women's Health Issues in Nigeria* (Nigeria: Tamaza Publishing Company Limited, 1992), 92.

<sup>31</sup> Bleek observed that abortion was not rampant in traditional societies (even though it was practised) because the traditional family set-up had the capacity to absorb children whatever their paternity within the mother's family: Bleek, Wolf, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120. I observe this is no longer the case today, because the contemporary family structure in Nigeria is increasingly modelled after the nucleus family structure of the West.

<sup>32</sup> A careful and purposeful selection of people interviewed at this early stage was done. Questions thrown up in the literature survey were sounded up with upper middle class people such as judges/lawyers, medical professionals, legislatures and academicians. Middle-level class of people such as business persons in private and government establishments were also interviewed. Finally, petty-traders, transporters and hawkers were interviewed. The interviews at this stage were informal interactive discussions with leading questions to test their reactions and provide answers to abortion questions raised with them.

<sup>33</sup> This has been noted also by Francis M. Coeytaux, 'Induced Abortion in Sub-Saharan Africa: What We Do and Do not Know' (1988) 19(3) *Studies in Family Planning* 186-190, 187.

<sup>34</sup> All the studies on abortion in Nigeria were undertaken in the last ten years by Non-governmental organisations like AGI in collaboration with medical personnel (see footnote 249).

- What is the perception of abortion in traditional and contemporary Nigerian society and do these perceptions affect attitudes to abortion law reform?
- Under what circumstances should abortion be available?
- What is the acceptable gestation period when lawful abortion should be allowed?
- Should social reasons be considered when abortion is being sought?
- There is also the more general (medical law) question about when can a woman alone consent to abortion especially within a largely patriarchal society like Nigeria; arising in the question is who should give consent to carry out an abortion for women or under-aged girls?

## 4.2 Research Method Used

### Design of Questionnaire and In-depth Interviews

The theoretical ideas that informed the research were translated into questions that addressed the objectives of the study, which were administered to the respondents in the questionnaire.<sup>35</sup> The study includes a quantitative component (a structured survey) and a qualitative component (in-depth interviews with key informants). The survey instrument used and the implementation protocol complied with the laid down guideline of the Kent Law School.

The questionnaire was prepared prior to going to Ibadan when the general design and make-up of the questionnaire was formulated. Its potential suitability for Nigerian environment was re-assessed by NISER colleagues through series of seminars prior to it being administered in the pilot study. Further re-assessments were made after the fieldwork during the pilot study based on the experiences gathered during the administration of the questionnaires.

I ensured that it covered aspects of the appropriateness of design; purpose and aim of the research; informed consent and the benefits to the respondents.<sup>36</sup>

At the conclusion of the study, I hope to be able to give feedback to respondents through awareness programmes and recommendations to the Legislative arm of the government of Nigeria where expedient.

### Quantitative Component

The questionnaire consists of structured open-ended and closed questions.<sup>37</sup> From the responses in the pilot study the final questionnaire was made as exhaustive as possible with the fixed answers covering a wide range of possible alternative responses including 'I don't know'. The language of the question is made as simple as possible in order to enable it to be translated into the three main indigenous languages in Nigeria.<sup>38</sup>

Appendix 1 shows the final questionnaire used for the main data collection. The questionnaire is in a booklet form of seven double-sided pages. The first page is also double-sided, detachable and deals with the ethical rights of the respondents,

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<sup>35</sup> Appendix 2 is a diagram showing the conceptual framework of this research.

<sup>36</sup> This did not alter the basic guidelines of the Kent Law School Ethical Review Committee and the final questionnaire was approved by them.

<sup>37</sup> See the appendix 1.

<sup>38</sup> These are Hausa, Igbo and Yoruba.

gives information about the study and seeks respondents' voluntary consent to participate.

The questionnaire is divided into 3 main sections labelled A, B and C. Section A covers the demographic characteristics of the respondents, while Section B deals with the socio-cultural perception of abortion in both traditional and contemporary Nigerian society. Because perception of abortion is an individual experience, which would differ with individuals based on the totality of their socio-cultural, religious and educational experiences; this section has many open-ended questions.

There are many issues that needed to be addressed based on the focal theory and aim of this study, for this reason Section C consists mostly of pre-determined multiple choice answers from which respondents were requested to make their choice. The answers are in the form of attitude scale of 1 to 7 designed to show their level of agreement or disagreement to the questions or statements made. Under section C Tables 1, 2, 3 and 4 covers different aspects of the identified theoretical and legal issues of abortion such as the:

- Circumstances when abortion should be made available in Nigeria
- Ethical issues of abortion
- Examining an appropriate abortion law for Nigeria
- Gestation period when abortion is acceptable.
- Who should give consent when abortion is to be performed

Some questions had a seven point Likert<sup>39</sup> scale, which had defined range of answers to questions asked. The respondents had the option to select from the range of given answers and in some cases there were spaces given for free responses not adequately taken care of in the provided pre-determined options. This wide range of responding options is important because it gives the researcher a wider knowledge of personal opinions on the particular question that might not have been envisaged by the researcher. This method was adopted as a result of the findings from the pilot study<sup>40</sup>. The respondents were allowed a free response to the age category and number of children they had in the final questionnaire for example, though at the pilot study the age was categorised into age ranges that

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<sup>39</sup> Neil Wood *The Health Project Book A handbook for new researchers in the field of health* (London & New York: Routledge, 2001) 36-37 and 48.

<sup>40</sup> This is discussed below.



the respondents had to select from. The age range was dispensed with because at the pilot study I observed that the non-literate respondents just selected any age range randomly whether or not they fell into their selected age brackets. The same was true of their selection about the number of children they have. From my personal knowledge of the culture, which was confirmed through informal conversations with the respondents at the pilot study, it is considered socially and culturally impolite to ask an adult their age (especially married or visibly older people). Many non-literate people would give an age younger or older than their actual age because they may not know their exact date of birth. The recommendation suggested by Gardner<sup>41</sup> of asking respondents for date or year of birth as a means of gathering accurate classification or identification data of respondents will not work for a developing country like Nigeria.<sup>42</sup>

In addition, children are considered a source of wealth and blessing from God traditionally, and Aderibigbe<sup>43</sup> had observed in an earlier study that it is a cultural taboo to state the exact number of children a person has because it would amount to flaunting one's 'wealth'. Though this perception is changing with western education and influence, the non-literates were assured that no harm will come to their children by their disclosure because their response are considered anonymously in the data analysis. Some of the market traders said a short prayer in supplication and asked protection from God before telling the researcher to write down the number of children they have.<sup>44</sup> 'Wealth' as used here does not mean material wealth in the Western sense, but a kind of investment by parents in the present to secure social security for the future, because children traditionally must care for their aged parents and provide for their sustenance until they die. To name the number of children would be tantamount to inviting envy and evildoers to harm these children.<sup>45</sup>

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<sup>41</sup> Godfrey Gardener, *Social Surveys for Social Planners* (Milton Keynes: The Open University Press, 1978), 37-38.

<sup>42</sup> Through skilful questioning about events surrounding the time they were born we were able to guess an age range for these selection of respondents. For example if they were born around the time the Second World War ended, we could guess they were born around 1945.

<sup>43</sup> Titilayo Aderibigbe, *Will and Will Making among Public Servant A Case Study of the Nigerian Institute of Social and Economic Research (NISER) Ibadan* (Nigeria: NISER, 2002), 23.

<sup>44</sup> The belief is that asking for God's protection before naming the actual number of children they have would wade off any evil spirit that might want to reduce the number of their 'blessings' (i.e. children) because they were boastful in counting their blessings.

<sup>45</sup> This belief is depicted in several indigenous proverbs in all Nigerian languages; among the Yorubas, it is "Ti isu eniyan ba' tu, wa fi owo bo ni' i.e. "When your yam is harvested and attractive, you do not flaunt it in other peoples' faces".

Illiterate respondents were asked to thumbprint where they were unable to sign or write their names. However, most of those interviewed could make a sign or write their name no matter how rudimentary.

### **Qualitative Component**

The qualitative component consisted of in-depth interviews. In selecting my sample population, account was taken of variables such as age, gender, religious beliefs, ethnic-group and socio-economic status in order to be able to obtain a comprehensive idea of the perceptions of people on abortion and if they feel that law reform is necessary.<sup>46</sup>

The in-depth interviews followed the same format as the questionnaire and essentially the same questions were asked. The only difference is that the respondents were given the free will to elaborate on aspects of the questions they felt they needed to expatiate on and offered the interviewer the opportunity to probe and get the respondents to clarify points they make. With their verbal consent, the respondents had their responses put on tape. The tapes were used in the analysis after its transcription.

### **Study Site**

The site used in this research is Ibadan, the largest city in Nigeria situated in the southwest of the country. I purposively chose Ibadan because of her ethnological composition since the population represents a blend of almost all the major ethnic groups found in Nigeria. The inhabitants follow the two main religions, (Christianity and Islam) and it is representative of the larger Nigerian population in that it does not have the more western and cosmopolitan influence seen in Lagos, the former capital of Nigeria, nor is it a rural area. Being an ancient town, Ibadan is a halfway between an urbanised and rural community.<sup>47</sup> The variables of the population, which includes socio-economic class, age, ethnic grouping, and language distribution, are proportionately distributed and representative of the characteristics and variables found in the larger Nigerian population.

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<sup>46</sup> In my analysis, I did not dwell on the ethnic differences among respondents as it relates to their attitude to abortion because, the differences I observed were more along education and religious lines rather than ethnic.

<sup>47</sup> S. I. Abumere 'Residential Differentiation in Ibadan: Some Sketches of an Explanation' in M. O. Filani (editor), *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan, 1994), 85-

With these variables in mind, Ibadan was divided into the constitutionally approved 11 Local Government Areas (LGA)<sup>48</sup> using a map of Ibadan provided by the Nigerian Federal Office of Statistics (FOS) as guide.<sup>49</sup> The selected areas are listed in Appendix 3. The socio-economic distribution of the population sample is worthy of note because it has some bearing on the data collection and fieldwork experiences. While it was easier to leave the questionnaire with the educated and higher income earning class in some local government areas, those respondents living in the mostly indigenous areas had to have the questionnaire administered to them. Some local government areas are inhabited by educated and high income earning people, while some are inhabited by public servants, and university community members.<sup>50</sup> This is an inherited social distribution dating back to colonial times when the British had special designated areas for their public servants and academies that were mostly British or British trained Nigerians. The indigenes and lower income-earning classes maintained their socio-cultural homogeneity that has not changed much since independence in 1960. The different socio-economic and ethnic variables are concentrated in some specific catchment areas of Bere, Mokola and Sabo. These catchment areas mentioned are recognisable as a distinctive homogeneous population because they still maintain their cultural, religious values and speak their individual dialects though they are grouped within larger local government areas. Almost all respondents could speak the main Yoruba language, which is the indigenous language, spoken in Ibadan while English is one the officially recognised medium of communication.<sup>51</sup> The respondents' views are therefore representative of likely views one would get from a nationwide study.

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97, 86-87; Akin L. Mabogunje 'The Growth of Residential Districts in Ibadan' (1962) 52(1) *Geographical Review* 56-77.

<sup>48</sup> First Schedule, Part 1 Section 3, The Constitution of the Federal Republic of Nigeria, 1999.

<sup>49</sup> The Nigerian Federal Office of Statistics is situated in Ibadan, shares a fence with NISER and often collaborates with her in various studies which made access to information from them much easier for me.

<sup>50</sup> S. I. Abumere, 'Social and Spatial Organisation' National Workshop on the Organisation of Urban Communities for Mass Mobilisation, sponsored by MAMSER and organised by the Nigerian Geographers Association, 162-181 in S.I. Abumere, 'Residential Differentiation in Ibadan: Some Sketches of an Explanation' in M.O. Filani; F.O. Akintola and C.O. Akporukpo, (editors) *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan Press, 1994),

<sup>51</sup> Under section 55 of The Constitution of the Federal Republic of Nigeria, 1999, the four official language spoken in Parliament are English, Hausa, Igbo and Yoruba, though Pidgin English (a mixture of local dialects and English) is spoken and understood by most people irrespective of ethnic origin or educational attainment.

Some of the areas that still maintained these class divisions and are recognisable homogeneous groups for example<sup>52</sup>:

- Bodija in Ibadan North LGA - which also comprises the University of Ibadan community), and Bodija Market, represent a well adjusted blend of all the ethnic. Bodija is a low density, high income earning area and the majority of the people who live here are educated upper and upper-middle class people.<sup>53</sup> The Bodija Market area serves the inhabitants of the main Bodija and the market traders go there daily from their various indigenous localities and do not live in Bodija Estates itself. The bulk of the sampling population here consists of all the major ethnic groups of both Christian Moslems, and Traditional believers.
- Bere in Ibadan South East LGA, - this is the indigenous heart of Ibadan composed of the Yoruba ethnic groups who are the original inhabitants of the city. It is densely populated and the population has a mixture of Muslims and Christians but Muslims predominate.
- Mokola in Ibadan North West LGA, and the areas immediately surrounding it is a medium density area inhabited mostly by the Igbo ethnic groups; many of them are traders and businessmen. They are widely travelled people who go to Europe, the Far East and Asia to transact their business. The people here are mostly Christians and some of them are very high income earning and attain at least primary school education.
- Sabo is in Akinyele LGA and is a high-density area mainly inhabited by the Hausa/Fulani ethnic group. The majority follow the Muslim faith.

It is important to note that though these core zones where the inhabitants are ethnically homogeneous; their level of income is not. Some of the traders and businesspersons might be illiterates but some are extremely wealthy. It is therefore quite common to see big mansions lying side by side with mud houses inhabited by people of the same ethnic groups in areas like Bere and Sabo. This makes the classification of residential areas in many cities in Nigeria and in particular, Ibadan, according to socio-economic class division rather

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<sup>52</sup> Appendix 3 shows the Local Government Areas and their Headquarters.

<sup>53</sup> S.I.Abumere, 'Residential Differentiation in Ibadan: Some Sketches of an Explanation' in M. O. Filani; F. O. Akintola and C.O. Akporukpo, *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan Press, 1994), 2.



inappropriate.<sup>54</sup> This is not to say however, that people of other ethnic groups do not live within these identified communities and thus form a heterogeneous sample of the larger Nigerian population. I noted these areas because they have maintained their distinctive ethnic, cultural, religious and language characteristics over a long period since their settlement in Ibadan.<sup>55</sup>

## **Ethical Issues**

After the questionnaire was prepared and prior to its being used on the field, it was submitted to the chair of the departmental Research Ethics Advisory Group for ethical review and scrutiny. Appropriate amendments were made along the lines advised to comply with departmental standard. As can be seen from Appendix 1 the first part of the questionnaire gives respondents detail information about the study, its aims and objectives and emphasising that participation was voluntary and they could withdraw at any stage of the administration of the questionnaire. The contacts of the supervisors and the researcher are clearly displayed on the first part of the questionnaire.

It is essential to state here that initially the questionnaire stated that a student of the University of Kent was doing the research. This information proved to be a hindrance during the pilot study because some of the respondents formed the erroneous impression that huge funding must have been given to the student to carry out the research. In pursuant of this, some respondents demanded some gratification before they could participate in the study. This attitude was not restricted to any particular socio-economic class of the study population as some university lecturers demanded to know how much funding was given to enable them assess how much they could demand as their 'share' of my funding. The only difference was in the quantum of monetary demands made, because while the educated people demanded quite huge amounts from me and the field assistants that would benefit them personally, some respondents in the lower socio-economic class demanded funding for projects that would benefit their communities, like bore-hole for water or clinics.<sup>56</sup> It should be emphasised that

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<sup>54</sup> Bola Ayeni, 'Map of Land Use Patterns in Ibadan' (Unpublished M.A.Thesis, 1982 in S. I. Abumere 'Residential Differentiation in Ibadan: Some Sketches of an Explanation' in M. O Filani (editor), *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan, 1994), 3.

<sup>55</sup> A. A. Afolayan, 'Population' in M. O. Filani (editor), *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan, 1994).

<sup>56</sup> While I do not have any specific data and reference on this issue, from personal experience while carrying out previous research, I observed that communities associated carrying out surveys

such demands came from only a small minority of the would-be respondents and those who accepted that no funding had been given for the research and were still willing to voluntarily participate did so.

This observation was significant enough to make me change the information on the questionnaire at the review stage of the pilot study to reflect that staffs of NISER were carrying it out.<sup>57</sup> In the final survey small gifts, (but not monetary rewards), such as paying for a bottle of cold water, biscuits or giving something small, inexpensive but practical, plastic containers were given to some of the respondents as appropriate. This was especially the case with the illiterate market traders who were interviewed while they sold their wares in the market stalls in the heat of the sun. In such cases, the research team had to spend a long time with them administering the questionnaire while the respondents carried on with their economic activities.<sup>58</sup> Wood<sup>59</sup> does not consider the giving of such gifts offered to research subject for time taken as inappropriate especially if it is a normal practice in that community.

During the interview sessions (as in the questionnaire administration), the respondents were explicitly informed about their rights to participate and given assurances of the confidentiality of the research. Research generally, and specifically on a sensitive issue such as abortion is regarded as an 'intrusion into the private lives of individuals'<sup>60</sup> and Boruch and Cecil<sup>61</sup> have expressed the view that in survey research method 'sharing one's thoughts attitudes and experiences with a social researcher can be regarded, in principle, as a depreciation of privacy'. To minimize the effect of intrusion into the privacy of respondents while at the same time eliciting from them important responses that are material to the objectives of the study, we were careful not to ask directly intrusive questions that

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with sponsorship by European and American multilaterals and Foundations. There was an avalanche of such sponsored surveys during the military government of Generals Buhari, Babangida and Abacha who ruled Nigeria between 1983-1985; 1985-1993 and 1993-1998 respectively.

<sup>57</sup> The researcher is in-fact a staff member from the institute. Since most respondents are familiar that part of NISER's mandate is to carry out research that would ultimately impact on the people positively, through recommendations given to government gratification for participation was limited.

<sup>58</sup> On such occasions the field assistants and I sometimes spend several hours with one respondent because the interview had to be suspended to allow him/her to attend to customers.

<sup>59</sup> Neil Wood, *The Health Project Book A handbook for new researchers in the field of health* (London and New York: Routledge, 2001), 11.

<sup>60</sup> James Alan Fox and Paul E. Tracy *Randomized Response A Method for Sensitive Surveys* (SAGE Publications, 1986), 10.

<sup>61</sup> R. F. Boruch and J. S. Cecil, *Assuring the Confidentiality of Social Research Data* (Philadelphia: University of Pennsylvania Press, 1979), 3.

would cause undue personal embarrassment. Rather than asking a respondent “have you had an abortion before?” we instead asked, “Would you consent to your female relation who wished to have an abortion to do so?” Throughout the design and fieldwork, we were conscious of the fact that the paramount ethical principle governing data collection is that no harm must come to the respondents because of their participation in the research.<sup>62</sup>

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<sup>62</sup> A. N. Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement* (London and New York: Continuum, 2001), 82-83.

### 4.3 Pilot Study and Selection of Sample Frame

#### Significance of the Pilot Study

A sampling of the questionnaires was conducted through a Pilot study. This was done by administering 50 questionnaires to respondents at the University of Ibadan and its environs of Abadina and Agbowo.<sup>63</sup> The Pilot study was to test the suitability of the questions in addressing the focal and background theory of the research as well its adequacy to the research and information that needed to be gathered. Since the study covers a microcosm of the socio-economic variables of Nigerians, the pilot study further enabled me to address the differences and the difficulties in the intellectual capacities of the respondents and their understanding of some of the terms and words used in the questionnaire such as my use of the word 'putative father'.<sup>64</sup>

The entire questionnaire was translated into the three major Nigerian languages of Hausa, Igbo Yoruba and I needed to ensure that the translation conformed to the accepted dictionary translation of these languages.<sup>65</sup> I tried to ensure that the sentence construction, syntax and grammar could be adequately understood by the different classes of the respondents as well as conforming to the intellectually accepted translations of the various languages used. Translating the questionnaire to the different native languages before going to the field for the main study solved the problem of understanding specific legal terms. This further standardized the final questions and led to uniformity of the questionnaire whether it was administered in the original English language or the translated languages of Hausa, Igbo or Yoruba. The final questionnaire was translated back to English from each of the chosen native languages to ensure that the meaning and essence of the questions was retained.

The Pilot study further assisted me in pre-empting some of the practical problems likely to be encountered when the actual questionnaire was administered. One such problem was the timing of our visits to the different respondents. I observe traders do not welcome researchers early in the morning when they have not

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<sup>63</sup> The University of Ibadan is residential and it has the senior and junior members of staff living within the university campus just as it was under Britain, therefore the major ethnic groups, the different religious affiliations and the differing socio-economic class was represented.

<sup>64</sup> For some of the less educated people the term 'putative father' was problematic, more so that there is no direct translation of the term in any of the native languages, a description of the term had to be used.



made many sales, but are more likely to be accommodating towards early evening when they are more relaxed and responsive. On the other hand educated people and professionals would prefer that the purpose of the research is explained to them nearer close of work and be left alone to answer the questions provided a contact number or address of the interviewer is left for them to be able to ask questions when any aspect of the questionnaire needs clarification. Most of the educated respondents gave a time and date when the interviewers could come back to collect the questionnaires. This method was not used for the less educated respondents because they did not have the time or the inclination to read the questionnaires even when it was translated into their native dialect. The questionnaire was administered to them and this was time consuming because respondents often had to attend to customers while the questionnaire was being administered.

Through the pilot study, I was able to modify and re-design the final questionnaires to meet the understanding of concepts and ideas I was trying to find out about abortion without losing sight of the focal theory of my research. For example, the pilot study prompted me to give more options to the structured questions. Another example is where 'others' was put as the last option originally, later, I included some of the frequent answers received at the pilot study as an option in the final questionnaire while still retaining the 'others' option for the unpredictable answers that may still be given. In addition, the pilot study enabled me to give more options to some of the open-ended questions. Where I felt that these options could not always address the views of the respondents they were given space where they could write in their own words their individual responses to the question asked. For the illiterates, the interviewer had to write respondents' responses for them in their own words. Generally, the pilot study helped me to have a fair idea of the likely outcome of the study and the relevance of my theoretical argument about abortion to Nigerian society.

In conducting the study those respondents (who did not raise any objection and gave their consent) had their interviews recorded on tape and later transcribed (this was useful in the analysis of the pilot study).

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<sup>65</sup> Professor M. Omibiyi-Obidike, the Director General of The Department of African Studies, University of Ibadan assisted in this respect.

Gathering information through the pilot study also allowed me to modify the format and print layout of the questionnaire. I discovered for example, that using large print and double-line spacing made the questionnaire appear bulky and some respondents asked us to come at some other convenient time to administer the questionnaire because they were discouraged by the size of the questionnaire at first.<sup>66</sup> To remedy this, I gave the final questionnaire to a professional printer to print in a booklet form. By using smaller font and printing, the questionnaire looked smaller and it was tidier to handle and administer to respondents.

The pilot study took four weeks on the field with all six members of the study team working six days a week. After the collation and analysis of the questionnaire for the Pilot study, I gave a final seminar to select research staffs who are experts in different social sciences fields at the Nigerian Institute of Social and Economic Research (NISER) for any further useful suggestions to the final questionnaire. I made modifications as necessary before giving it to the printers.<sup>67</sup>

### **Selection of the Pilot Study and Main Study Sample Frames and Sizes**

For both the pilot and main study, I used two methods of the Probability Sample methods: the Random Survey Sample (RSS) for the pilot and Systemic Survey Sample (SSS) for the main study.<sup>68</sup> I used Probability Sample because it is acknowledged the overall best method to be adopted when the aim of the research is to get a population that is representative of a larger population.<sup>69</sup> The one drawback of the RSS method is that it cannot truly generate an accurate selection of the proportion of the entire subgroups of a population. In practice while some sub-groups will be under-represented, others will be over-represented due to human inaccuracies. Wood refers to this as 'luck of the draw',<sup>70</sup> but he goes on further to state that the probability of getting a different distribution from the existing population is statistically small. Fowler<sup>71</sup> has also advised that 'the way to evaluate a sample is not by the results, the characteristics of the sample,

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<sup>66</sup> From personal experiences I knew that it is better to administer the questionnaire rather than leave it with the less educated respondents especially.

<sup>67</sup> The seminar was organised by the then Director-General of NISER Professor Olu Ajakaiye Professor Kunle Adeniji of the Transport Studies Unit and it was attended by other NISER staff and the field assistants.

<sup>68</sup> RSS is where statistically all population is put in a hat and a random percentage is chosen while SSS is where a sample is chosen from a predefined list at fixed intervals. Neil Wood, *The Health Project Book, A handbook for new researchers in the field of health* (London and New York: Routledge, 2001,) 28-29

<sup>69</sup> Neil Wood, (*Ibid*).

<sup>70</sup> Neil Wood, (*Ibid*), 29.

<sup>71</sup> Floyd J. Fowler, Jr., *Survey Research Methods* (Thousand Oaks: SAGE Publications 3<sup>rd</sup> edition, 2002), 11.

but by examining the process by which it was selected'. All these factors including the specific procedure used to select the sample together will ultimately 'influence the precision of sample estimates...(and) how closely a sample is likely to approximate the characteristics of the whole population'<sup>72</sup>. Bearing this in mind, for the pilot study 50 questionnaires were distributed.<sup>73</sup> The simple random sampling procedure was used at the pilot stage because it best suited this small number for a pilot study and it gave each respondent a known chance of selection. The University of Ibadan community with its surrounding Agbowo area is used as the site because the demographic characteristics of the population there correspond fairly with the overall population of my main study area.<sup>74</sup>

For the main study I used the SSS frame. The SSS method was seen as the best option to be used in term of the comprehensiveness of characteristics of the population I want. A total of 1500 questionnaires were distributed leaving a margin of plus or minus 3 to 5 per cent failure in distribution and collation of the questionnaires that would be indicative of overall margin of responses. In my selection of the sample frame, I ensured that the sample frame corresponded to the population I am interested in studying by ensuring that all of them had an equal but systemic chance of being selected. In each of the eleven Local Government Area (LGA) I obtained a randomly selected list of 500 households from the LGA Headquarter chairmen. I needed to get approximately 136 samples of each household from each of the LGA. The figure of 136 was arrived at by dividing 1500 (our sample size) by 11 (the number of LGAs in Ibadan), that is,  $1500/11=136.4$ . We collected a list of 1000 households from each LGA and by simple random sampling selected 500 as my base list from which I will get 136 households. That is, randomly picking 500 from the list of 1000 households. To get the systemic sample I proceeded to divide 136 by 500 to get approximately 4, (i.e.  $136/500 = 3.7$ ). Beginning with a random number of 1 I proceeded to distribute the questionnaire to 1 out of every 4<sup>th</sup> household on our list in each of the 11 LGA. I further divided the sample equally into 3 among adult females, adult males aged between 21 and 80 years and adolescents of both sexes aged

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<sup>72</sup> *ibid*

<sup>73</sup> These figures were used based on the advice of Dr E. E. Barret of the Mathematical Institute, University of Kent who is a competent statistician, after an evaluation of the data I wanted to produce before going to Ibadan.

<sup>74</sup> University of Ibadan has always existed as a small heterogeneous community since its inception where all the major ethnic groups and demographic variables live: S. I. Abumere 'Residential Differentiation in Ibadan: Some Sketches of an Explanation' in M. O Filani (editor), *Ibadan Region* (Nigeria: Department of Geography, University of Ibadan, 1994), 87.

between 14 and 20 years in a ratio of 1:3 (i.e.  $136/3 = 46$ ). For the adolescent sample, I further divided the list of 136 between males and female in a ratio of 1:2 (i.e.  $46/2$ ). Through this sampling technique, we were able to administer 136 questionnaires in each LGA making 1500 overall in all 11 LGAs.

I initially chose eighteen as the minimum age for the adolescent respondents because under the Nigerian Constitution "full age" means the age of eighteen years and above'.<sup>75</sup> The minimum age of twenty-one years was also adopted for adults because at that age a person can marry without parental consent; but during the course of the survey the age was lowered to fourteen because I realised that some girls were sexually active at this age.<sup>76</sup> However, I realise that eighteen is only a voting age that confers no contractual responsibility or obligation on parties to a contract, but twenty-one years does.<sup>77</sup> It could be argued on this basis that legally, an eighteen year old is not an adult while a twenty-one year old is. The age of 80 was used as the maximum age because I observed from the pilot study that there were adults who lived beyond the World Bank stated average life expectancy age of 55.<sup>78</sup> This group of elders have a lot to say about the traditional attitude to abortion, therefore their opinion forms an important part of the analysis of the final study.

I also note that in some rural communities and among some ethnic groups such as the Hausas, it was traditional for young girls to be married off by their father at a

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<sup>75</sup> The Constitution of the Federal Republic of Nigeria, 1999 Section 29 (4) (a).

<sup>76</sup> My finding is corroborated by; The Allan Guttmacher Institute 'Early Childbearing in Nigeria: A Continuing Challenge' (2004) 2 *Research in Brief Series* 1-8, 4; see also United Nations World Population Review that puts the average first childbearing age of Nigerian women 15-19 years: 'World Population Prospects: The 2002 Revision' (United Nations, Department of Economic and Social Affairs, Population Division), <http://esa.un.org/unpp> (accessed 28 September 2005). We collected responses from girls aged 14 and boys aged 16 in the survey, while this does not suggest these respondents were sexually active, they were well informed about abortion and formed different opinions on it.

<sup>77</sup> E. I. Nwogugu, *Family Law in Nigeria* (Nigeria: Heinemann Publication, 1974), 24 and 27 states there is no marriageable age under Nigerian law, but a person can enter into contractual obligation at 21, and since marriage is a form of contract the courts have used this age as the marriageable age under statutory marriage. Under customary law however the marriageable age is often at puberty for females. It should be noted that The Constitution of the Federal Republic of Nigeria, 1999 s 65(1)(a) and (b) stipulates that a person shall be qualified for election as a member of the upper House of the Senate at age 35 and the lower House of Representatives at 30 respectively. All other elective offices tend to follow this age requirements.

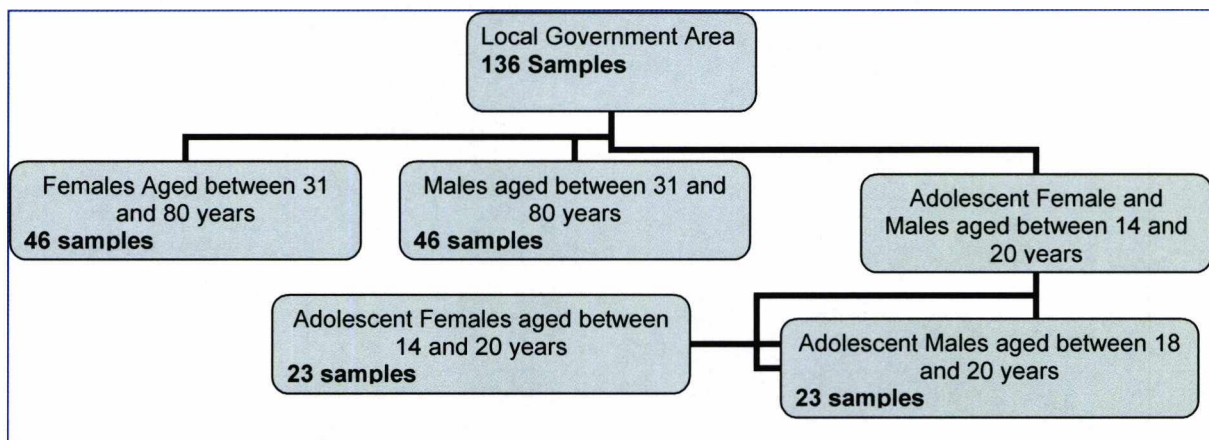
<sup>78</sup> The World Bank age range is the *average life expectancy* it does not mean that there were no Nigerians who lived beyond that age. Respondents were able to confirm their age by referring to a known event in they experienced in their lifetime; for example, a soldier who fought alongside the British Army in the Second World War (which started in 1939) would be over 80 years of age even if he was 20 years when he fought in the war.



median age of 15 in most Northern states where the Hausas originate.<sup>79</sup> Though sexual relations are discouraged before girls reach the age of 18 there has been occasions when girls have been pregnant before this age. However, a government policy on education is slowly changing this cultural attitude among the traditional people. Nevertheless, in Oyo state where Ibadan is situated the average age of marriage for females is 23 years while that for males is 25 years.<sup>80</sup> There is however, no stipulated legally recognised marriageable age for either gender in Nigeria.<sup>81</sup> Chart 4.1 shows the distribution sample and size of the questionnaire.

**Chart 4.1 How the Sample Selection and Sample Size was Arrived at for each of the 11 Local Government Areas**

*Source: Field Data Analysis*



**Total Sample size for each LGA = 136**

**Total Sample Size for 11 LGA = 1500**

<sup>79</sup> O. Odumosu; F. O. N. Roberts and A. S. Jegede, 'Regional Differentials and the implementation of the National Policy on Population: A Study of the Borno and Oyo States of Nigeria' in Adedotun Phillips and D. Olu Ajakaiye, *Population-Environment Interactions in Nigeria* (Nigeria: NISER, 1996), 7; though girls as young as 12 have been known to be given in married if they have reached puberty.

<sup>80</sup> Ibid 29.

<sup>81</sup> Titilayo Aderibigbe, 'Women's Rights, Law and Practice in Nigeria' in Layi Erinosho, Babatunde Osotimehin and Janice E. Olawoye (editors), *Women's Empowerment and Reproductive Health* (Nigeria: Ibadan, Social Sciences and Reproductive Health Research Network, 1996), 52.

## Training of Field Assistants

Six interviewers took part in gathering the data,<sup>82</sup> and two weeks was spent training them before the commencement of the pilot study. Their initial selection was based on their previous expertise in data gathering which did not require their intensive training.<sup>83</sup> The survey team included experts who could speak and understand the language and culture of the different indigenous languages.<sup>84</sup> The training of the survey team in administering the questionnaire also provided the opportunity for them to be given background information about the research, its aims and objectives and the how different respondents could be supported to answer the questions.<sup>85</sup>

Mock interviews were conducted as well as supervised field trials by experienced interviewers and fieldworkers.<sup>86</sup> Studies have shown that the way interviewers respond and provide encouragement to respondents affects their sense of what they are supposed to do.<sup>87</sup> More so because interviewers explicitly and implicitly teach respondents how to behave, know what to do and perform their roles during the interview.<sup>88</sup> Some of the qualities that were looked for in the selection of the field work team was their good reading and writing skills, their open and friendly (yet polite and sensitive), characteristics that encouraged respondents to give honest information even when the responses are intimate. Nicholas<sup>89</sup> also emphasises personal dressing and demeanour as well as personal motivation and enthusiasm towards the research

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<sup>82</sup> I was assisted in the training of these research assistants by Professor Kunle Adeniji Head of Transport Studies Unit in NISER. The research assistants were four masters' degree students and one final year undergraduate all studying at the University of Ibadan. There were three females and two males including myself. The names and qualifications of the research team is found in Appendix 4.

<sup>83</sup> Five of the members of the survey team were postgraduate students and one was a final year Geography student. They were all students of the University of Ibadan. All of them had experiences in interviewing, and data gathering.

<sup>84</sup> The interviewers were sent to do the interviews in areas where they were conversant with the language and cultural practices of the particular community or they were members of that ethnic group. They always went in pairs to ensure that one person could take notes on observations, or handle the survey instruments while the other conducted the interview.

<sup>85</sup> All the research assistants had been involved in other research, data collection and were quite experienced in how to get different people to respond to the interview and the conduct of the interview generally.

<sup>86</sup> Professors Kunle Adeniji, Olu Ajakaiye and Bayo Ajala and Titilayo Aderibigbe conducted the training. Appendix 4 is a list of the fieldwork team who are all post-graduate students of the University of Ibadan or in final undergraduate year.

<sup>87</sup> C. Cannell; R. Groves; L. Magilavy; N. Mathiowetz and P. Miller *An experimental comparison of telephones and personal health interview surveys Vital & Health Statistics (Series 2, No. 106)*, (Washington, DC: Government Printing Office, 1987), 276.

<sup>88</sup> Ibid, 119.

<sup>89</sup> Paul Nicholas, *Social Survey Methods: A Fieldguide for Development Workers* (Oxfam, 1991), 26.

At the end of the day, the field assistants were encouraged to give briefing to the supervisor if it was feasible to do so otherwise they were encouraged to do so before they set out the following day or through telephone contact. At the end of each week all the field assistants as well as the supervisors met to evaluate the fieldwork and provide solutions to any problem that would arise like getting more tapes and batteries or writing materials. There were also occasions when the incentives given to respondents for their time was not adequate and had to be replenished.

The questionnaire was translated into Hausa, Yoruba and Igbo<sup>90</sup> which are the three major languages spoken in Nigeria, for those respondents who had to have the questionnaires administered in their native language. This ensured the standardisation of the translation and assured the uniformity of the questions asked whatever language it was conducted in. The standardisation of the questionnaire in this way made the task of the analysis of the final data generated more accurate.

### **In-depth Interviews**

A total of 12 in-depth interviews (IDIs) were conducted. The respondents chosen for the IDIs were not chosen strictly along ethnic lines but on the bases of their experiences in life as community leaders, professionals, parents or adolescents. I tried to ensure a balance along gender lines and along the age brackets so that the views of the older and younger generation on the issue of abortion could be assessed and compared. Random sampling was used to select the respondents from six LGA because they fall within high, medium and low population area in the LGAs. In Bodija where the respondents are mostly educated, the questionnaires were given to the respondents to fill in and we collected them at an agreed date. Twelve In-depth-interviews were conducted with selected key informants such as the community heads and Market Leaders in Bere and Sabo, professionals such as Medical doctors, Lawyers, Judges and members of the Houses of Representatives in Ibadan.

These were the six categories of respondents interviewed:

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<sup>90</sup> I used Hausa/English, Igbo/English and Yoruba/English dictionaries to ensure the accuracy of the translation of these words. I also sought the assistance of my colleagues in the Institute Of African Studies at the University of Ibadan in arriving at the adequacy of our translation. Professor Omibiyi-Obidike the Director-General of the Institute of African Studies University Of Ibadan was particularly helpful in this regard.

- Judges/Lawyers
- Medical Personnel
- Members of the Legislature
- Community Leaders
- School Principals
- Youths (between ages 14 and 25).

The interview guide for the IDIs was conducted along the same format as the questionnaire, however the respondents were allowed to express other personal opinion on the subject of abortion freely.

Though I did not set out to have a Focus Group Discussion (FGD), however in some places such as in the market places of Bodija, Moniya, and Sabo the interview tuned into an FGD because other traders came in first as onlookers and later gave their own opinions as more and more people joined in the discussion. The field assistants skilfully made these people part of the interview by following ethical guidelines and asking them for their names, seeking their consent to participate and giving them information about the study before they carried on to give their responses to the questions asked. In these instances however, we ensured that the structure of the questionnaire was followed nevertheless.

## **Resources**

There was no funding for the actual fieldwork; the study was carried out from personal resources with no cost spared. This is because the study is a project that I have deep personal interest in pursuing. All the necessary instruments such as cassette tape-recorder, tapes, batteries notebooks, pencils/biros erasers, etc were bought from personal funds. The payment for the services of the six field assistants was also borne from personal resources.<sup>91</sup>

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<sup>91</sup> Professors Adeniji and Ajakaiye and Bayo Ajala, who assisted in training the field assistants (besides myself), did not however take any payment for their efforts.



## 4.4 Data Analysis

Though 1500 questionnaires were distributed, we were able to collect 1,322 back, which is above 80 percent. I used Microsoft Database Access 2000 to input and analyse the data collected because it is particularly useful for text-based data.<sup>92</sup> I used this computer package because it is easy for imputing text-based data, which form the bulk of the data collected. The essential feature of Access 2000 is that it is easy to understand relational database with graphic interface and can be used to store, retrieve, edit and analyse text-based data. This makes reporting of the analysed data easier than other software packages such as Excel or SPSS. With this package, I am able to relate, compare and assess the percentage of the respondents, attitude to the various issues asked in the questionnaire. What makes the package more versatile is its ability to calculate the percentage of respondents who answered a particular question. I was therefore also able to generate some quantitative data from the analysis, which made comparison of responses manageable and aided in the eventual analysis of the data.

The only negative aspect of Database Access is that it is unable to round up a percentage like other packages such as Excel<sup>93</sup> and often gives percentage figures to as many as five decimal places. To get round this disadvantage, I transferred the data generated to Microsoft Excel, which was able to round up the decimal places before importing it into the Word document. I was also able to generate graphics and tables with Microsoft Excel. I did the calculations as a percentage, which excluded respondents who gave 'I don't know' responses though these responses are recorded.

I started the analysis of the data collected by assigning codes to the closed and open-ended questions in the questionnaire before tagging and inputting it to Access database. The data input took me a little over nine months. By the time I reached 700 on the questionnaire I realised I had reached saturation point because the answers were generally the same after this.

For the open-ended questions, I started by reading through the responses given to the different questions and noted in a tabular form a list of the range of responses given to the questions asked. These responses were coded along the focus of the research before inputting it on the Database Access software package for analysis. The data input and analysis took me a little over eleven months.

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<sup>92</sup> Susan S. Harkins; Ken Hansen and Tom Gerhart, *Using Microsoft Access 2000*, (USA: Indiana: QUE Corporations, 1999), 1-6.

I also transcribed the audiocassettes of the in-depth-interviews by listening to all the tapes carefully and transcribing them verbatim into Microsoft Word. The tapes in Hausa were transcribed by the two interviewers who interviewed respondents who did not give their responses in English. The research team reviewed all the transcribed tapes for accuracy and made corrections where necessary. I coded the tapes based on the different themes of my research. Microsoft Database was used to analyse the results. The findings from the data gathered are discussed in the following chapters.

### **Fieldwork Experiences**

The traditional and cultural difference among the ethnic groups in Nigeria was visibly noticed during the conduct of the interviews. While there was no opposition from the other sites, we initially experienced hostility from the leaders of the Sabo community, an area inhabited by Hausa/Fulani ethnic group who are almost 100 per cent Muslims.<sup>94</sup> We were prevented from going to interview the women who were in purdah (seclusion) by their husbands/fathers because they felt that our questions were offensive and could only raise issues 'decent Muslim women' ought not to discuss. One of the Muslim husbands we met was of the view that we educated women were 'white women' who came to influence and teach their women 'corrupt westernized views' and asked us to go away. Once the leader of the community expressed this view, all the other male household leaders refused us entry into their compounds. The hostility was further compounded by the fact that we went to ask for permission to conduct the interview dressed in formal respectable looking English clothes. The community leader felt that our mode of dressing would influence their women to abandon the traditional way of dressing.<sup>95</sup> We therefore had to go away when we could not get any positive response from him despite our best efforts. I later asked a colleague from the Hausa/Fulani ethnic group to take me to the community leader again to explain the purpose of our interview and the fact that its outcome could prevent the death of women from

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<sup>93</sup> Susan S. Harkins; *et al ibid at* 378.

<sup>94</sup> This reason for the difference in reception could also be due to the fact that for the other sites, we didn't need to approach a single community leader, but approached the respondents on individual bases and not as a community. We did not need to seek permission from any community leader from any of the other sites. Even at Bodija market where there is a community leader, we merely informed the leaders of the Market women and Market men's association what our research was about and we conducted the interviews there unhindered.

<sup>95</sup> We were all dressed in Western clothes-long skirts and blouses that covered our bodies adequately.

illegally procured abortions if we could advise government on ways to reform the law. I further explained that to achieve this aim I needed the views of all Nigerians even if they expressed opposition to abortion law reform which their women were free to do. I reiterated the issue of confidentiality, anonymity and firm promise not to influence or teach the women anything they did not already know.

The community leader gave us his own personal views on abortion along the line that it is forbidden under the Koran and that women should be allowed to marry early so that they do not become promiscuous. The interview with community leaders in Sabo was doctrinal in the sense that they wanted to merely quote what the Koran says on women, chastity, their submissiveness to men in all ways including sex, and why women ought to have children in accordance with Allah's wishes. He refused to acknowledge the fact that abortion took place among their women and insisted that it was women from the other ethnic groups who practised abortion.<sup>96</sup>

We went back a week later to Sabo dressed this time in traditional clothes accompanied with one of the researcher's sons to prove that we were respectable and decent women and even had children. The male members stood around when we were conducting the interview with the women initially. The male presence noticeably inhibited the women's free expression and many of them were unwilling to speak. When we noticed this, we did not begin the interview proper, but just spoke on mundane aspects of pregnancy, womanhood and marriage. Naturally, the men found such issues mundane and left. When they left, we were able to speak and gently redirect the conversation to the questionnaire. The women thereafter freely expressed their opinions and answered the questionnaire without inhibition and with candour. For this exercise three of us interviewers, (all female), administered the questionnaire to the women. After the interview session many of the women, especially the younger ones wanted to get some information from us about abortion and its implications to their health on more general basis.

The differences between the freedom of expression and opinions on the topic between Hausa/Fulani women on one hand and Igbo and Yoruba women on the

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<sup>96</sup> He refused to have his views on tape or for us to take notes. It was more of a lecture in decency and the appropriate place of women in society.

other was significantly seen during the field work. While attitudes to abortion was generally the same across all ethnic groups, I however observe that women of other ethnic groups such as Calabar, Bini, Igbo, Yoruba, Ijaw, Itsekiri, etc<sup>97</sup> are more independent of their men. These women neither sought permission from, nor were they inhibited by their male presence to take part in the study in any significant way, even in public.<sup>98</sup> None of the men from the other ethnic groups prevented us from administering the questionnaire to their wives or daughters and after the initial awkwardness the women were not inhibited in discussing abortion in the presence of men unlike the Hausa/Fulani women. I believe my observation cannot be due to the differences in religion but on culture, because there are Muslim women among indigenous Yoruba areas of Bere or Bodija Market, or Igbo women in Oke Ado like most other southern ethnic minority groups (who are a mixture of Christians and Muslims).

We were also confronted with the variation between educated and illiterate people when expressing their thoughts and views. While educated people used deliberate, carefully chosen words in expressing their attitudes towards abortion, the illiterates were more down to earth, uninhibited and used very blunt and (what an educated person would consider crude) expressions to convey their feelings. Consider for example the responses given by two males opposing abortion and two females endorsing it from different educational and socio-economic backgrounds in Text Box 4.1.

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<sup>97</sup> These are ethnic groups found in the Southern part of Nigeria.

<sup>98</sup> The IDI's were however conducted privately on individual bases.



**Text Box 4.1**

A young girl who is old enough to experience and enjoy sex and knows the size of a man's penis should not be pitied, but should be made to know the effect of her folly. She should have the baby because while her mates are going to school or learning some trade, she is engaging in sex. The doctor should only do an abortion to save her life

Western civilisation has brought abortion to the level that it is. Ninety-nine percent of girls today terminate their pregnancy in Nigeria without any consideration for religion or culture...Abortion should be considered as lawlessness, except in certain conditions where the mother's life will be affected then abortion could then take place.

**(i)Extract from In-depth-Interview  
55 years old Muslim Male,  
Butcher in Moniya Market with  
no formal education**

**(ii) Extract from In-depth-  
with Interview with thirty year  
old Hausa Priest with  
tertiary education**

A man who has made a woman pregnant should have a say over the pregnancy only if they have discussed it before they had sex. The woman should have the ultimate say over the pregnancy. Western education brought the idea of abortion into our society. Abortion should be done before the first three months if it becomes necessary.

I believe strongly that abortion should be legalised because even in countries where it is legalised they (government) cater for 'these' (unwanted children) not to talk of a country that cannot even cater for it's retired officers, not to talk of unborn children. Then it will reduce population explosion in the country

**(iii) Extract from In-depth-Interview  
with the 40 year old Muslim  
female leader of Women  
Vegetable Sellers at Bodija  
Market with Secondary School  
Certificate**

**(iv) 25 year old female Pharmacist,  
Muslim, with Tertiary education,  
single**

*Source: Field Data Analysis*

## Limitations of the Study

It was difficult to get a nationwide opinion due to the huge cost of a study in the thirty-six states of Nigeria with a land mass 6 times the size of Great Britain.<sup>99</sup> The study is only representative of the wider Nigerian population.<sup>100</sup> In an effort to make it as representative as possible the sampling selection was carefully done to represent the different social, cultural and ethnic variables in Nigeria. This in itself is a limitation, in that when communities have lived together for a long time as in Ibadan, there is the tendency that social interaction may make them lose core cultural characteristics of specific ethnic groups through their daily interactions with one another over time. I hope that a nationwide study would be conducted to address these limitations in future. This however does not detract from the benefit the outcome of this research will bring later in terms of its awareness of the issues raised and quest for abortion law reform in Nigeria.

Since funding for this research was limited Ibadan, rather than Lagos the former capital of Nigeria or Abuja the present capital was chosen.<sup>101</sup> I would have wanted to study two capital cities in the northern and eastern parts of Nigeria where the composition of the population is similar to Ibadan as a basis for comparison of my findings.<sup>102</sup> Both Lagos and Abuja being former and present capital of Nigeria are more cosmopolitan in population composition and the people's socio-cultural perception of a sensitive issue such as abortion would nevertheless be influenced by Western ideals through interactions with peoples from the developed countries as well as the media.

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<sup>99</sup> CIA: 'The World Factbook-Nigeria' <http://www.odci.gov/cia/publications/factbook/print/ni.html> (accessed 27 May 2005).

<sup>100</sup> This is also because the funding for the data collection itself came from the personal resources of the researcher.

<sup>101</sup> Apart from the unique characteristics of Ibadan that I discussed under 'Study Site', the fact that NISER the oldest research institute in Nigeria is situated there, and the expertise and facilities of the institute was ready available for me to conduct the survey.

<sup>102</sup> When nationwide researches are conducted by NISER, for government, it is usually done in the six geo-political states and the Federal Capital Territory of Abuja. The 'geo-political states' is a term used by researchers in Nigeria where the 36 states of Nigeria is divided into six parts: Nigerian Institute of Social and Economic Research: 'NISER Review of Nigerian Development 2000: The State in Nigerian Development' (Nigeria, Ibadan: Nigerian Institute of Social and Economic Research (NISER), 2001).

## Summary

My observation even among women in seclusion is that reactions to abortion did not differ generally with the educational attainment of respondents, except that educated women were more knowledgeable about the abortion procedure itself, while the less educated associated abortion with quacks, infertility and death of women who attempted abortion.<sup>103</sup> For this reason less educated women, had greater faith in the traditional herbal (and sometimes dangerous and corrosive)<sup>104</sup> abortifacents. Ethnicity and religion only affected their perceptions as far as their understanding of the moral consequences of having an abortion will be in accordance with their faith, but generally, most of the women when left alone accepted that abortion was a necessary part of their reproductive life and would choose abortion if it became necessary. The individual circumstance surrounding the pregnancy was a greater consideration for women to choose abortion regardless of their religious following. This shows that morality is not the most compelling argument for advocating for abortion in both the social and legal approach, according to Fegan and Rebouche 'the vague universalist moral claim conceals other subtle dominant norms and values'.<sup>105</sup> This research has shown that the more dominant consideration for choosing abortion by women regardless of demographic characteristics is economic first and non-acceptance of the pregnancy by the putative father next.

The following chapters discuss my findings from the empirical study.

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<sup>103</sup> This is also the finding of Bleek in a hospital-based research in Ghana: Wolf Bleek, , 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 110-111; see also D. A. Ampofo, 'Abortion in the Korie Bu Hospital: Demographic, Social and Medical Perspectives', in N. O. Addo et al (editors) *Symposium on Implication of Population Trends for Policy Measures in West Africa* (Ghana Population Studies Series: University of Ghana, 1971), 79-105.

<sup>104</sup> Some of the women said they used a mixture of lemon, gin, the juice from 'alfalfa' plant to induce abortion, while another group said that they believed lemon, gin, blue stone and some leaves procured for the purpose in the market were equally effective. I have no means of ascertaining the efficacy of these preparations.

<sup>105</sup> Eileen V. Fegan and Rachel Rebouche 'Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency' (2003) 11 *Feminist Legal Studies* 221-254, 222.

# CHAPTER FIVE



## THE TIRED WOMB TAKES CONTROL: FINDINGS FROM THE EMPIRICAL STUDY

"Culture has nothing to do with pregnancy. It is the woman who carries the pregnancy who knows how she feels about it and whether she is capable of maintaining it, even without the assistance of the putative father".<sup>1</sup>

Women's right to control their reproduction has traditionally been linked to societal perceptions that women are principally expected to bear children. This study has revealed that contemporary Nigerian women feel that they should have control over their reproduction. In a sense, they have finally acknowledged that Nigerian women need to take control over their womb, and the statement from the survey in the opening quotation assuredly makes this sentiment. However, Nigerian society still holds tenaciously to the belief that men should have a *say* on termination of a woman's pregnancy if she is a married woman and the man is the putative father, (in keeping with the patriarchal nature of the society); but, *not control*. Unmarried women on the other hand, have more accepted control over their reproduction if they are of full age and economically independent. Nevertheless, young unmarried girls still have the decision of whether to have an abortion made for them by their father.

Though societal norms, rules and subsequently, formalised legislation have been put in place towards sustaining the genre of women's function and place within society as being tied to their womb; modern Nigerian women are resisting the traditional societal belief that 'the primary purpose of marriage is bearing children'<sup>2</sup>. The result of economic hardship due to years of political mismanagement; the movement away from communal way of life to a nuclear one; modernisation and the increasing education of women; coupled with the desire of women to exercise

<sup>1</sup> Field Data Analysis: 24 year old female Lawyer.

<sup>2</sup> Field Data Analysis: statement made by a 49 year old female trader with no formal education and married with children.

control over their lives have made reproductive issues and abortion a subject that can no longer be ignored by society. This is significant because more women are demanding to be heard and given control over their body. The desire for fertility control by women is particularly pertinent because of the health implications surrounding non-clinically procured abortion and its subsequent effect on the quality of life of women affected by it and correlatively, the society in general. The resultant effect of these external pressures shows that the younger generation of women are becoming more vocal in demanding the right to assert control over their reproduction including the right *not to produce* unless the individual circumstances of the woman can sustain the new life. It is unsurprising that a large number of the younger generation of contemporary Nigerian men are also in support of controlled reproduction. The older generation have also come to the realisation that change is inevitable and women must exercise control over the right to reproduce at a time convenient to women. However, most men reiterate that abortion decisions should be taken with the support of the putative father in appropriate situations.

The fieldwork analysis shows that there is a greater awareness and openness towards reproductive issues and abortion as a social and health problem that should be addressed urgently. Economic hardship is one of the main reasons why a greater awareness towards reproductive health and abortion in particular, has been generated in contemporary Nigeria.

This chapter gives an analysis of the fieldwork as presented in the data collected through the questionnaire. The approach I adopt follows the format in the previous chapters, which is to discuss from the traditional issues to the contemporary. In this chapter first, I will discuss contemporary Nigerians' perception and awareness of women's reproductive autonomy in traditional and contemporary society among different age groups and gender. The existence of abortion in the traditional society, overall attitudes towards termination of pregnancy and necessity (if any) to resort to abortion is also examined. I look at how these attitudes have shaped contemporary Nigerians' attitude towards reproductive health, abortion choices and how attitudes by society are changing and evolving over time. Secondly, I examine social issues influencing abortion decisions generally in contemporary Nigeria. Here I discuss how acceptable it is for married women particularly to seek abortion and focus on what determines married women's abortion choices

individually and socially. Thirdly, I turn my attention to social factors influencing unmarried girls' abortion decisions. Nigeria being a patriarchal society, I examine who makes the abortion choice when an unmarried girl is pregnant with an unwanted pregnancy. Finally, I look at the other side of the abortion debate and analyse the reasons put forward by those opposed to abortion. Since single motherhood is considered a social aberration in Nigeria, I discuss the status of single mothers denied abortion, how society views them and what choices are available to them.

I have been careful in ensuring that the demographic spread of the survey sample is representative of the population site. The survey covers the affluent suburban, cosmopolitan, semi/rural, as well as the ethnically indigenous areas of the study site representing most of the demographic population found in Nigeria. The findings given here therefore give no reason to suggest that it is not atypical of what would be found in a national survey. The survey does not discuss contraceptive use in detail since this is not the focus of this study but references to contraceptive use will be made where necessary. In addition, while infanticide was practised in traditional society when the child was deformed or had other qualities that were considered an aberration,<sup>3</sup> abortion for foetal defect will be referred to but discussed in detail in chapter 7.5.

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<sup>3</sup> Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 109.

## 5.1 Perception of Women's Reproductive Autonomy in Traditional and Contemporary Nigeria

The perception of women's reproductive rights in traditional society stated here is depicted through the statements and answers given to specific questions in the questionnaire by contemporary Nigerians.

For each of the sub-paragraphs I divided the responses between female and males aged between 14 and 19; 20 and 30 and 31 and 77<sup>4</sup>. The classification of the ages into these three groups is because an overall assessment of the data shows that respondents aged 14 to 20 are young people mostly, in secondary schools or learning a trade. These young people are sometimes already sexually active<sup>5</sup> and have vociferous opinions about abortion and reproductive choices. Their voices are seldom heard, but their opinions are important because they are the age group that do not seek medical help when a pregnancy occurs and will most likely visit unqualified persons if termination of a pregnancy is sought. Since they are economically incapacitated and invariably under parental control, they are the most vulnerable group. They usually have no access to medical help and thereby most affected by the illegality of abortion for reasons I will give below.

The respondents aged between 20 and 30<sup>6</sup> though a small group, they are equally sexually active but have a greater measure of independence and have access to abortion facilities, or, have access to knowledge of where it could be procured legally or illegally. These people are in their prime, attending formal tertiary education or have acquired a trade or some measure of economic capacity and independent thought. These groups are settled or in the process of settling down to a particular way of life as professionals and have consolidated their views on

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<sup>4</sup> This age range is chosen because the youngest respondent is a very articulate 14 year old secondary school female; while the oldest respondent is also a female, a 77 year old retired nurse.

<sup>5</sup> While no direct questions were asked about their sexual activities; (due to its sensitive nature and possible unwillingness of respondents to answer such a direct question), questions about what their 'close relations' would do in a given situation were asked. Their responses to these questions give an insight into my forming this opinion. See the questionnaire question B 7(i) and (ii); B 9 (i) and (ii); B 12 (i) and (ii) of Appendix-1.

<sup>6</sup> This age range is chosen because Section 106, The Constitution of the Federal Republic of Nigeria, 1999 prescribes 30 years as the minimum age to be eligible for election into the House of Representatives which is the lower house of the Federal or State Assembly. Also at 30 years, a person is exempted from the otherwise compulsory one-year national service called the 'National Youth Service Corp' (NYSC).



reproductive choices and autonomy and these views have a strong effect on society.

The last group aged 31 and above are the middle and older generation who are usually socially and economically independent. This group shapes society and the rules and regulations that govern it. They are able to have reflective views on traditional conception of reproductive rights and reflect on it comparatively alongside changes within extant society. They have been able to consolidate their opinions on reproductive rights having had the added advantage of living through these changes and are therefore able to assess how development, modernisation and Western influence have changed social purview of reproductive choices. Their opinions are important because when given it is expected to be a consolidation of their gained experiences in life that are used to shape policy that affect everybody in society<sup>7</sup>.

### **Awareness of abortion within Traditional and Contemporary society, a closed and open secret**

The survey demonstrates that there is a slight variation between the sexes in their awareness of the existence of abortion within traditional society. A total of 700 females and 622 males responded to the question about whether they were aware of the existence of abortion in traditional society. As can be seen from Tables 5.1, approximately 38 percent of female respondents said that they were aware abortion took place in traditional society, while only 21 per cent of the male respondents agreed (Table 5.2). Conversely 39 per cent of the male respondents stated that they were not aware of abortion practices (Table 5.2) while only 24 per cent of the females agreed with them (Table 5.1).

What these percentages appear to show is that women would carry out abortion without necessarily letting their men know about it. Many of the respondents said that traditional women had their ways of removing unwanted pregnancies.<sup>8</sup>

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<sup>7</sup> This age group from the data analysis are the parents; professionals and people who make policies that affect societal values or are in positions to influence the views of the other age groupings when they act as *locus parentis* in their capacities as teachers; trainers; bosses... etc over them.

<sup>8</sup> Women used different forms of herbs as abortifacients in traditional society.

Abortion in traditional society is possibly a closely guarded secret. This is seen from a sample of two of the responses given below by respondents of different gender but within the same age group and socio-economic background.

**Text Box 5.1**

The belief of people then was that a woman had many children in her womb and failure to give birth to all of them may bring problems to the woman as it is against the wish of God

In the olden days the woman would go to a herbalist to terminate the pregnancy.

**(i) 34 year old male Civil Servant**

**(ii) 39 year old female University Lecturer**

*Source: Field Data Analysis*

**Table 5.1****Differences in Age among Female Respondents' Awareness of Abortion in Traditional Society**

<b>Total Number of Female Respondents</b>	<b>700</b>	<b>Percentage of Female Respondents' Responses</b>	
<i>Total Number of Respondents with 'Yes I Am Aware'</i>	268	<i>Percentage Total Number of Respondents with 'Yes I Am Aware'</i>	38
<i>Total Number of Respondents with 'No I Am Not Aware'</i>	168	<i>Percentage Total Number of Respondents with 'No I Am Not Aware'</i>	24
<i>Female Respondents Between Age 31 and 77 with 'Yes I Am Aware'</i>	56	<i>Percentage of Female Respondents Between Age 31 and 77 with 'Yes I Am Aware'</i>	8
<i>Female Respondents Between Age 20 and 30 with 'Yes I Am Aware'</i>	53	<i>Percentage of Female Respondents Between Age 20 and 30 with 'Yes I Am Aware'</i>	7.6
<i>Female Respondents Between Age 14 and 19 with 'Yes I Am Aware'</i>	8	<i>Percentage of Female Respondents Between Age 14 and 19 with 'Yes I Am Aware'</i>	1.1
<i>Female Respondents Between Age 31 and 77 with 'No I Am Not Aware'</i>	56	<i>Percentage of Female Respondents Between Age 31 and 77 with 'No I Am Not Aware'</i>	8
<i>Female Respondents Between Age 20 and 30 with 'No I Am Not Aware'</i>	94	<i>Percentage of Female Respondents Between Age 20 and 30 with 'No I Am Not Aware'</i>	13.4
<i>Female Respondents Between Age 14 and 19 with 'No I Am Not Aware'</i>	8	<i>Percentage of Female Respondents Between Age 14 and 19 with 'No I Am Not Aware'</i>	1.1
<i>Female Respondents Between Age 31 and 77 with 'I Don't Know'</i>	20	<i>Percentage of Female Respondents Between Age 31 and 77 with 'I Don't Know'</i>	2.9
<i>Female Respondents Between Age 20 and 30 with 'I Don't Know'</i>	57	<i>Percentage Female Respondents Between Age 20 and 30 with 'I Don't Know'</i>	8.1
<i>Female Respondents Between Age 14 and 19 with 'I Don't Know'</i>	3	<i>Percentage of Female Respondents Between Age 14 and 19 with 'I Don't Know'</i>	0.4

*Source: Field Data Analysis*

To further buttress the existence of some form or reproductive regulation by women in traditional society, many of the female respondents confirmed that there existed traditional means of inducing abortion. Many stated that women often used

'kaun'<sup>9</sup> mixed with lemon and native gin called 'ogogoro' to induce abortion. If they could not go to the herbalist, others believed in the efficacy of special rings with herbal adornments and incantations to induce or prevent reproduction. From conversation I had with a 94 year old female during the study, she stated that women in traditional days sometimes tied a thick cloth called 'oja' (which was customarily used to hold a baby in place on its mother's back) round their womb and engage in intense physical exercise such as pounding food in a mortar in conjunction with the combination of strong drinks and herbs to induce abortion.<sup>10</sup> This showed that regardless of the effectiveness of the methods adopted, traditional women practised some methods to take control of their reproduction. A closer look at Table 5.1 shows that more females within the age bracket of 31 to 77 and 20 to 30 years (with 8 per cent and 7.5 per cent respectively) were aware that women in traditional society practised abortion in some way. This is in contrast to the male respondents where 10 and 9 per cent of males within the same age category of 31 to 77 and 20 to 30 respectively, were aware that abortion took place in traditional society, (Table 5.2). It is not unexpected that females and males in the age group 14 to 19 had a low knowledge of abortion in traditional society. Only 0.4 of the females (Table 5.1) and 0.3 of the males (Table 5.2) said they were aware; because whatever knowledge they had would be what has been told them by older members of the society rather than through personal experience.

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<sup>9</sup> This is the traditional name for potash.

<sup>10</sup> Olusanya has documented four forms of traditional family planning among the Yorubas of Western Nigeria and the use of this herbal preparation is cited among them. See P.O. Olusanya, 'Cultural Barriers to Family Planning Among the Yorubas' in, John C. Caldwell; N. O. Addo; A. Igun.; S. K. Gaise and P. O. Olusanya, (editors), *Population Growth and Socioeconomic Change in West Africa* (New York and London: Columbia University Press, 1975), 214. See also, V. O; Otoide; Frank Oransaye and Friday E, Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81; Germaine Greer has also documented other countries where herbal preparations are used as abortifacients, see Germaine Greer, *Sex and Destiny, The Politics of Human Fertility* (London: Secker and Warburg, 1984); and J. F. Dastur *Medical Plants of India and Pakistan*, (Bombay, 1977) 181.



**Table 5.2**

**Differences in Age among Male Respondents' Awareness of Abortion in Traditional Society**

<b>Total Number of Male Respondents</b>	622	<b>Percentage of the Different Awareness Responses</b>	
Male Respondents with 'Yes I Am Aware'	150	Percentage of Male Respondents with 'Yes I Am Aware'	21.4
Male Respondents with 'No I Am Not Aware'	273	Percentage of Male Respondents with 'No I Am Not Aware'	39
Male Respondents Between Age 31 and 77 with 'Yes I Am Aware'	72	Percentage of Male Respondents Between Age 31 an 77 with 'Yes I Am Aware'	10
Male Respondents Between Age 20 and 30 with 'Yes I Am Aware'	63	Percentage Male Respondents Between Age 20 and 30 with 'Yes I Am Aware'	9
Male Respondents Between Age 14 and 19 with 'Yes I Am Aware'	2	Percentage Male Respondents Between Age 14 and 19 with 'Yes I Am Aware'	0.3
Total Number of Male Respondents with 'I Don't Know'	81	Total Percentage Number of Male Respondents with 'I Don't Know'	11.6

*Source: Field Data Analysis.*

This is not to say that all the women agreed that they were aware abortion was practised in traditional society, because the proportion of 24 percent of the females who said they were unaware as seen in Table 5.1 suggests this. The more pragmatic respondents were willing to acknowledge the existence of abortion practices in traditional society, but it was just not socially acceptable or expedient to talk about it openly.<sup>11</sup> A 65 year old woman confirmed this when she said:

**Text Box 5.2**

In Nigerian traditional society, abortion in any form for any reason is an abomination. Those who do so do it secretly and never openly. *She does not have the right to terminate the pregnancy* since she is a married woman and if it happens that she got pregnant she must deliver it, since it is her husband who is responsible.

**65-Year-old Female Trader with no formal education<sup>12</sup>**

*Source: Field Data Analysis*

The statement in Text Box 5.2 confirms the notion that women's sexuality and place in society was to bear children.<sup>13</sup> The cultural belief is that women are traditionally the property of a man as explained in chapter three, and this has also been explicitly endorsed by many of the male respondents regardless of their educational attainment. This is confirmed in the similarity between the statements made by these two male respondents below:

**Text Box 5.3**

A married woman belongs to a man, and the man is responsible for all that comes within the marriage (if it belongs to him).

I believe in Nigerian traditional culture a *married woman is supposed to bear as many children as her husband wants*. Therefore, termination of her pregnancy is her husband's decision, not her own. I think it is a taboo for the African woman folk.

**(i) 36 year old male Bus Driver with no formal education**

**(ii) 34 year old male university student<sup>14</sup>**

*Source: Field Data Analysis*

<sup>11</sup> Social and cultural inhibitions are issues already discussed in chapter three.  
<sup>12</sup> The italics are mine and buttress the point that a woman does not have control over her reproduction.  
<sup>13</sup> Adetoun O, Ilumoka 'Reproductive Rights: A Critical Appraisal of the Law Relating to Abortion in Nigeria' in Mere N Kesekka, (editor) *Women's Health Issues in Nigeria* (Nigeria: Tamaza Publishing Company Limited, 1992). She stated that the focus in traditional society was on the 'reason' for abortion rather than the act of abortion itself. In some cases, she opined that it "carrying a pregnancy to its conclusion was, in some circumstances, considered a worse abomination than terminating it": at page 94.

The reasons why traditional society formalised control over women's reproduction were mainly economic. They needed children to cultivate the land and the wealth of a man and his social status was measured by the size of his household.<sup>15</sup> Children were regarded as a blessing and termination of a pregnancy was abhorred such that a myth existed that any woman who terminated a pregnancy would bring the wrath of the gods on the entire community. This is not unusual in that with limited knowledge of medical care, there were high infant death rates, which would balance the population by high birth rates.<sup>16</sup> These women were regarded as prostitutes or witches and elaborate rituals would be needed to cleanse the community of the supposed heresy committed by the woman who has had an abortion.

Several other reasons were given why abortion was socially unacceptable. It was believed that attempting to have an abortion could result in the woman's death or adversely affect her health. Also, the belief is that once conception took place the foetus already had its own destiny which no woman had a right to destroy. Several of the respondents reiterated the notion that the primary purpose of marriage was for procreation, so women should not abort. It is believed that "It is only a foolish married woman who would attempt to have an abortion in traditional society. If it is her husband who made her pregnant the problem is his because he has to take care of her and the baby".<sup>17</sup> In this way, through the use of fear abortion was made socially unacceptable. It was unacceptable because the traditional social construct that embraced a communal way of life could absorb any number of children the community had because a child was seen as the responsibility of the entire community and not necessarily, the particular family the child belong to alone. There was therefore no overriding need to encourage termination of pregnancies because the community had the capacity and the structural social set up to absorb the children born.

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<sup>14</sup> The italics are mine for emphasise.

<sup>15</sup> The authors Beulah Bewley; Judith Cook and Penny Kane in *Choice Not Chance, A Handbook of Fertility Behaviour* (University College Cardiff Press, 1977) 13-15, have stated that it is a common feature of agrarian society to value women for their procreative ability because of the value of the work children contributed to the economic growth of the population.

<sup>16</sup> Beulah Bewley, (*et al*) *ibid* at 11-15.

<sup>17</sup> Field Data Analysis- 37 year old male, civil servant with tertiary education.



### ***Marriageable age and abortion***<sup>18</sup>

While married women were given some latitude within traditional society to have an abortion whether openly or surreptitiously, no such leeway was given to unmarried girls. The term 'unmarried girl' is used here as opposed to 'teenager' because there is a lacuna in the Nigerian legislation of what is the acceptable marriageable age for a girl. There are several conflicting statutes that relate to the age of first marriage. While the National Policy on Population<sup>19</sup> advises parents not to arrange marriages for their daughters who are below the age of 18 years; under Customary law a father can arrange marriage for his children once they reach puberty.<sup>20</sup> On the other hand, Islamic law allows a father to arrange marriage for his children at any time.<sup>21</sup> The Marriage Act also states that no one under the age of 21 can marry without parental consent.<sup>22</sup> With these conflicting legislations one would have expected the Constitution to make a categorical definition on the issue of marriage. This is however not the case and it can be said that the Constitution complicates an already ill-defined marriageable age. The puzzle is further complicated because Section 29 (4) (a) of the Constitution states that "full age" means the age of eighteen years and above' while subsection (b) states that "a woman who is married shall be deemed to be of full age".<sup>23</sup> The eastern states also enacted laws that declare that any marriage between adolescents under 16 years should not be legally recognised.<sup>24</sup> 'Full age' as can be seen is dependent on religion, culture and the form of marriage contracted by the parents of the adolescents seeking marriage. From the foregoing, I can safely state that the acceptable time a girl can marry is socially and culturally defined in Nigeria. These conflicting laws result in a wide margin between the socially acceptable age of marriage for young girls between the northern states and southern states of

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<sup>18</sup> In 2003 the National Assembly promulgated a law called 'The Child's Right Act' Laws of the Federation of Nigeria; where it is an offence for anyone to marry a girl who is below the age of 18 years. Many states have not incorporated this law into state legislations because it goes against many cultural practices where young girls are given out in marriage.

<sup>19</sup> Federal Republic of Nigeria, National Policy on Population for Development, Unity, Progress and Self-Reliance (1988), section 1 (hereinafter referred to as NPP).

<sup>20</sup> Puberty is attained at the age of about 14 for boys and about 12 for girls –The Center for Reproductive Law and Policy, (1988), 12: [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed November 24 2002).

<sup>21</sup> Sarah Y. Lai and Regan E. Ralph, 'Female Sexual Autonomy and Human Rights' (1995), 8 *Harvard Human Rights Journal*, 201, 219.

<sup>22</sup> Marriage Act, Federal Republic of Nigeria 1970 section 18-20

<sup>23</sup> The Constitution of the Federal Republic of Nigeria, 1999; see also Titilayo Aderibigbe, 'An Assessment of the Empowerment of the Legal Rights of Adolescents in Nigeria' in Dare, Lola (editor) *Status of Adolescents and Young Adults in Nigeria* (Nigeria: Centre for Health Sciences Training, Research and Development International (CHESTRAD) 1997), 465-467.

<sup>24</sup> Age of Marriage Law [Chapter 6] sections 2-4 laws of former Eastern Region 1956. Each of the present states in the east have enacted their own laws similar in context to this 1956 law.



Nigeria. Girls as young as twelve have been given out in marriage in the northern states, while girls in their late twenties in the south states could still be unmarried, especially if they are in some form of educational institution. The differences also depend on the socio-economic level of the girl's family and the family's perception of the value and ambition for the girl.<sup>25</sup> The 'unmarried girl' could be any girl from puberty to full womanhood so long as she is unmarried. I use the term to refer to her unmarried status and not necessarily her age.<sup>26</sup>

In traditional society, unmarried girls were expected to be virgins on their wedding day and a girl who was considered not chaste before then brought shame and ridicule to the entire family.<sup>27</sup> Her action could also prevent her other siblings from getting suitable suitors because of the stigma attached to it. Such girls were referred to as a 'broken calabash'.<sup>28</sup> The stigma attached to a pregnant unmarried girl was worse than being discovered to have lost her virginity. This research shows that over 73 percent of the respondents agreed that such girls were unceremoniously married to the man responsible for the pregnant if he was known or to any man who is willing to accept her with the pregnancy.<sup>29</sup> A 65-year-old male respondent, a tailor said, "All girls married as virgins and it was an abominable act for a girl to be *dispirited* before getting married. If she got pregnant she would be disgraced and married off to the man who made her pregnant". In most of the cases, the father of the pregnant girl took the decision. A 77 year old female retired teacher said "she would be unable to get a husband anyway once she lost her virginity". Girls in traditional society were ignorant about sex and would lack the initiative to attempt termination of the pregnancy. Young women's sexual knowledge would mostly be acquired in their marital homes and many of

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<sup>25</sup> By this I mean that a family that believes a female has equal value as a male would likely give her the same educational chances as her brothers, while some other family may value her for the bride price she could fetch on her marriage.

<sup>26</sup> Judge Chukwudifu Oputa (Justice of the Supreme Court of Nigeria) said that a father first and then a husband in traditional society had the right "detestable Roman *patria potestas* which gave him the right to discipline, to sell or even kill his daughter because women had no legal status and correspondingly no rights". See 'Women and Children as Disempowered Groups' in *Women and Children Under Nigerian Law* (1989) Nigeria: Federal Ministry of Justice Law Review Series 8-9, in a sense a woman's marital status is determined by her father in traditional society.

<sup>27</sup> M. A., Fadipe *The Sociology of the Yoruba* (Nigeria: Ibadan University Press, 1970).

<sup>28</sup> A calabash has many uses in traditional society. It was used to fetch water for the household and also used as decorations for the home after it had been carved with intricate designs. A broken calabash cannot be useful for any of these things; therefore the analogy is that the utility of an unmarried girl has been diminished by the loss of her virginity before marriage.

<sup>29</sup> Older women respondents said that these girls were married to men much older than them who were usually polygamist because they were the only ones rich enough to absorb the girl within his household. This protected the dignity of the girl's family and decreased the social stigma associated with the pregnancy.

the respondents stated that most unmarried girls would not know they are pregnant until the physical evidence becomes apparent. Since pre-marital sex was not encouraged in traditional society, it is unlikely that the issue of unmarried pregnant girls was a common problem.

The study shows that changing social attitude toward unmarried girls getting pregnant and the likely actions of their family in such instances have changed over the years. Table 5.3 below shows the difference in family decisions between traditional and contemporary society over a pregnant unmarried girl. In traditional society, the family would make the girl marry the putative father according to 73 percent of the respondents. However, only 49 percent of the respondents stated that the girl's family would act the same way in contemporary Nigeria. It is notable that 26 percent of the respondents stated that the family would decide to obtain an abortion for the girl today, while only a negligible 1 percent agreed they would attempt to terminate the pregnancy in the traditional days. I discuss this issue further in subsection 5.3 below.

**Table 5.3**

**Family Decisions when Unmarried Girl is Pregnant in Traditional And Contemporary Nigerian Society**

Decisions Taken	Percentage Distribution	
Forced to marry putative father	73.4	49
Marry man who will accept her	6.4	6.7
Terminate the pregnancy	1.4	26
Had the baby and stay home	10.4	13.4
The girl was thrown out of home	3.9	3
I don't know	1	1
Percentage Total	100	100
	Traditional	Contemporary

*Source: Field Data Analysis*

Table 5.3 shows that in traditional society the family decision over the pregnant unmarried girl appears less temperate than in contemporary time. Over 73 percent of parents would have forced the unmarried girl to marry the putative father in traditional society, while only 49 percent would do so today; suggesting that in contemporary time the pregnant girl is given some element of personal liberty. The pregnant unmarried girl is no longer treated as an object that could be moved about without regard to her emotional preference in order to preserve social ideals of the family and community. While a pregnant unmarried girl was an affront to the social values of the traditional community, to the more individualistic contemporary society it is a personal disappointment to the girl's family. It is however not one that will be remedied without a recognition that the physical and mental state of the pregnant girl is more important than the personal disappointment her family will experience as a result of the pregnancy. Parents are also increasingly aware of the necessity of educating their daughters so they can be self-sufficient to an extent and not become a social liability. Previous studies show that Nigerian girls are marrying at a later age and are increasingly acquiring formal education before marriage but are also having premarital sex unlike in traditional society.<sup>30</sup> This research shows the changing attitudes toward unmarried girls' pregnancies as depicted in the two statements by two of the male respondents within different age groups below.

**Text Box 5.4**

It is better for her to make the decision by herself whether or not she can cope with the consequences of the pregnancy ...her parents would want her to further her education or any other training she may be engaged in so that she may be self-sufficient in the future.

**25 year old male university undergraduate**

Some parents may feel that it is better to terminate an unmarried girl's pregnancy because not many men would be willing to marry a single mother, and she would be considered a liability in the future...

**58 year old male university lecturer**

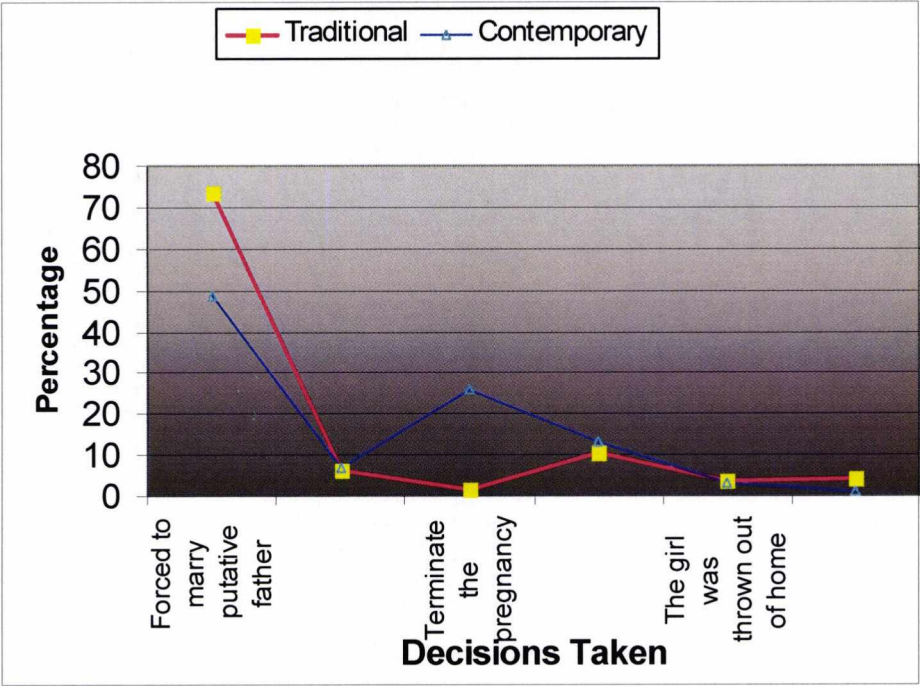
<sup>30</sup> V. O; Otoide; Frank Oransaye and Friday E, Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81; see also B. Feyisetan, and A. R. Pebley, 'Premarital sexuality in urban Nigeria', 1989 20(6) *Studies in Family Planning*, 343-354 and

Source: Field Data Analysis

Chart 5.1 below shows the differences over time of the actions taken by parents in traditional and contemporary society. Apart from pregnancy termination being a more likely decision in contemporary society than the traditional, we can also see that parents from both periods are unlikely to send their pregnant daughters out of the home.

Chart 5.1

Differences between Traditional and Contemporary Society's Responses to the 'Decisions Taken When an Unmarried Girl is Pregnant'



Source: Field Data Analysis



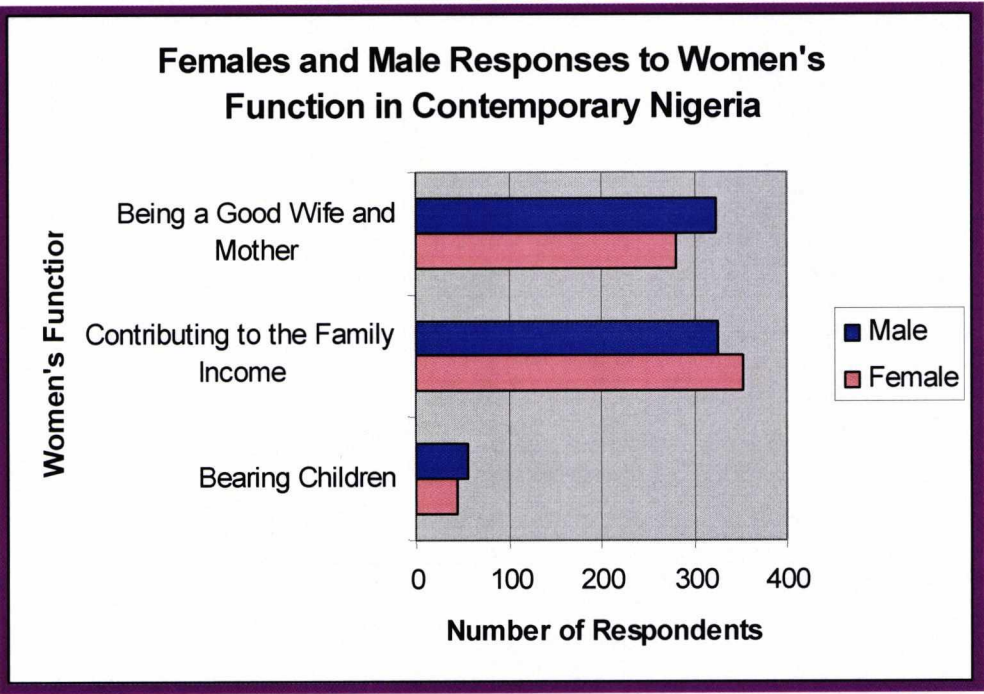
## Functions of women in traditional to contemporary periods and its impact on their reproductive autonomy

Despite the fact that the respondents stated that children held such a pivotal place within society, the respondents did not believe that bearing children was the most important function of women in traditional society. Table 5.4 shows the 'Most Important Function of Women in Traditional Society', over 53 percent of women and 57 percent of men still felt that *being a good wife and mother was more important than bearing children*. On the other hand, 29 percent of female respondents and 37 percent of males did believe the most important function of women in traditional society was bearing children.<sup>31</sup> In this Table, we can see that a negligible percentage of approximately 5 percent females and 7 percent males, ranked women's contribution to the family income as important functions of women in traditional society. The evolving nature of society's attitude to reproduction is depicted in what the respondents believed is the most important function of contemporary Nigerian women as seen in Table 5.5 below. In this table 50 percent of the females and approximately 46 percent of the male stated that *contributing to the family income is the most important function of women*. This is followed closely by 40 percent females and 46 percent males who said being a good wife and mother was more important than bearing children while only 7 percent females and 8 percent males still held on to the believe that children are still the pivotal function of women in contemporary Nigeria. Chart 5.2 depicts the responses graphically.

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<sup>31</sup> Bleek, states that family size in traditional society was unlimited because many children died young and they were not sure how many will survive. Children were also needed in the production of food: Wolf Bleek, (Footnote 3) at 108.

Chart 5.2



Source: Field Data Analysis

Chart 5.2, shows that contemporary Nigerian men did not attach as much importance to bearing children as their women did. Men were more concerned with women being a good wife and not necessarily contributing to family income. The younger generation also accept that children are not the only reason why people should marry but reiterate that children are essential to a lasting marriage as depicted by the two responses in Text Box 5.5:

### Text Box 5.5

Although the purpose of marriage is not necessarily to have children, but in Yoruba traditional society any marriage without children is a taboo because the people lived for their children.

Children in marriage is secondary and is not compulsory, the love between a man and woman and the renewal of it is the most important thing. If children comes their way it is good, if not that should not end the marriage.

**(i) 29 year old male undergraduate**

**(ii) 33 year old female secondary school teacher**

*Source: Field Data Analysis*

From the responses above younger generation of contemporary Nigerian people, still acknowledge that children are “the cement that binds a marriage,”<sup>32</sup> but women want to be able to control *when* and *how* many children they would have. However, many of the respondents of both gender still reiterated that a decision to terminate a pregnancy should be made in conjunction with the putative father of the foetus. I believe attitudes to abortion mirror changing social values, confirmed by Furedi<sup>33</sup> who said abortion does not exist in a vacuum, but is interfaced with existing social issues such as poverty, over-population and the perception of women’s role within society. The responses show that perceptions of the role of women are changing in contemporary Nigeria, buttressed by the believe that neither of the gender believes procreation is the most significant function of women. On the other hand, more than 50 percent of women considered contributing to the family income as a significant aspect of their role within society. The reason for this is possibly because with increasing education of women comes economic freedom and emancipation. Women want to assert their independence in the private sphere through playing and contributing to the traditional role men used to hold within the home. Despite women’s assertiveness, abortion is still a moral dilemma in society.

<sup>32</sup> Field Data Analysis: 56 year old female Secondary school Principal.

<sup>33</sup> Ann Furedi, ‘Wrong but the Right Thing to Do: Public Opinion and Abortion’ in Ellie Lee(editor), *Abortion Law and Politics Today*, (PALGRAVE, 2001), 162.

### **Abortion is morally wrong but can't be avoided**

Table 5.3 shows respondents' attitude to the morality of abortion. From 698 respondents 78.99 percent believed *abortion may be morally wrong, but it cannot be avoided* as opposed to only 19.57 who did not think so. In essence, this survey shows that respondents accept that there are "situations where termination of a pregnancy is considered more expedient than keeping the pregnancy".<sup>34</sup> The respondents themselves highlight some of these expedient situations. The recurrent reason given has been that the economic situation does not support large families and that it is necessary for women to plan the spacing and the number of children they would want. Where unexpected pregnancy occurs, respondents states there should be safe medical environment where termination procedure can be legally done without damage to women's health. Apart from the health implications of illegally procured abortion, there is also the social effect of an unwanted pregnancy on the future of an unmarried girl. The girl and her child becomes a burden on her family, in addition, such girls are often prevented from becoming self-sufficient in future because invariably, their education has to stop. As one female school principle said to me "one girl who drops out of school as a result of a pregnancy is equal to at least four children whose quality of life will be significantly reduced".<sup>35</sup>

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<sup>34</sup>Statement made by a 36 year old female Artist, educated to tertiary level, and married with two children. She confessed (off record) that she has had an abortion before because it was not economically convenient for both herself and her husband to have had another child at that time.

<sup>35</sup> Field Data Analysis: 56 year old female School Principal.



Table 5.4

Abortion is Morally Wrong But Can't Be Avoided			
Responses	Number	Percentage	Percentage Approve/Disapprove*
Strongly Approve	217	31.22	} 78.99
Approve	211	30.36	
Mildly Approve	121	17.41	
Strongly Disapprove	84	12.09	} 19.57
Disapprove	38	5.47	
Mildly Disapprove	14	2.01	
I Don't Know	10	1.44	
Total	695	100.00	

\*The percentage of Approval is a total of Strongly/Mildly Approve, while the percentage of Disapprove is the total of Strongly/Mildly Disapprove.

Source: Field Data Analysis

## 5.2 Social Issues Influencing Abortion Decision

The social epidemiology of abortion prevalence in Nigeria cannot be fully appreciated without an understanding of how the cultural and religious beliefs impact on choices made by women faced with unwanted pregnancies. What this study has shown is while both genders acknowledge the doctrinal cohesion of religious teachings of the two dominant faiths (Christianity and Islam) and their prohibition of abortion; faced with economic hardship, many of the women said they would choose to terminate the pregnancy if they could not afford to feed an extra mouth; (as seen in Table 5.4). While their faith in the religious teaching is acknowledged, termination of a pregnancy in order to take care of existing children (in the case of married women), or for self-improvement (for unmarried girls to prevent their becoming social liabilities in future), is the more probable choice most women will take. The choice does not negate their strong faith in God nor does it detract from the irreducibly moral dimension of the abortion debate.<sup>36</sup> In order to facilitate reform of abortion law, I believe Nigerian policy makers and religious leaders would need to find a balance between deeply held beliefs and how this clash with women's desire to control their reproduction in order to give themselves and their family a better quality of life in an increasingly capitalist and individualistic world.

Nigerian women would choose abortion if they lack the economic capacity to maintain the new baby and to give existing children a better quality of life. Bankole *et al*<sup>37</sup> showed that in 1992, the main reason for abortion choice for women was for 'timing birth and controlling family size' but by 1996, 'poverty and economic reasons' were the main reason why Nigerian women would choose abortion. This study shows that the reasons have not changed since the late ninety nineties. A 33-year-old female teacher said, "Maintenance of children is very expensive, therefore a married woman would prefer to have an abortion to enable her take care of children she already has".<sup>38</sup> Young people of both genders also echo this view. A sixteen-year-old male, secondary school student stated, "This is an enlightened world and many married women today see nothing wrong with

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<sup>36</sup> The moral clash of faith is explored in detail by Laurence H. Tribe *ABORTION The Clash of Absolutes* (New York and London: W. W. Norton & Company, 1992) 116. And

<sup>37</sup> Akinrinola Bankole; Susheela Singh, and Taylor Haas, 'Reasons Why Women Have Induced Abortions: Evidence from 27 Countries' 1998 24 (3) *International Family Planning Perspectives* 117-127 & 152

terminating a pregnancy depending on her perception of life and religious belief”.<sup>39</sup> Another fifteen-year-old female also in secondary school said, “A married woman in present day society can seek to terminate her pregnancy due to the prevailing economic hardship and instability and some personal, private agreement between the woman and her husband”.<sup>40</sup> What these views indicate is that the solution to illegally procured abortion will not be made based on religion and moral conscience and diction alone. The solution lies in addressing the complexities of women’s perceived opportunity cost of having a child balanced against the social and economic loss the infringement of having an unplanned pregnancy will have on them and the baby in the long term. The pertinent question is to what extent their religious belief will assist them in alleviating their present economic predicament. Some of the young women went as far saying that choosing abortion was an act of mercy and selflessness. “They feel doing what is right at the right time is best”.<sup>41</sup> The responses below show the various social reasons why contemporary Nigerian women would choose abortion:

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<sup>38</sup> Field Data Analysis

<sup>39</sup> Field Data Analysis

<sup>40</sup> Field Data Analysis

<sup>41</sup> Field Data Analysis 53 year old Nurse

**Text Box 5.6**

Taking care of children requires a lot of selfless service and thoughtfulness, therefore a person who seeks an abortion knows the reason for her choice depending on her circumstances, it will be unfair to judge her.

It may not be her intention to have an abortion, but if there is no-one to take care of her and the baby then she will have no other choice than to have an abortion.

**(i) 25 year old female  
Secondary School Teacher  
with Tertiary education**

**(ii) 30 year old male Carpenter  
with Secondary School education**

These women are sometimes highly respected women who hold top positions in society. For the sake of their career mostly they opt to terminate such pregnancies because their career does not make provision for nursing mothers.

When a woman is pregnant and no-one to come to her aid she will be crying for help, so abortion is the easier way out, moreover she will not even have the strength to do any job to take care of herself and the baby.

**(iii) 20 year old male Clerk with  
Secondary School education**

**(iv) 30 year old male Civil Servant  
with Tertiary education**

*Source: Field Data Analysis*

To appreciate better the acceptability of abortion choices, I presented all the respondents with the statements ‘how acceptable is it for a married woman, first, and then an unmarried girl next, to seek abortion in contemporary Nigeria?’<sup>42</sup> Both genders were given the same questions. Their responses for married women and unmarried girls are presented along gender lines in Table 5.5 below.



Table 5.5

Percentage Distribution of Responses to Acceptability of Women Seeking Abortion in Contemporary Nigeria

(Total Number of Respondents: 700)

	Married Women		Unmarried Girls	
I Agree	45.7	57.9	47.3	46.4
I Disagree	29.2	39.5	31.3	29.8
I Agree in Some Circumstances	23.4	36.4	19.1	22.2
I Don't Know	1.3	2.3	1.6	1.4
Others	0.1	0.3	0.4	0.3
%Total	99.7	*136.3	99.7	100.0
	Females	Males	Females	Males

\*Note that the percentage total for Male responses for married women is 136.3. This is because many of the male respondents filled in 'I Agree' as well as 'I Agree in Some Circumstances'. The responses were recorded in both cases because the 'circumstances indicated are the ones under discussion.

Source: Field Data Analysis.

From Table 5.5, 45.7 percent of females and 59.9 percent of males agreed that *it is acceptable for married women to seek abortion in contemporary Nigeria*. There is less than 2 percent difference between respondents who accept that unmarried girls could seek abortion, with 47.9 percent females and 46.4 percent males sharing this view. The differences in the percentage ratio of responses of respondents who agree that abortion is acceptable for married women and unmarried girls across gender lines is also less than 2.5 percent. What these figures suggest is that abortion is an acceptable choice for both married and unmarried women. What I observe from this table is that the respondents seem to compartmentalise their acceptability of abortion based on socioeconomic variables and separated it from their religious belief. The realities of the hard economic predicament have made them choose abortion rather than give birth to children

<sup>42</sup> There is no definitive age when a woman gets married since timing varies across cultural and socioeconomic class. I will choose a married woman to mean any woman of child bearing age which is between 15 and 49 as used by Bankole *et al* (footnote 36).

they cannot feed. From discussions with undergraduates of both genders, there is an acute awareness among them that what is acceptable cannot be dictated by society or government because neither will come to their aid when they have a child they cannot feed. This is a pointer to the fact that Nigeria has no social security or welfare system and family burdens are individual problems that require individual solutions. Young people were adamant that society should not dictate to them what is acceptable when it has to do with reproductive choices. A 28-year-old female postgraduate student was vocal when she retorted:

**Text Box 5.7**

Unacceptable before who?  
That is the big question!  
The present Nigerians have come  
to accept abortion unlike Nigerians  
of old. Even parents, uncles,  
aunts, priests, pastors, lecturers,  
husbands etc condone abortion

**28 year old female postgraduate  
student**

*Source: Field Data Analysis*

While it may not be totally accurate to state that all these people mentioned have come to accept abortion, it is right to state that the reality of abortion as a social and a recurring health problem is known to all of them.

There is a need to address the responses of those respondents who disagreed with the acceptability of abortion because they form the next highest percentage distribution across both gender lines. These respondents felt that the pregnancy should be carried to term because they believed the child would survive somehow. Some optimists may argue that this is an expression of implicit faith while realists

may argue that these respondents belief in life as a state of being and not necessarily the quality of that life.<sup>43</sup>

There were some arguments put forward by some of the respondents for the denial of abortion to women on the ground that the role of women is essentially for procreation. Denial of abortion was used as a punishment for recreational sex for women, which in reality is the effect of the present abortion law on women. The arguments were more didactic against unmarried girls than married women and in some instance peers were scathing in their attack. A 14 year old secondary school student said:

### **Text Box 5.8**

She knew she is in school before she had sex. If the girl is in secondary school and she allows a man to have sex with her, she knows the result and must bear the consequences. If my sister should get pregnant in school I will not allow her to have an abortion.

**14 year old male, Secondary school student**

*Source: Field Data Analysis*

Some of the older respondents also argue that sexual intercourse for women should not be for recreational means. In the traditional society, it was “the belief of people then that a woman had many children in her womb and failure to give birth to all of them would bring problems to the woman as it is against the design of God for her”.<sup>44</sup> Despite Western education and knowledge about procreation, some respondents still feel that women should be denied sexual freedom for non-reproductive reasons. Other respondents state women who engaged in sex and

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<sup>43</sup> This is an argument along pro-life and pro-choice adherents and I have discussed the differences and tensions between their arguments in chapter three.

became pregnant must be prepared to bear the consequences of their action and bear the child as a punishment for giving in to her sexual desires. The carrying of the child to term is seen as proper maternal self-abnegation decent mothers ought to do as atonement for their sins of omissions or commissions.<sup>45</sup> This was the traditional perception, while a small minority of the respondents still hold tenaciously to this perception; many Nigerians in contemporary society no longer adhere to this view. A 77 year old retired nurse giving her hospital experience said “women have the monopoly of choice; it is not always that husbands are informed before the decision to terminate is taken by the woman”.<sup>46</sup> However, from this study, married women who seek abortion are looked at with greater leniency by the moral judgement of society than unmarried girls. Even though both women face the same biological and psychological problems, the reasons for their choice of abortion are socially different. I will therefore examine in turn the social issues influencing married women and unmarried girls’ abortion choice in contemporary Nigeria.

### **Social Issues impacting on Married Women’s Abortion Choices**

This study shows that Nigerian women make reproductive choices based on the individual circumstances of their pregnancy, their economic capability and their environment. The reasons are inter-related and overlap and the complexity of these choices form a web of psychosocial reasons, which only individual women can make within their peculiar circumstances. Bankole *et al* have stated that reproductive choices for women vary across socioeconomic and demographic subgroups across the world and ‘it may be difficult to identify a single factor as the most important one.’<sup>47</sup> Impacting on these choices are the perceived opportunity cost of having a child; the legal, moral and religious context surrounding the abortion decision and the pattern of contraceptive use in the country where they are resident.<sup>48</sup> In making reproductive choices Nigerian women are no different

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<sup>44</sup> Field Data Analysis: 34 year old male, Civil Servant.

<sup>45</sup> This view is not restricted to Nigeria alone and has found voice in developed counties like Great Britain, see Emily Jackson, *Regulating Reproduction, Law, Technology and Autonomy* (Oxford-Portland Oregon 2001), 74-76; Sheldon, Sally, *Beyond Control: Medical Power and Abortion Law* (London: Pluto, 1997) 40; Kristin Luker, *Abortion and the Politics of Motherhood*, (Berkeley: University of California Press, 1984),

<sup>46</sup> Field Data Analysis

<sup>47</sup> Bankole, *et al* (Footnote 36) at 117-127 & 152.

<sup>48</sup> Bankole, *ibid* at 66-77.



from their sisters across the world as found by Bankole *et al.*<sup>49</sup> However this study shows that abortion decisions for contemporary Nigerian married women no longer depend on what society dictates because the society will not maintain the child for them. Decisions on unwanted pregnancies are therefore based on what is socially expedient and practical for the married woman and her husband. The quotations below are typical of responses from many of the respondents:

**Text Box 5.9**

It is not economically viable to have many children because there is depreciation in the income of most people due to economic repression.

I don't see why someone should have more than four children with the situation in Nigeria today.

**(i) 35 year old male Accountant**

**(ii) 29 year old male Banker**

*Source: Field Data Analysis*

What is significant about the responses is the fact that almost all the respondents who agree that abortion is acceptable for married women across the socio-demographic lines, state it should be a joint decision between the woman and her husband. One should not read into this view that a contemporary Nigerian woman would want her male partners to dictate and control their reproduction. It simply points to the deeply held cultural notion of patriarchy that a child belongs to a man and he must therefore have a say in whatever happens to the foetus within the ambit of matrimony. It also reflects the fact (also demonstrated by research here) that women need emotional support at such times. It is logical that they will get it from their male partners.

One cannot say in the absence of Nigerian case law on the matter whether the perceived 'right' of the putative father to have a say in the decision of the pregnant woman to have or not have an abortion can override that of the woman herself. The perceived right to my mind is neither an accrued one resulting from the

<sup>49</sup> *Ibid* at 68.

changing role of men within society as observed by Nolan<sup>50</sup> in the case of Britain. In Nigeria, the 'right' of the putative father is a right borne out of deeply ensnared societal belief that patriarchy justifies the superiority of men over women which include the unborn child in her womb. For without an acknowledgement by a father, a child is not given his due recognition by society despite legal prohibitions against such discrimination.<sup>51</sup> I therefore make the argument that had a similar case like *Paton v United Kingdom*<sup>52</sup> been brought to Nigerian courts it is most probable that (were abortion legally permitted), the court might hold that consent of the husband should be sought before abortion is permitted. Conversely abortion could be denied the woman if the putative father is opposed to it. These are some of the issues that should be addresses when legislation for a reformed abortion law in Nigeria is sought. However, since almost the same percentage of male respondents as female respondents agree that abortion is acceptable, it shows that married couples in reality would arrive at a compromise decision about abortion devoid of acrimony if the woman has an unexpected and unwanted pregnancy. Confirmation of this assumption is given by a 54 year old civil servant who said "some husbands follow their wives to the clinic to terminate a pregnancy..."<sup>53</sup> The only exception for a unilateral decision by the married woman is if she is sure her husband is not the putative father of the pregnancy, in that case most women would make their choice without consulting their husband. This is buttressed by the responses below:

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<sup>50</sup> David Nolan, 'Abortion: Should Men Have a Say?' in Ellie Lee (editor) *Abortion Law and Politics Today* (New York: PALGRAVE, 2001) 216-230 at 216-217.

<sup>51</sup> Several case law in Nigeria insists on legitimating of a child born out of wedlock e.g. the case of *Lawal v Yunan* (1961) 1 All NLR 245 at 255 states that "children not born in wedlock...but are born without marriage can also be regarded as legitimate children...if paternity is acknowledged by the putative father".

<sup>52</sup> *Paton v United Kingdom* (1980) 3 EHRR 408 at 415 (paragraph 19) where the court held that 'The "life" of the foetus is intimately connected with, and cannot be regarded in isolation from, the life of the pregnant woman' it would be impossible to accept that a husband can prevent his pregnant wife from seeking an abortion. But here the women are saying he ought to have a say in the foetus' termination because it was jointly created by them.

<sup>53</sup> Field Data Analysis

**Text Box 5.10**

If the man responsible for the pregnancy is not her husband it is better for her to terminate the pregnancy before he gets to know

It (abortion) is only unacceptable if it is without her husband's consent, not the society.

**(i) 22 year old male student, Muslim                      (ii) 27 year old female undergraduate, Christian**

This would depend on the agreement between the woman and her husband, and also the (gestation) age of the pregnancy

... The pregnancy could be from an extra marital affair which will expose the woman's infidelity. But if it is for health reasons it could be permitted with the husband's consent

**(iii) 29 year old male, Trader, Muslim                      (iv) 53 year old female, Retired Nurse Christian**

*Source: Field Data Analysis*

Other combinations of socio-demographic factors that impact on a woman's choice of abortion include the number of children she already has, the woman's age, educational attainment and the socio-economic group she belongs. The responses in Text Box 5.11 shows the different views of respondents across different socio-economic groups:

**Text Box 5.11**

It depends on the situation sometimes it is necessary to abort, for instance when the woman cannot afford to feed the (other) children.

She may try to terminate it if the husband denies responsibility for the pregnancy, but this is unusual because it is not possible for the husband to know until the child is born and something happens that will make him aware, for example: the child needing blood transfusion.

**(i) 33 year old male Trader Muslim, with Secondary school education**

**(ii) 42 year old male, Christian, Businessman with Tertiary education**

These days technology has changed everything. Abortion is no longer a new thing. More so if a married woman's condition of health (sic) is not good enough to carry the pregnancy, she can terminate it, but it is not Biblical.

The present government has placed some restrictions on abortion, but most women practice it without fear.

**(iii) 35 year old female Civil Servant Christian, with primary school education**

**32 year old male Teacher with tertiary education**

*Source: Field Data Analysis*

The responses chosen in Text Box 5.11 (i) (ii) and (iii) above are by male respondents from different educational backgrounds in order to show that it is not only women who regard access to abortion as a necessity for modern Nigerian women, but that men feel as strongly about it too. The number of children a couple has is a determinant of the socio-economic class they want to maintain.

I observe from this study, that educated married women in formal work environment are more likely to have an abortion than less educated women in subsistence form of work, or who are self employed. Women in formal places of work (especially public services), have limitations placed on them on the number



of maternity leave they can get within a space of two years; and all formal public institutions do not give annual leave along with maternity leave.<sup>54</sup> Women who wish to retain their job are forced to comply with these restrictions. Another reason I suggest is due largely to the differences in knowledge between educated and illiterate women of where to access the facility for safe abortion rather than not wanting to have an abortion by the illiterate women. Regardless of the educational and religious attainment of respondents, this study shows that notwithstanding the illegality of abortion, women will choose abortion if the need arises despite the legal restrictions placed on accessing it. What this means is that contemporary Nigerian women in formal work place are compelled to take control of their reproduction and access abortion where necessary due to restrictions over maternity leave in their work place. The difference in the quality of the access of abortion will depend on the economic and social status of the woman and possibly her educational attainment and exposure to knowledge of available abortion procedures. The resultant effect is that more enlightened, economically independent women would go to competent doctors while the less educated and economically or educationally incapacitated women would obtain abortion through back street clinics or unqualified personnel. Many of the less educated women I spoke with went to older women who were known to them to be experienced in the techniques of termination of unwanted pregnancies, while others used strong herbal concoctions and self-help to have an abortion. A 34-year-old female teacher who is a Christian said:

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<sup>54</sup> The NISER 'Staff Handbook' (1999), guideline on maternity leave is typical of all government establishments. Chapter VI 7 (2) states "Maternity leave shall be with full pay, provided the last maternity leave with pay is at least two years before the current maternity leave became due"; 7 (4) states: "Annual leave shall not normally be taken in the same year that maternity leave is granted or falls due. Where, for whatever reason, both are taken during the same year, the annual leave for the subsequent year shall be forfeited". The NISER guideline follows the laid down law as contained in section 58 of the Labour Law Laws of the Federation of Nigeria 1999. See also, S. K. Henshaw and K Kost, 'Abortion patients in 1994-1995: characteristics and contraceptive use' (1996) 28 (4), *International Family Planning Perspectives*, 140-147 &158.

**Text Box 5.12**

Many lives have been wasted and affected by the attitude of people towards abortion which force women and girls to go to unqualified doctors. They end up dying or not being able to have children in their life again.

**34-year-old female teacher**

*Source: Field Data Analyses*

What is perhaps surprising is the support of men in asserting that women should only have children that they are capable of maintaining and at times convenient for them. This is a departure from the traditional belief. This view also runs contrary to the patriarchal notion that men will insist on women having children once conception takes place, whether planned or unplanned.

I will examine the various reasons that will likely influence Nigerian women to choose abortion from the perspective of women as well as men. However, in doing so, I will separate the reasons given by the respondents for married women from unmarried girls for reasons that will become clearer in section 5.3.

**Reasons for married women’s abortion decision**

The decision to have an abortion cannot be attributed to one single motivating factor because the reasons are many. These reasons are a complex juxtaposition of social, religious, demographic and policy (legal) factors that affect the choice women ultimately make. This study shows that a consistent compelling reason why married women would choose abortion is the number of children she already has as seen from Table 5.6.

**Table 5.6**

**Percentage Distribution of Respondents' Responses to Factors Influencing Married Women's Abortion Decision in Contemporary Nigeria**

Factors Influencing Married Women's Abortion Decision in Contemporary Nigeria		
Reasons	Percentage of responses	
Number of children she already has	36	32
Economic status	33	34
No support from the putative father	10	11
Women's health and mental states	9	9
Religious belief	5	6
What society thinks	5	4
I don't know	2	3
Others	1	1
Total	100	100
	Female	Male

*Source: Field Data Analysis*

Followed closely is 'Economic status', which has a symbiotic relation to the first reason because both reasons determine the economic status and quality of life of women and their children. Several statements to this effect are made by respondents like "too many children pauperises the woman and her social status"<sup>55</sup>, "many children makes a woman a laughing stock"<sup>56</sup>; "these children become a nuisance to the family and community"<sup>57</sup>; and "having many children leads to depreciation of the standard of living of the family"<sup>58</sup>. Only 5 percent of male and 4 percent of female respondents would choose abortion simply because of social stigma. As can be seen from Table 5.6, the percentage differences between female and male respondents' responses in all cases are small, (less

<sup>55</sup> Field Data Analysis: Female, 37 year old secretary.

<sup>56</sup> Field Data Analysis: Female, 27 year old nurse.

<sup>57</sup> Field Data Analysis: Female, 28 year old medical doctor.

<sup>58</sup> Field Data Analysis: Female, 21 year old undergraduate studying Management.

than 6 per cent) showing that reasons for abortion choice are not much different between women and men.

Some couples sometimes selected abortion consciously to maintain desired economic status. This is identified more with the younger and educated couples who are determined to maintain an acceptable standard of living despite the economic depression experienced by them. Being a patriarchal society, many of the male respondents were quick to point out that maintaining an acceptable standard of living is a ground for abortion for contemporary young, married Nigerian couples as seen from the responses in 5.13:

**Text Box 5.13**

If it (the pregnancy), is unwanted, and the fact that she is married does not mean that there can't be an unwanted pregnancy from her husband

Women today are conscious of their income in maintaining the few children they have. If an unwanted pregnancy comes along the best thing is to terminate it. However abortion has not been legalised in this country.

**(i) 32 year old female Banker with Tertiary education**

**(ii) 33 year old male Trader, with Secondary education**

In modern day, married couples usually agree on the number of children they will have due to economic circumstances. If there is unexpected pregnancy, they could decide to terminate it to be able to maintain their lifestyle and family (size).

We are in a civilised environment. Many things have to be taken into consideration before getting pregnant. Such things as standard of living you want to maintain; name, education, work etc. If an average of these can't be come by (got); nothing is bad in aborting the pregnancy.

**(iii) 24 year old male undergraduate education**

**(iv) 33 year old male Trader with School Secondary**

*Source: Field Data Analysis*



For some young respondents, abortion is an expression of newly acquired emancipation of women and their total control over their reproduction. This view cuts across socioeconomic, educational and religious lines as shown in Text box 5.14.

**Text Box 5.14**

I disagree because a modern Nigerian woman knows she has total control over her body. If she wishes to terminate her baby (sic) (pregnancy), she will not mind whether it is acceptable by anybody

**(iii) 25-year-old female, undergraduate, Christian**

Every woman in Nigeria has a right to her body and if a married woman wants to terminate her pregnancy with the consent of her husband then it is nobody's business

**(iv) 33-year-old male, Trader, with Secondary education, Muslim**

*Source: Field Data Analysis*

Other social reasons why women could choose abortion include cases of contraceptive failure. A 42-year-old male who works in Marketing said, “I agree that a married woman can terminate her pregnancy because the condom is not fool-proof and can sometimes fail and lead to unwanted pregnancy”. Respondents also accept abortion when it will affect the woman's health and mental state. Sometimes some women used abortion as a form of contraceptive due to the mistrust most women have for modern contraceptives.<sup>59</sup> Nevertheless, I find the use of abortion as a form of family planning device as a worrisome health problem that must be stopped through more education and demystifying abortion through its accessibility and legal reform.<sup>60</sup> Equally dangerous are back street abortions.<sup>61</sup>

<sup>59</sup> As I have indicated in the opening paragraph contraceptive use is not the focus of this study, but earlier research have shown the low level of contraceptive use among women of all ages in Nigeria. This is mainly because of the mistrust they have in its use and the fear that it may result in infertility. Valentine O. Otoide; Frank Oransaye, and Friday E. Okonofua, ‘Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions’ (2001) 27 (2) *International Family Planning Perspectives* 77-81 at 78;

<sup>60</sup> Ibid.

Enlightened respondents also state that government can use abortion as a form of population control, but no government in Nigeria has attempted to enforce such a policy. The only way government has come close to advocating population control of its citizens is in the form of an advice in a policy statement.<sup>62</sup>

Early marriage as a result of lack of formal education is a social problem indirectly affecting abortion choice. Women who marry early tend to have more children because their child bearing years are longer. But with the economic problems faced by them many often seek abortion to enable them cope with maintenance of the children. The resultant effect of the harsh economic climate has led to a decrease in polygamous unions and thereby less children within the family unit. Younger contemporary Nigerian males find it more expedient to have only one wife. A 16-year-old female Shop Assistant summed this new development within marital relationships succinctly when she said:

#### **Text Box 5.15**

A man with a wife has a cutlass and a problem; but when it turns to two, then the problem becomes a knife; when it becomes three people, the problem becomes a gun. Therefore many wives and children will cause the man many problems.

**16 year old female Shop Assistant  
with Secondary school education**

Source: Field Data Analysis

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<sup>61</sup> Women were encouraged to have not more than four children each as part of the 'National Policy on Population for Development, Unity, Progress and Self-Reliance (National Policy on Population).

<sup>62</sup> Federal Republic of Nigeria, (1999). Nigeria is the most populous black nation in the world and one out of every black person in the world is a Nigerian: UNFPA: 'Nigeria's Population' <http://www.unfpa.org/profile/nigeria.cfm> (accessed 21 September 2005); Chapter 2, *Footnote 1*.

### 5.3 Social Factors Influencing Unmarried Girls' Abortion Decisions

There no longer exists within society a vehement abhorrence to unmarried girls terminating pregnancies in contemporary Nigerian society as was the case in the traditional. The social reasons influencing unmarried girls' choice of abortion are different from those influencing married women's choice. Today many unmarried girls would want to get formal education or some vocational training to enable them to be self-sufficient later in life before settling down to raising children they can give a decent standard of living. The desire for education and economic independence among young people is more widespread in the southern states of Nigeria than in the northern states. This could be due to greater urbanisation and greater influence of Western culture on the younger generation of adolescents in the south. However, generally the average age at first marriage for girls is 16 years.<sup>63</sup> The result of these factors is that young women in the south are getting married at a later age but are also sexually more active than before. Those young women in the north who marry at an early age also have a longer procreation period. The resultant effect of increasing pre-marital sex is an increase in unwanted pregnancies.

What would then affect unmarried girls' reproductive choices especially since this study shows that society is still reluctant to give unmarried girls access to family planning facilities?<sup>64</sup> This study shows that young women do not use societal values alone as their yardstick when making abortion choices. Unmarried girls make abortion choices depending on what is individually convenient and practicable for them. Influencing these choices would be a whole combination of factors including social, peer group influence, family support and the educational ambition and future career pursuit of individual girls. A 24 year old male undergraduate put the changing values in unmarried women's choice concisely when he said: "In present Nigerian society, nothing is unacceptable because societal values are not considered before decisions (about abortions) are taken, so the acceptability depends on who and what type of family values the girls' family

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<sup>63</sup> The Centre for Reproductive Law and Policy, *Women's Reproductive Rights in Nigeria: A Shadow Report* [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed November 24 2002) 13. Early female marriages in the north also lead to greater number of unwanted births.

<sup>64</sup> This is discussed in detail below.

has, but legally it is not acceptable”.<sup>65</sup> However, by far the most compelling reason why an unmarried girl would choose abortion is if the putative father denies responsibility for the pregnancy. This shows that traditional values that traces lineage and identity of an individual along the male line is still a strong cohesive factor that would prevent a girl from giving birth to an illegitimate child even if she has the economic capacity and family support system to maintain the child when it is born. Chart 5.3 below shows the different social reasons influencing unmarried girls’ abortion choice.

In Chart 5.3, 53.1 percent of female and 49 percent of male respondents believe that most unmarried girls would decide to have an abortion “*if the putative father of the pregnancy denies he is responsible for the pregnancy*”. The society still stigmatise a child that has no acknowledged paternity despite the Constitutional prohibition against discrimination or deprivation against any person in Nigeria because of the circumstances of his/her birth.<sup>66</sup> Law often does not depict social reality as can be seen from this statement by a 22 year old Apprentice Mechanic who said “I agree it is acceptable for an unmarried girl to have an abortion if the putative father will not be responsible for the pregnancy and also if he will not care for her and the baby”. Apart from the stigma of illegitimacy, this study shows that many unmarried girls would choose abortion and not want to have a child if they are in school. Unmarried girls would prefer to have economic independence later in life that only proper education can provide,<sup>67</sup> as seen from the response in Text Box 5.16, which is typical of responses given by both genders across different demographic lines.

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<sup>65</sup> Field Data Analysis: 37 year old male undergraduate.

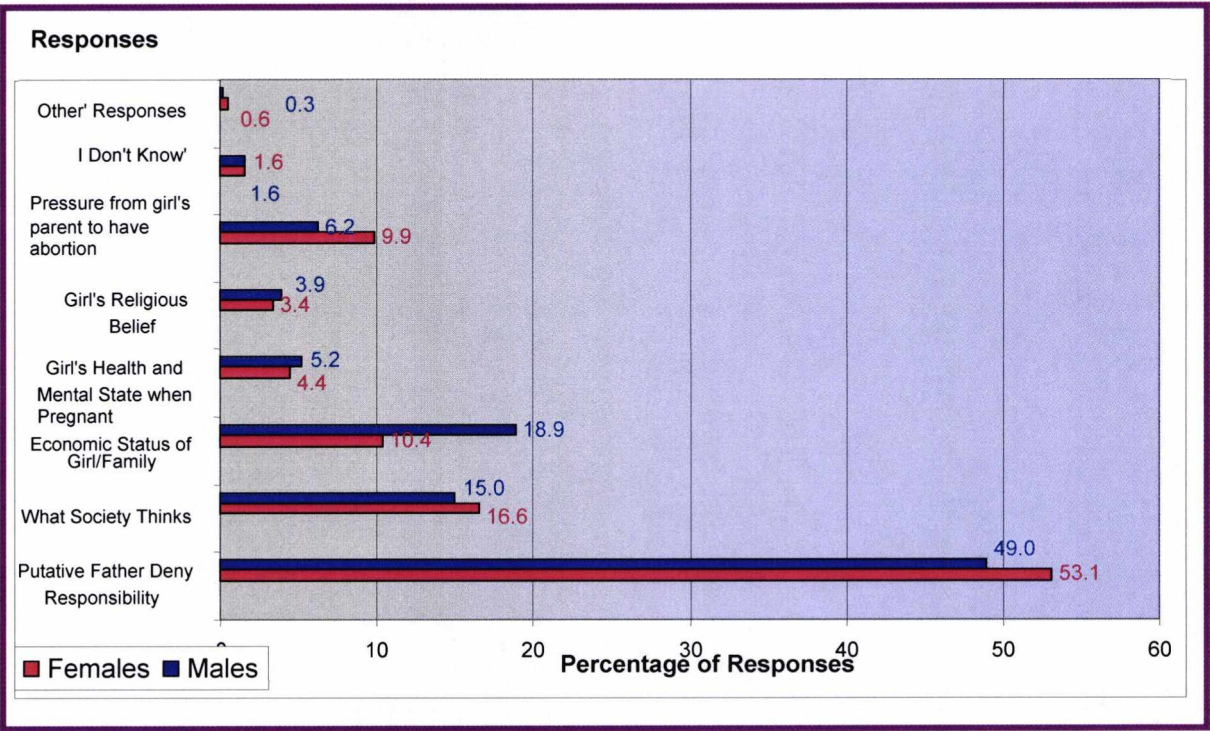
<sup>66</sup> Section 42 (2) The Constitution of the Federal Republic of Nigeria, 1999. Bleek states that some stigma is still attached to an illegitimate child: Wolf Bleek, *Footnote* 30 at 103-120.

<sup>67</sup> The desire for education by unmarried women has not changed since 1996 when Bankole *et al* showed that young unmarried women are more likely to choose abortion because having a child would disrupt their education, employment or career on a worldwide bases. In Sub-Saharan Africa a pregnant girl must leave school. Akinrinola Bankole *et al* (*Footnote* 36), 72.



**Chart 5.3**

**Percentage Distribution between Females and Males Responses to What Influences Unmarried Girls' Abortion Decision in Contemporary Nigeria**



*Source: Field Data Analysis*

**Text Box 5.16**

She might want to complete her education, or decide to have a child when she is fully and properly married, the putative father might deny ever being responsible for it, so she has no other choice than to terminate the pregnancy.

**32 year old male, Computer Engineer  
Instructor, Christian**

*Source: Field Data Analysis*

An unmarried girl's pregnancy brings "shame and disgrace for the whole family".<sup>68</sup> Despite the usual statement by respondents that society should not interfere in personal reproductive decisions of women, it seems that this applies only to married women. Many unmarried girls are still mindful of the stigma a pregnancy brings and would choose abortion based on "*what society thinks of them*" according to 16.6 percent of females and 15 percent of male respondents. This perception cuts across all educational levels. For instance, another respondent with no formal education said, "While some family may discourage abortion, some may allow termination because of stigma from society".<sup>69</sup> Several respondents stated that abortion saves the unmarried girl from trauma and mockery by society. A pregnant unmarried girl is faced with a lifetime of inferiority complex because society will not forgive her for getting pregnant and throughout her life, the fact of her pregnancy will be a reference point for anything she wants to do later in life. It is difficult for her to get back into school, get an education or get a job. Later in life, many men will be unwilling to marry her.

Text Box 5.17 is a cross-section of respondents' responses giving the various views on abortion and the social stigma abortion carries for unmarried girls:

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<sup>68</sup> Field Data Analysis: 29 year old female Banker, Christian, divorced,

<sup>69</sup> Field Data Analysis: 36 year old male Trader with no formal education, Muslim, married

**Text Box 5.17**

Many unmarried girls' view today is that if they are not ready to take the responsibility, abortion is the best decision to take more so the society might see her as being promiscuous. She would probably have a lot of influence from friends who share the same view. Even parents sometimes instigate termination of pregnancies to avert social disgrace.

If her boyfriend rejects the pregnancy, and also in some cultures an unmarried girl must not get pregnant before marriage otherwise she will be ostracised from the community.

**(i) 16 year old male, Secondary School Student**

She won't be able to achieve her goals because in Nigeria our teachers term unmarried girl's pregnancy as "the end of the road" and one's education is banished

**(ii) 20 year old female, Catering student with Secondary School Education**

Most times girls have abortions without their parents knowing and most times the girls do it to cover the shame they might face from society at other times parents will prevent her from aborting it because of their religious belief.

**(iii) 29 year old male, Cattle Rarer, with no formal education**

**(iv) 25 year old female, Teacher, with Tertiary education**

*Source: Field Data Analysis*

Another social reason why unmarried girls would choose abortion is the “*economic situation of the girl and her family*”. 10.4 percent of female respondents and 18.9 of males considered this to be a compelling enough reason for unmarried girls to choose abortion.

The combined effect on the family of unmarried girls grappling with poverty, financial problems and social stigma would be to make it compelling for them to choose abortion for their daughters when they can hardly maintain them and their other siblings. If unmarried girls are forced to keep their pregnancy to term against

their will, it could lead to them abandoning the child and other forms of child abuse as the reasons given in Text Box 5.18 show.

**Text Box 5.18**

It may be seen as a sin if abortion is done, but one has to consider individual attainment of economic standard, educational level, food, shelter and many more before getting pregnant. If abortion is sought (to achieve these values) there is nothing bad in that.

As most people encounter the bad economy in the country, most of the people embark on sex for sale service, since it is the easiest job to be found and if one should mistakenly get pregnant; she must abort if she doesn't want to suffer death. (sic)

**(i) 24 year old male undergraduate    (ii) 23 year old, female, Commercial Sex Worker with Primary School education**

*Source: Field Data Analysis*

The respondents acknowledge that the risks associated with abortion are quite many. But decisions on what to do when unmarried girls gets pregnant in contemporary Nigeria will depend on their families' socio-economic class, their financial situation and their future educational pursuits or career.

**Pressure from girl's the parents to have an abortion**

Even though respondents accept that parents would rarely compel their daughters to seek abortion, in instances where they do, parents put pressure on their daughters because parents feel the pregnancy will impede their education and future development. 9.9 percent of females and 6.2 percent male respondents felt that parents would pressurise their daughters to have abortion because they would want them to get a proper education or vocation so they are not dependent on their husbands in future. In some cases parents reasons maybe because they do not consider the putative father suitable for their daughter and pressurise her to have an abortion. Some respondents state that some mothers even take their



daughter to abortion clinics to have the termination done.<sup>70</sup> The statement in Text Box 5.19 by the respondent below, which is typical of several, made by both genders shows this:

### **Text Box 5.19**

Most of the girls who get pregnant before marriage did it out of ignorance and improper care from parents. Therefore, the first thing that would come to such girl's mind and even her parents' is to terminate the pregnancy because it is believed it would disturb the girl academically.

### **29 year old male Accountant**

*Source: Field Data Analysis*

There is a limit to how far parents can act as watchdog over their daughters' activities (which they do not do for their sons) especially when they have left the home environment and have an independent life within a university setting for example.<sup>71</sup> The study shows that in majority of cases parents are not informed before their daughters unilaterally take the decision to seek abortion. Girls would seek advice from their friends and their choice of where the abortion is performed would depend on their awareness, and exposure to abortion practice, and their socio-economic and educational background. The more socio-economically enlightened the girls are, the more likely, they would seek abortion in proper medical facilities; while the less economically stable girls would more likely seek unqualified personnel to perform their termination for them. However, many

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<sup>70</sup> This situation is an already prevalent fact known to me as far back 1995, following a study I carried out under the auspices of the Social Sciences and Reproductive Health Research Network in Nigeria funded by the Ford Foundation see Titilayo Aderibigbe, 'An Assessment of the Empowerment of the Legal Rights of Adolescents in Nigeria' in Lola Dare, (editor) *Status of Adolescents and Young Adults in Nigeria* (Nigeria: (Centre for Health Sciences Training Research and Development International, (CHESTRAD) 1997); also, Titilayo Aderibigbe, 'The Law and Sexual Offences' (1995) Nigeria: (Number 2 December) *The Network* 15.

<sup>71</sup> In traditional society, sexual experience for men happens without restrictions whenever the man is ready and has performed the initiation rite to manhood (where this is the custom): Helen Ware

respondents believe that the choice of abortion for unmarried girls, especially where their health and mental state will be affected by the pregnancy should still be their own and not their parents'. This is essentially because it is their life and they should be able to make a choice they can accept in future and not have regrets because of parental coercion. Besides, the study shows that many young adults are aware of abortion and all the social and health ramifications surrounding the issue as can be seen from the response of this 14 year old female student in Text Box 5.20:

**Text Box 5.20**

In present day Nigeria most unmarried girls are already independent of their parents and know what to do about their unwanted pregnancy, so the decision is left to them.

**14 year old female Secondary  
School student**

*Source: Field Data Analysis*

**The girl’s health and mental state at the time of the pregnancy**

A small percentage of 4.4 female and 5.2 male respondents acknowledge that the age of the pregnant girls as well as their mental state at the time of the pregnancy should be a determining factor when making abortion choice. A young male medical doctor said that many so called ‘enlightened’ girls have resorted to the use of abortion as a form of contraceptive. He further stated that:

## Text Box 5.21

It is common among girls of today to have frequent abortions, in this way some have totally destroyed their womb and thereby totally destroyed their life.

### 28-year-old male, Medical Doctor

*Source: Field Data Analysis*

Many of the less educated girls sometimes resort to the use of dangerous drugs to force a miscarriage when they are pregnant. Many of the respondents believe that the combinations of all drugs taken by some girls would naturally have affected them and the foetus. In such cases, the consensus among respondents is that the best option for both the unmarried girl and the foetus is to have an abortion performed.

When discussing the health hazard that flow from the illegality of abortion and the difficulty of accessibility of safe abortion services, we often forget the effect of the law on 'Commercial Sex workers'.<sup>72</sup> These women are faced regularly with abortion choice almost on a monthly basis when they fail to see their menstruation. These two Commercial Sex workers below depict the effect of the law on the health of these women in the statement:

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(George Allen & Unwin (Publishers) Ltd., 1983), 6.

<sup>72</sup> In a 1993 study I carried out along with E. Smaranda Olarinde titled 'Adolescent Sexuality Study' under the auspices of the Social Sciences and Reproductive Health Research Network which was funded by The Ford Foundation: We had the opportunity of interviewing prostitutes in Mokola in Ibadan in the South-western part of Nigeria. Many of the prostitutes (or 'Commercial Sex Worker' as they preferred to be called) stated that they had a retainerhip with a few private hospitals that they could go discreetly, whenever they needed any medical treatment including abortion services without being humiliated or stigmatised. Many of the prostitutes stated that they sometimes had abortions done as often as two to four times a year in some cases. Many of the Commercial Sex Workers reasoned that they were forced into prostitution out of economic necessity, and that the services they provide to society is like any other. They believe that they are instrumental to keeping society stable since several of the men who employ their services are provided with succour and psycho-analyst therapy. Many men do not want to use condoms when they are with them. (However, attitudes may have changed because of the escalating incidence of HIV AIDS in Nigeria as in other parts of the world). For these reasons they ought to be given access to abortion services not only in situations when their lives are in danger: Titilayo Aderibigbe, 'Adolescent Sexual Abuse in Nigeria', (1997) 3 (4), *The Network*.

**Text Box 5.22**

People use ungrated (sic) drugs, or even hard drugs and alcohol, even herbs to abort. Girls are forced to use unsafe drugs and even dangerous concoctions of herbs...If they legalise abortion, the abortion process will be easier and young girls will stop dying like goats

Abortion is also possible by using unripe orange and potash and mix it with water. Drink it at night time before going to sleep. This will make the girl see her period.

**(i) 32 year old Commercial Sex Worker, divorced with Children with Primary Secondary School education**

**(ii) 28 year old Commercial Sex Worker with two children with School education**

*Source: Field Data Analysis*

**Other reasons given for when abortion should be allowed**

The respondents also gave several other reasons why abortion should be allowed which are not limited to unmarried girls alone.<sup>73</sup> Many of the respondents believed that abortion should be available in rape cases; when the baby is likely to be deformed; or will be born severely handicapped; where the woman's health will be affected by the continuation of the pregnancy or where the girl is too young to carry the baby to term; and where conception is as a result of incest.<sup>74</sup>

**The father makes the abortion choice for his pregnant unmarried daughter**

I have shown earlier in the previous section that when unmarried girls are pregnant most often they do not inform members of their family and often make unilateral choices of abortion. But, what happens when the family is informed? From this study, it is clear that in circumstances where the family knows about

<sup>73</sup> I deal with these issues in detail in chapter 7.

<sup>74</sup> These ethical issues are addressed in the following chapter.



their daughter's pregnancy the choice of whether the girl will have an abortion or not still rests with the pregnant girl's father in most cases. Table 5.7 shows that out of 482 respondents, who answered this question, 52.28 percent said it is the father of the pregnant girl who '*decides what to do with their unmarried girl's pregnancy*' and 18.26 said it should be the mother. Only 26.76 percent of the respondents said it should be the pregnant girl. Table 5.8 is a breakdown of the responses along gender lines and the result shows the influence of patriarchy when a daughter's pregnancy decision is to be made. 50 percent of females and 54.44 percent of males hold the view that, *it is the pregnant girl's father who should make the decision*; while only 17.24 percent of females and 19.2 of males said, *it should be the mother of the pregnant girl*. Only 30.60 percent of females and 23.2 percent of males acknowledged that *the pregnant girl should have the final say on what to do with her pregnancy*.<sup>75</sup> These facts were corroborated by discussions with respondents who are medical practitioners who owned-up to providing abortion services, that they would prefer the father of the pregnant girl to sign the consent form if asked to perform an abortion on a patient who is still a minor. If the father were unavailable, the doctors would prefer a male relation to sign.<sup>76</sup> This shows that despite there being no law stipulating the gender of who is competent to sign for an operation,<sup>77</sup> the medical practitioners often insist on male family members signing in keeping with the patriarchal nature of society. This survey corroborates my finding that the father is also expected to sign the consent form for *any* surgical operation including abortion.<sup>78</sup> The only positive deduction I make from this survey is that across gender lines pregnant girls are believed to have more input in their reproductive choices than their mothers have. My findings corroborate an earlier study that found that 'decision making was husband dominated [and] decided alone ...such issues those pertaining to children (family size, birth control use, education, discipline,' and even the wife's use of leisure time, leisure and domestic expenditure.<sup>79</sup>

<sup>75</sup> I found some overlap in some instances where some respondents stated that the decision could be made in consultation with the girl's mother, but this was negligible because ultimately majority of the respondents stated that the father should have the final say.

<sup>76</sup> In chapter six I discuss in detail the issue of consent in abortion services.

<sup>77</sup> The Medical and Dental Council of Nigeria, Rules of Professional Conducts for Medical and Dental Practitioners in Nigeria (1995) section 16 merely states that medical practitioners "...must always obtain consent of the patient or competent relatives...before embarking on any special treatment procedures with determinable risks"

<sup>78</sup> This is discussed in chapter 8.1.

<sup>79</sup> Wambui Wa Karanja 'Conjugal Decision Making: Some Data from Lagos' in Christine Oppong (editor) *Female and Male in West Africa* (George Allen & Unwin (Publishers) Ltd., 1983), 237-The only area where the wife had autonomous decision making was in domestic food menu, work outside the home, domestic help, use of free time and contraception

**Table 5.7**

Who Decides What to do with an Unmarried Girl's Pregnancy in Contemporary Nigeria		
Responses	Number of Respondents	Percentage of Responses
Father'	252.0	52.28
Mother'	88.0	18.26
Pregnant Girl'	129.0	26.76
I Don't Know'	11.0	2.28
Other' responses	2.0	0.41
<b>Total</b>	<b>482.0</b>	<b>100.00</b>

*Source: Field Data Analysis*

**Table 5.8**

Differences between Female and Male respondents' Responses on 'Who decides what to do with an unmarried girl's pregnancy' in contemporary Nigeria		
Percentage of Respondents' Responses		
Responses		
Father	50.00	54.4
Mother	17.24	19.2
Pregnant Girl'	30.68	23.2
I Don't Know'	1.72	2.8
Other' Responses	0.43	0.4
<b>Total Percentage</b>	<b>100.00</b>	<b>100</b>
<b>Total Respondents</b>	<b>232 Female</b>	<b>250 Male</b>

*Source: Field Data Analysis*

## 5.4 “Abortion corrupts our women”: Reasons for opposing abortion

To get a balanced view about the differing attitudes to abortion within contemporary Nigerian society I will address some of the views of those people opposing abortion.

Just like the head of the Hausa community, who was reluctant for me to discuss abortion with the women in purdah because talking about abortion would “corrupt them”<sup>80</sup>, some respondents believe that abortion neither should be discussed nor encouraged. Their logic is that by discussing abortion openly, young women will be enlightened and emboldened to seek abortion. It seems that to these critics ignorance is a barrier to the creation of an awareness of the existence of abortion and its practice in society. Yet, abortion practices and the use of abortifacients have been in existence for as long as human desire to control their reproduction.<sup>81</sup> However, contemporary Nigerian society can no longer act like the proverbial bird with its head buried in the sand, women young and old are aware of abortion and do resort to it when individual situations demand it. Unfortunately, most seek the assistance of unqualified people to the detriment of their health. Some women who are forced to carry the pregnancy to term resort to infanticide by throwing the newborn baby in pit toilets, dustbins, canals or on rubbish dumps.<sup>82</sup> These desperate actions by women are a far worse solution to the social malady of abortion.

This study has revealed the ignorance of some respondents about abortion procedures and the belief that abortion equates to instant death or destruction of women’s wombs. This fear is understandable, because the widely known abortion procedures are those performed by unqualified people and adversely affects the woman’s health usually. Abortion law reform would control the clinical environment and lay down procedures when abortion is performed.

Though opposition to abortion is mainly on religious grounds, underlying it is the apprehension of, as well as a veiled desire by these critiques to retain control over

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<sup>80</sup> This was the term used by the Hausa leader (see the subsection titled ‘Fieldwork Experience’ in Chapter 4).

<sup>81</sup> Adekunle Owoade, ‘The Legal Implications of Contraception in Contemporary Nigeria’ (1988) *Nigeria*: 1(3) *Calabar Law Journal* 3-18, 9; Noonan, J. T. *The Morality of Abortion*

<sup>82</sup> The Center for Reproductive Law and Policy (CRPL), ‘Women’s Reproductive rights in Nigeria: A Shadow Report’ [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November 2002).



women's reproduction, thereby denies women autonomy. The statement by a 65-year-old Banker with tertiary education depicts the misgivings that "Abortion is against the will of God. It damages the womb. Through abortion they can contract diseases". Another 27-year-old male graduate doing his NYSC<sup>83</sup> said, "...abortion could cause AIDS".

Other respondents are of the view that women should know the consequences of their actions and "Because girls of nowadays are not responsible, if she is stupid enough to get pregnant she should not abort it".<sup>84</sup> Especially because "girls of today are careless and promiscuous"<sup>85</sup> and if "abortion is legalised women will use it as an escape route to continue having abortions".<sup>86</sup> Many of these statements make it seem as if women are capable of reproduction alone. Men who are party to the procreation continue with their life unscathed without suffering the criticism of society.<sup>87</sup>

Abortion is also opposed on the basis that the child has its own karma therefore, "termination of an unborn baby's life is ungodly because you never can tell what that child might become in life, so it is better to stay away from sex".<sup>88</sup> The law in Nigeria and many other countries of the world do not recognise the foetus as a legal entity until it is capable of independent existence from its mother.<sup>89</sup> Sexual abstinence is a desired virtue that cannot be guaranteed with exactitude because of human weaknesses, therefore I believe a more pragmatic solution is necessary when unwanted pregnancies occur.

Those opposed to the legalisation of abortion do not oppose only for religious reasons. Some see abortion as the result of the negative effect of Western influence on Nigerian women and society as a whole. Some respondents state that the break down of Nigerian traditional norms and culture is seen in the proliferation of abortion and if it is legalised, abortion will be more common within society. These views cannot be dismissed off-hand because they are genuine fears raised by Nigerians, however, abortion problem will not be solved by ignoring

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<sup>83</sup> NYSC-National Youth Service Corp-the mandatory one year national service every Nigerian graduate of a tertiary institution must undertake before he/she can proceed on other avenues in life.

<sup>84</sup> Field data analysis: 24 year old male student in Secondary school.

<sup>85</sup> Field data analysis: 30 year old male teacher with tertiary education.

<sup>86</sup> Field data analysis: 18 year old female Secondary school student.

<sup>87</sup> Parents do not as a rule keep as keen an eye over the sexual activities of sons (save for moral instructions and advise on avoidance of loose women) as they do their daughters

<sup>88</sup> Field data analysis: 50 year old male Technician with secondary education.

<sup>89</sup> Section 307 Criminal Code Act Caption 77 and Section 5(2) Penal Code Caption 105: Laws of the Federation of Nigeria.



its existence or the fact that it will not continue by retaining the law as it stands. Evidence from other developed countries has shown that in countries where abortion laws have been reformed to allow women easier access to abortion, the abortion rate has not only decreased but the health hazard from clandestine abortion procedures have declined.<sup>90</sup>

The issue of abortion has to be determined within the prevailing social context of Nigeria, by weighing the result of maintaining a pristine social morality that cannot be sustained (and it is already being eroded) with the reality that about 20,000 Nigerian women die each year as a result of complications from illegal abortion.<sup>91</sup> Nigerian women are at a greater disadvantage than other women in more developed societies are because women cannot control sexual occurrence within a marriage nor can they dictate or refuse sexual advances from their husbands.<sup>92</sup> The NPP expects that individuals should adequately space their family and give birth to only the number of children they are capable of maintaining;<sup>93</sup> because contraceptive use is low in Nigeria,<sup>94</sup> unwanted pregnancy is a common occurrence. Therefore, abortion should be seen as a necessary backup to failed contraceptives and enable women to give their children a better quality of life in keeping with the aims and objectives of the National Policy.

The existence of the high abortion rate in Nigeria is an indication that women in Nigeria as in other countries in the world wish to combine sexual activities with individual self-actualisation and development. In many cases sexual control within a heterosexual relationship lies with the man and not the woman, but it is the woman who bears the consequences of the physical, emotional and medical implications of pregnancy. In polygamous unions individual wives maintain their

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<sup>90</sup> Emily Jackson, *Ethics and British Abortion Law* <http://www.prochoiceforum.org.uk/al9.asp> (accessed 21 November 2002).

<sup>91</sup> World Health Organisation, 'Maternal Health and Safe Motherhood Programme, Abortion: A Tabulation of Available Data on the Frequency and Mortality of Unsafe Abortion' 33 (2<sup>nd</sup> edition 1994); S. K Henshaw, Susheela Singh; Boniface A. Oye-Adeniran; Isaac F. Adewole; Ngozi Iwere and Yvette P. Cuca, 'The Incidence of Induced Abortion in Nigeria' (1998) 24 (4) 156-164.

<sup>92</sup> Traditionally, girls are taught that 'decent' girls do not to initiate sex within marriage, and in a polygamous home where wives take turns to have coitus with their husband, it would be impracticable for the women in such marital set-up to refuse sex. This is corroborated by Theresa Akumadu, 'Data on the Nigerian Chapter of the Anglophone Africa Report 9' in *The Women's Reproductive Rights in Nigeria: A Shadow Report* (1998) The Center for Reproductive Law and Policy [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed November 24 2002).

<sup>93</sup> Federal Government of Nigeria: NPP, 1988, Section 1.5.

<sup>94</sup> Amuyunzu-Nyamango; Biddecom; Mary Ann E. Ouedraogo, Chritine and Woog, Vanessa 'Qualitative Evidence on Adolescent Views of Sexually Transmitted Diseases in Sub-Saharan Africa, (2005) Occasional Report Number 16', (New York: The Alan Guttmacher Institute: 17-25, 19.

children and resources from the husband are often shared thinly among all the children. It therefore becomes imperative that women should seek to have the capacity to maintain only those children they can adequately care for within their resources. To achieve this, women need to have autonomous control over their reproduction.

### **Abortion and single mothers, head or tail they lose out**

The largely conservative Nigerian society would not readily forgive women for having children without contracting one form of marriage that would legitimise their unborn children.<sup>95</sup> When respondents were asked separately: 'If you were a female (or male) would you approve marriage with a single mother?' Table 5.9 shows the results. The table shows that for both genders 57.28 females and 56.96 males responded that they 'would not'. The implication for single women is that if they choose to keep an unplanned pregnancy, it is most unlikely that they will be able to marry anyone else (but the putative father of the foetus), and the reason the single women would likely consider abortion (among other reasons) is his rejection of responsibility for the pregnancy. Therefore, single mothers are left in the lurch where keeping the pregnancy is socially objectionable and access to pregnancy is legally problematic. Whichever way single motherhood is viewed, head or tail the single mother loses, for this reason there should be access for her to choose abortion legally if she wishes.

Some samples of statements by respondents in Text Box 5.22 state some of the several reasons why there is opposition to marriage with single mothers.

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<sup>95</sup> Three types of marriages are legally recognised in Nigeria, Civil marriage which is monogamous; Islamic marriages which allows a man to marry a maximum of four wives provided he can love each of them equally and Traditional marriage which allows a man to marry as many wives as he can adequately cater for. Marriage is considered an important and imperative social institution in Nigeria.



Table 5.9

Social Attitudes to Fertility: Marriage With Single Mothers and its Implication for Abortion Choice				
Responses to: 'If you were a female would you approve marriage with a single mother?'			Responses to: 'If you were a male would you approve marriage with a single mother?'	
Responses	Number	Percentage	Number	Percentage
'I will approve'	203	32.48	229	32.86
'I will not approve'	358	57.28	397	56.96
'I don't know'	64	10.24	71	10.19
Total	625	100	697	100.00

Source: Field Data Analysis

**Text Box 5.22**

Since my son is not an imbecile or handicapped I don't see why he can't marry a single woman without complications.

The woman (single mother) is prone to divided interest between her matrimonial home and the family of the erstwhile child or children.

**(i) Male, 33 Trader, married with Secondary school education**

**(ii) 41 year old Female, Lecturer, married with Tertiary education**

It is uncultured, it usually creates problems and other troubles in the nearest future and religion goes against it strictly.

My son is not bringing his own liability into her life so why should she bring her problem to him?

**(iii) 26 year old Male, Caterer with Tertiary education, single**

**(iv) 40 year old female Trader with Primary School education, married**

*Source: Field Data Analysis*

Other reasons for opposition to marriages with single mothers are that the child would be a source of conflict in the matrimonial home of its mother, especially when the stepfather dies. This is because traditionally stepchildren cannot inherit from their stepfathers.<sup>96</sup> Also, the belief is that the children would always be outcasts within the new home and would eventually look for their biological father making all the maintenance and care given to the child by the stepfather a fruitless and thankless exercise. Some male respondents reiterated that they would not be comfortable with the single mother because they believe she had the child

<sup>96</sup>, Titilayo Aderibigbe *Will and Will Making Among Public Servants: A Case Study of the Nigerian Institute of Social and Economic Research*, (Nigeria: NISER 2001), 14. The only exception, is when the step-father makes a will that divest his personal property (but not family property held in common) to the step son.



because of her promiscuous life-style.

However, the minority of those in favour of marriage with single mothers are mainly from the educated class. One female respondent said "The fact that a lady has child(ren) doesn't make her worse than those who don't".<sup>97</sup> While another was a little ambivalent when he said, "The situation surrounding her past is what matters. Some circumstances are so complex and tied up that you may not have a choice than to go contrary to your view/opinion".<sup>98</sup> From the foregoing, my argument is that if women are denied abortion due to legal restrictions; yet the same society denies them the right to future matrimony because of social abhorrence to single motherhood and are ostracised because of bearing a child out of wedlock, where does the single mother seek succour? Whichever way women turn they lose out through the denial of their right to control their fertility and have children when it is socially and personally convenient for them. While I do not advocate abortion simply on the ground of rejection by a putative father, women, married or single, ought to be able to exercise their right as individuals to procreate when it is feasible for them and under circumstances that they are comfortable with without suffering humiliation on account of their choice.

Society often overlooks the psychological and social effect of illegitimacy on the child despite the prohibition by law against their discrimination.<sup>99</sup> Nigerian society places great importance on paternity and it is socially impossible for a child not acknowledged by the putative father to be integrated within traditional society. Traditional set up make it inherently impossible for that child to participate in family meetings from either of his parents' sides. S/he cannot hold any traditional post or headship and if the child is a female when she is about to be married, the paternal family are the ones to perform traditional marriage rites which she will be denied if unacknowledged. These privileges are intrinsically tied to paternal lineage by tradition in all ethnic groups in Nigeria.

There is no social security system in Nigeria therefore a single mother is at an economic disadvantage. She either has to stop her education or whatever vocation she is engaged in. Often the woman is forced to raise the child alone unless she has support from her family. It is often difficult for single mothers to

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<sup>97</sup> Field Data Analysis: 30 year old female Biochemist.

<sup>98</sup> Field Data Analysis: 25 year old male Lawyer.

regain their footing within society or improve themselves educationally. Many of the respondents reiterated that children of single mothers are often social outcasts and miscreants and end up as vagabonds unless the mother has the economic capacity to maintain them.

Some respondents argued that women who engage in sex outside wedlock deserve being discriminated against, but procreation is practised between men and women.<sup>100</sup> Abortion choice is not advocated simply because the putative father denies a pregnancy. But, that the child and its mother would be saved many of the social and psychological problems stated here if the mother is given a choice of abortion not only in situations where her life is at stake as it is presently under the law.

## Summary

In this chapter, I have looked at the perception of women, their functions, duties and reproductive rights and autonomy in traditional and contemporary Nigeria. The study shows that these perceptions are evolving and changes are evident that society is giving women more control over their fertility. I show that there are many social issues affecting abortion decisions for many women in contemporary Nigeria, and whereas abortion choices involve a complex admixture of social factors; the most compelling is the economic depression most Nigerians face today. However, what decides individual choice of abortion by married women is different from unmarried girls. For a married woman the most compelling reason is economic and the inability to maintain previous children; while for unmarried girls it is the lack of acknowledgement by the putative father of their pregnancy. Unmarried women who are economically independent have unrestricted choice of abortion. But those who choose to retain the pregnancy, are ostracised by the society and the child face a life-time of discrimination despite Constitutional provision against discrimination. Also, contemporary Nigerian men believe they ought to have a say in the abortion decisions of their wives if they are the putative

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<sup>99</sup> The Constitution of the Federal Republic of Nigeria 1999, Section 42 guarantees the 'Right to freedom from discrimination'... or deprivation *merely by reason of the circumstances of his birth*'. (Italics are mine for emphasis.)

father, while for under-age or dependent unmarried girls, their father wants to retain the choice of abortion decision for their daughter. Contemporary women on the other hand believe that the ultimate choice of abortion decision should rest with them because it is their body. This is an assertion that Nigerian women want control of their fertility to rest with them. The fact that abortion is an occurring choice made by women and accepted by men shows that a reform of abortion law is necessary for it to be in conformity with social reality.

In chapter six, I look at how to arrive at an acceptable abortion law reform in Nigeria. I will do so by looking at all the ethical issues and rights of all the parties to abortion.

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<sup>100</sup> Except where artificial insemination is done through IVF services and these require a two parents for the procedure to be accepted.

# CHAPTER SIX



## **‘PRIVATE HARLOTS’: DEFINING THE CHARACTERISTICS OF NIGERIAN WOMEN WHO SEEK ABORTION**

“Women who seek abortion are those who live for pleasure. They lack self-control. Those who cannot plan, who throw themselves out into the hands of circumstances to carry them wherever it blows. They are hard-hearted. They do things without thinking of its consequences. They have no conscience. Most are private harlots”.<sup>1</sup>

Women who seek abortion do so for a combination of personal, social and cultural reasons. Unfortunately, some members of society characterise women who choose abortion in negative terms as this opening quotation shows. The personal characteristics of individual women are likely to influence their possibility of terminating an unwanted pregnancy and regardless of their demographic and socio-cultural group; some women will have an abortion if the pregnancy is unintended.<sup>2</sup> Research has shown that a large percentage of Nigerian women will have abortion at some stage in their life.<sup>3</sup> The focus of this chapter is on the perceived intrinsic characterisation of Nigerian women who are likely to have an induced abortion for reasons outside of what the law stipulates.<sup>4</sup> I will use quotations of respondents interviewed during this research as well as data from the field study to depict the perceptions and characterisation. In my discussions in this chapter I am influenced by similar works by Sheldon<sup>5</sup> and Boyle.<sup>6</sup> In this chapter I attempt a social ‘deconstruction’ of the image of the woman who would choose abortion in Nigeria. By giving a construction of the ‘aborting woman’<sup>7</sup> I reconcile the language of the law with the woman. This is because as

<sup>1</sup> Field Data Analysis: 48 year old Male Nurse, Christian, and Widower.

<sup>2</sup> Akinrinola Bankole; Susheela Singh and Taylor Haas ‘Characteristics of women who obtain induced abortion: A Worldwide Review’, *International Family planning Perspectives* (1999), 25(2), 68-77.

<sup>3</sup> Raufu Abiodun ‘Unsafe Abortions Causes 20,000 Deaths a Year in Nigeria’, *BMJ* 325 (2002), 988: In the research about 80 percent of women interviewed stated that they have had abortion at least once in their life.

<sup>4</sup> The only reason the law stipulates for induced abortion is to save the pregnant woman’s life. There are however several demographic, social and medical reasons why Nigerian women seek induced abortion. The family size; their economic status, educational level, religious beliefs are reasons adduced by Bankole (et al) (2002), (*Footnote 2*), for women seeking induced abortion. This research has also shown that the likelihood of giving birth to a deformed child is another reason why Nigerian women are likely to seek induced abortion. This issue is discussed in chapter seven.

<sup>5</sup> Sally Sheldon, *Beyond Control Medical Power and the Abortion Law* ((London, Chicago: Pluto Press, 1997).

<sup>6</sup> Mary Boyle, *Rethinking Abortion, Psychology, gender, power and the law*, (London and New York: Routledge, 1997).

<sup>7</sup> Sally Sheldon, (*Footnote 5*) at 35.

Boyle has said “the female ‘legal subject’ of abortion legislation has been constructed so as to make particular forms of legislation appropriate”,<sup>8</sup> this is true of Nigerian legislation on abortion also. I argue further that abortion legislation in Nigeria unwittingly paints the picture of an ‘immoral woman’ who, without compunction, will commit ‘an offence affecting the human body’ by choosing abortion.<sup>9</sup> I believe law ought to reflect as much as possible extant social realities; but the construction of the Nigerian female legal subject under Nigerian abortion law does not reflect with exactitude the reality of that persona. When a law does not meet prevailing social realities as the abortion legislation in Nigeria, its reform is necessary. What form these reforms should take can only be gleaned from the perceptions and attitudes of the people to specific issues that the law touch directly or fail to, indirectly; as well as other important issues that are ignored by the law, but are important if abortion legislation is to conform to the needs of modern Nigerian women.

This chapter focuses on the many issues that are not discussed under Nigerian abortion legislation. It is by discussing these issues that we can untie the tired womb of thousands of women who seek abortion each day in Nigeria and arrive at a just law that will adequately address their need for abortion. I attempt to decriminalize the aborting woman’s imputed characteristic and lift the veil of odium to see the true nature of the woman who chooses abortion. To do this I begin by discussing the legal representation of the characteristics of Nigerian women who seek abortion. Secondly I examine the characteristics of women who seek abortion as depicted by the survey. I examine this under two broad headings: I look at their negative and positive characterisation and examine whether the stereotyping of their image fit the language of the abortion law. Under both main headings, I discuss the influence of the educational attainment of respondents to their characterisation of these women. I conclude with a summary that examines some of the health policies of Nigerian government and how they meet their reproductive and health needs.

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A term used by Sally Sheldon *ibid*, in depicting the image of the woman who chooses abortion during the Parliamentary debates preceding the passing of the British Abortion Act of 1967.

<sup>8</sup> Mary Boyle, (*Footnote 6*) at 27.

<sup>9</sup> The title given to the sections in the Criminal Code (applicable to the southern states in Nigeria); dealing with abortion legislation is ‘Offences Relating to Morality’ while that of the northern states is the Penal Code under the title ‘Offences Affecting the Human Body’. Both titles already make a moral judgment on the characteristics of the type of woman who will seek abortion and imputes to such a woman a veiled sentence of a murderer and an immoral person.

## 6.1 Legal Representation of the Characteristics of Nigerian Women who Seek Abortion

Abortion is an issue that generates furores among people, whatever side of the abortion debate they are, because society compartmentalise categories of women who will and will not choose abortion with generalised characteristics. A clear understanding of the characteristics of women who would seek abortion in Nigeria is needed to be able to paint a clear picture of the type of woman for whom law reform is being sought. As was the case in England at the time the Abortion Act 1967 was being debated in Parliament the social construct of the image of women who seek abortion is often one of an 'emotionally weak, unstable...a selfish irrational child'.<sup>10</sup> "Sometimes these women are pictured as the career-minded, self-centred, educated and westernised women who lacking in maternal instinct would put career above children".<sup>11</sup> However women who are faced with the hard abortion decision in Nigeria are from different types of demographic and ethnic background. While some respondents are fanatically religious and lace every sentence of their description of the 'aborting woman'<sup>12</sup> with quotes from different religious teachings, there are those who hold strongly to their faith but do not condemn the women who choose abortion recognising that they do so for compelling reasons. These later respondents recognise that abortion might be a 'wrong but right thing to do'<sup>13</sup> within their immediate circumstances. This later group of women; have assessed the reality of these women's situation, and have been able to internalise and objectively judge their individual choices. This research shows that women make abortion choice by forcing themselves to arrive at a reconciliation of their ethical beliefs and balance it with the practical exigencies of their existence within modern Nigerian society. Faced with the excruciating decision of an unexpected pregnancy, modern Nigeria women within their social construct make their choice of abortion based on the practicality of how they can live a meaningful quality of life and with their conscience by the choice they make.

The historical legislative development of Nigerian abortion law is created against the background of strict British Victorian moral attitude towards women and

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<sup>10</sup> Sally Sheldon, (*Footnote 5*) at 35; Sally Sheldon, 'Who is the Mother to Make the Judgement?: The Construction of Women in English Abortion Law' (1993) 1 *Feminist Legal Studies* 3-22, 7.

<sup>11</sup> Field Data Analysis 30 year old Banker, with tertiary education and a Pentecostal Christian.

<sup>12</sup> Sally Sheldon, see (*Footnote 5*) at 35.

<sup>13</sup> Ann Furedi, 'Wrong but the Right Thing to Do: Public Opinion and Abortion' in Ellie Lee *Abortion Law and Politics Today* (PALGRAVE 2001) 160-161.

childbearing. The British put Nigeria's abortion law in place when Nigeria was part of her colony in the early Eighteenth Century. The declaration of Southern Nigeria as a Protectorate of Britain in 1900 formalised the administrative control of Britain over Nigeria,<sup>14</sup> this resulted in 'the subordination of the indigenous legal system to the one imported by the colonial power...meant, in effect, an imposition of British social values, for every legal system is a product of a social milieu'.<sup>15</sup> The wordings of the present abortion law are a prototype of the Offences Against the Person's Act 1861 and reflects British attitude to women's sexuality and reproduction then. As a result the British society's moral attitudes of the eighteenth century were forced onto Nigerian society without taking cognisance of the indigenous people's needs.<sup>16</sup> The British morality of that period is reflected in sections of the Criminal and Penal Codes which include sections dealing with miscarriage.<sup>17</sup> Prior to colonisation, the sexuality of the Nigerian woman was culturally determined.<sup>18</sup> Nigerian women in the Nineteenth Century were known to be independent and were able to exercise autonomous control over their reproduction through extended child spacing and sexual abstinence.<sup>19</sup> Many of the autonomous controls enjoyed by Nigerian women (which were not given British

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<sup>14</sup> Nina Emma Mba, *Nigerian Women Mobilized, Women's Political Activity in Southern Nigeria, 1900-1965* (Institute of International Studies, University of Berkeley, 1982), 1. Northern Nigeria was amalgamated with the South in 1914, but the British tried as best not to disrupt the Islamic religion of the North which explains why there are two sets of laws between the South and Northern parts of Nigeria dealing with personal and criminal matters.

<sup>15</sup> O. Adewoye, 'The Law and Social Change in Nigeria' *Journal of the Historical Society of Nigeria* (1973) 3(1) 149-158 at 150.

<sup>16</sup> *Cole v Akinyele* (1960), 5 FSC 84 The case was about the legitimacy of a child not born in accordance with the British concept of a valid Christian monogamous marriage. Nigerian law recognises Islamic and traditional marriages as valid, though both are polygamous. The court held that a lot of the morality depicted in our laws is alien to the indigenous culture of the people they are made for because they are imported laws of the British society that did not reflect Nigerian culture.

<sup>17</sup> There are two abortion laws in Nigeria-the Criminal Code applicable to States in the mainly Christian southern parts of Nigeria; and the Penal Code (which is a modification of the Criminal Codes and the Penal Codes of Pakistan and Sudan) applicable to the mainly Muslim northern States of Nigeria. The crimes and punishments are similar in both codes generally. Because Nigeria is a federation, each of the States have their own laws; but the wordings and sections of the laws are uniform. That is all the states of the south using the Criminal Code all have the same law with the same sections as references; similarly, the northern states using the Penal Code all use the same Penal.

<sup>18</sup> William Bascom, *The Yoruba of Southwestern Nigeria* (New York: Holt Rinehart and Winston, 1969), 61-63; Nathaniel A. Fadipe, *The Sociology of the Yoruba*, (Nigeria: Ibadan University Press, 1970), 83-86.

<sup>19</sup> Breast feeding and sexual abstinence went on for as long as three years which was a form of contraceptive. Lawrence A. Adedokun, 'Marital Sexuality and Birth Spacing Among the Yoruba' in C. Oppong (editor), *Male and Females in West Africa* (London: George Allen and Unwin, 1983), 127-137; D. B. Jelliffe, 'Infant Feeding Among the Yoruba of Ibadan' *The West African Medical Journal* (1953) 2(3) 111-122; Margaret Thompson Drewal, *Yoruba, Ritual Performers, Play, Agency*, (Indiana University Press, 1992), 188.



women of the same era) were taken from them.<sup>20</sup> While it has been argued that abstinence and cultural taboos against frequent pregnancy meant that the necessity for abortion did not arise;<sup>21</sup> the fact that women had to maintain the cultural code of not bearing a child during the mandatory breastfeeding and weaning period<sup>22</sup> pointed to the fact that abortifacients were used to prevent pregnancy.

Sections 229 and 232 of the Criminal and Penal Codes<sup>23</sup> respectively both punish the woman who 'attempts or procure her own miscarriage'. I argue that both these laws were incorporated into the first Nigerian Constitution in 1960 without consideration for the applicability of the law to the social and cultural context of Nigerian women at the time. The wordings of the law are similar to Sections 58 and 59 of the 1861 English Law; they thereby are a reflection of the Victorian perception of women in England and not contemporary Nigerian women. The incorporation into the Nigerian legal system of these laws deconstructed the traditional concept of the Nigerian woman and replaced her with an alien perception and characterisation of womanhood that the law has not succeeded in re-creating. Women have neither succeeded in re-claiming their reproductive independence. The codes construct a legal persona that did not even reflect the Nigerian woman of the 60s, because the women of that time were economically independent and took control of their reproduction within the social context of their time.<sup>24</sup> I argue further that the high prevalence of abortion in Nigeria is a reflection of the inability of the law to suppress the intrinsic determination of Nigerian women to continue to exercise control on their reproduction which they had always been able to within socio-cultural means available to them. Traditional women found traditional means through the use of herbs as abortifacients to prevent pregnancy. Also, the traditional marriage institution made it possible for women to be independent and space their children within socially defined means. All these were taken away from women when the British enforced their legal and social

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<sup>20</sup> Prior to colonisation, Nigerian women exercised control over, owned and inherited properties independently of men. They also had control over their reproduction because the polygamous form of marriage left them free to share conjugal duties with co-wives and also enabled them to choose when to procreate: Nina Emma Mba, (1982), (*Footnote 14*), 52-53.

<sup>21</sup> J. C. Caldwell and P. Caldwell 'The Role of Marital Sexual Abstinence in Determining Fertility: A Study of the Yoruba in Nigerian' *Population Studies* 31(2) (1992) 193-217.

<sup>22</sup> Any woman who became pregnant during this time faced societal ridicule and the pregnancy was believed to lead to the ill-health of the existing child: Elizabeth Isichei *A History of Nigeria* (New York: Longman Group Ltd., 1983), 257-258.

<sup>23</sup> Laws of the Federation of Nigeria, 1990, see *Footnotes* 60 page 13 and *Footnote* 62, page 14 for the wordings of sections 229 and 232 of the Criminal and Penal Codes respectively.

<sup>24</sup> Nina Emma Mba, (1982), (*Footnote 14*), 44-52.

morality on Nigerians through the law and governance; thereby making it socially impossible for women to exercise control over their reproduction the way they used to.<sup>25</sup>

The only ground by which abortion is allowed under the Criminal and Penal Codes is when the life of the woman is in danger; but the Nigerian society of pre-colonial era had used different types of abortifacients to control their reproduction<sup>26</sup> prior to British rule. The state of development of medicine since 1861 is not the same as it is today. The reproductive needs of Nigerian women today are definitely not the same as in 1861 when the English law was enacted, or in 1960 when Nigeria gained independence. But the law remains the same, unchanged and gives a characterisation of women who seek abortion as criminals without incorporating the fact that social changes and medical advances has made it necessary that women may need to have children only when it is socially and economically convenient for them and their family. This research shows however that choosing to have an abortion to meet their socio-economic needs does not characterise them as criminals as the law stipulates.

Through the years the Nigerian Legislators have also not reflected the rising social, economic and health needs for abortion by Nigerian women into the law. The Nigerian law imputes a Nineteenth Century legal construct of a British woman to a Nigerian woman of the Twentieth Century, which is no longer reflected even in the British society of today.<sup>27</sup> The Nigerian Legislature for its part has shown a reluctance to reflect changes of the needs of women into the law because it is socially and politically convenient for them to disregard it. The reason for this I believe is because the abortion law as it is continues to give men control over

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<sup>25</sup> The British in 1800 onwards until 1960, made the Nigerian women to believe that the imported Christian form of marriage was superior to the Customary form of marriage because it enabled women to file for divorce and insist on being the only wife of the man; thereby making it seem that their position under the British system was better under Customary system (Nina Emma Mba, (1982), (*ibid*), 54-58). I argue that the new system of law actually abolished women's freedom to own properties and exercise freedom to determine when they could engage in sex because their husbands were not confined to one woman, which left the women free to engage in economic activities and acquire properties.

<sup>26</sup> I. E. Ada 'The question of Abortion' *Nigerian Criminal Law Review* (1982,) 191-198, 191. The respondents in this research also mentioned various forms of abortifacients which they used to induce abortion. The case of *Attorney-General v Edgal* (1938) 4 WACA, 133 involved the administration of some form of noxious abortifacients administered by the accused which led to the death of the pregnant woman in the case.

<sup>27</sup> The amendment of the Offences Against the Persons Act 1861 by the Abortion Act 1967 and subsequently the 1990 Human Fertilisation and Embryology Act (which is also in the process of being amended), has periodically reflected the social needs of the British women and the state of development of medical science and technology.

women's reproduction under the precept of patriarchy and endorsed by government. Sections 229 and 232 of the Criminal and Penal Code respectively, punishes the woman who attempts or procures her own miscarriage, in effect the construction of the woman under these laws is that of a felon who has committed a moral crime against the society.<sup>28</sup> But the question one may ask is by whose moral standard is the Nigerian woman under the law being punished? Whose moral dictate is being violated? What is the extant social context that has driven the woman to attempt or procure her own abortion? Obviously, the construction of women as 'tarts and tired housewives'<sup>29</sup> by an English Parliamentarian is no different from Nigerian women's depiction as 'private harlots'. It is not even the nineteenth century characteristics of Nigerian women as depicted by even the British who colonised Nigeria.<sup>30</sup>

I believe that the failure of the law to address these questions is the reason why the law is violated by thousands of Nigerian women daily.<sup>31</sup> The abortion law no longer meets the reproductive needs of Nigerian women of today because the law still paints a picture of Nigerian women that never existed in 1861 when English Parliament enacted the law for English women, nor did that Nigerian woman exist in 1960, and certainly does she not exist today. Sheldon states that 'law creates its own fiction of the subject that it seeks to regulate'.<sup>32</sup> My argument is that the legal construction of women for which the law was made is not accurate. My aim is to debunk the statement made by the respondent in the opening to this chapter. This research shows that the majority of women who seek abortion in Nigeria are not women 'who live for pleasure', nor do they lack self-control. The majority of them choose abortion after a careful consideration of their social and economic situation; and are aware of the consequences of their choice. This research shows that the majority of the respondents do not consider women who choose abortion as 'private harlots' as shown from the discussions in the next section. On

<sup>28</sup> Section 229 and all sections dealing with abortion are listed under 'Offences against morality'.

<sup>29</sup> A term used by Sally Sheldon in depicting the characteristics of women who seeks abortion in Britain: Sally Sheldon: (*Footnote 5*), at 32.

<sup>30</sup> In Helen Callaway *Gender, Culture and Empire: European Women in Colonial Nigeria* (The Macmillan Press Lt., 1987, 52) it is said of Nigerian women: 'As early as 1905, Constance Larymore rejects the view of the 'down trodden women of Africa'...in her observation in Kabba of the women long-distance traders between Lagos and the Hausa States: 'There is not much that indicates subjection or fear about theses ladies, sitting at graceful ease among their loads, or strolling about in the hot sunshine...Speaking in general, the women of Nigeria are seldom of the chattel type and correspond little to the widely held idea of the downtrodden slave or unregarded beast of burden'. See also William Bascom, (1969), (*Footnote 18*), 61-63.

<sup>31</sup> As at 2002 Nigeria is said to have an abortion rate of 45 per 1000 women: Abiodun Raufu, (2002) (*Footnote 3*), 989.

<sup>32</sup> Sally Sheldon, (1993), (*Footnote 10*), 4.

the contrary, women who choose abortion are 'ordinary' women and their choice of abortion is a requirement to remedy the failure of law to provide them avenue to address their reproductive needs.



## 6.2 Characteristics of Nigerian Women who Seek Abortion

The data collected shows that some segments of Nigerian society attribute a set of characteristics to women who choose abortion without evaluating the social circumstances that necessitate their choice. Individuals inadvertently make value judgements on these women based on their own personal experiences, religious leaning and socio-cultural backgrounds which may be completely different from the aborting women's. Society's categorisation of the women who choose abortion is often an assessment of them which may not necessarily paint a clear subjective framework of the real character of these women. These value judgements often do not consider the particular circumstances of the women or the overarching reasons that compelled them to make that choice. The law through the use of legalise also make cultural statements about the presumed intrinsic nature of women who would choose abortion. To use Naffine's word we find the language of law 'sexing the female subject'<sup>33</sup> of abortion as if she exists as an object with predictable assumed characteristics. In Nigeria, law's portrayal echoes society's perception which makes women objects of societal scorn, sometimes pity, and sometimes understanding. The emotional reaction to women who choose abortion is also a reflection of individual making the judgement understanding of pregnant women, which in turn reflects their own fears and biases about abortion. If the tables were turned the value judgement individuals make of women who choose abortion will be quite different from their assessment of themselves in similar situation facing the same choice. Through the statements of respondents in the questionnaires, the in-depth interviews and the focus-group discussions I examine the negative and positive characteristics of Nigerian women who would choose to have an abortion and try to reconcile this image with the abortion laws as it stands presently in Nigeria.

This study shows that earlier research based in Sub-Saharan Africa on abortion have focused on the demographic characteristics of women who seek abortion and contraception.<sup>34</sup> Other researches have focused on the implication of the

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<sup>33</sup> Ngaire Naffine, and Rosemary J. Owens, (editors) *Sexing the subject of Law* (LBC Information Services and Sweet & Maxwell: 1997), 8.

<sup>34</sup> S. K. Henshaw, and K. Kost, 'Abortion Patients in 1994-1995: characteristics and contraceptive use', *Family Planning Perspectives*, (1996) 28 (4): 140-147; Akinrinola Bankole, *et al* (1999), (Footnote 2), 68-77; C. Tietze, and S. K., Henshaw, *Induced Abortion: A World Review* (New York: AGI, 1986), (6<sup>th</sup> edition); R. N. Likwa and M. Whittaker 'The Characteristics of women presenting for abortion and complications of illegal abortions at the University Teaching Hospital Lusaka, Zambia: an explorative study, *African Journal of Fertility, Sexuality and Reproductive Health*, (1996), 1(1) 43-49. The demographic characteristics have been discussed in the previous chapter.

demographic environment and its effect on abortion choices by Sub-Saharan African women.<sup>35</sup> The categorisations I discuss here however are the perceptions and attitude to women who choose abortion from the point-of-view of Nigerian public in the survey. My analysis is subjective and is depicted through the perceptions of other people affected by, or interested in abortion, rather than the women who have had abortion. The reason I take the analysis from this angle is because it is the attitude of the public that will affect changes in the law.<sup>36</sup> Their reasoning, I believe is sometimes more presumed than factual, condescending rather than understanding, and in most cases they often do not have any psychological basis for arriving at their conclusion. What is true however is that the characterisation is mostly societal based on traditional attribute of what a woman ought to be which sometimes conflicts with the modern perception of what women are in reality today.

### **Negative characteristics of women who choose abortion**

In examining adopted social assumptions of the typification of the aborting woman's character, I have divided the negative categorisation of these women into three broad groupings. These are '*the selfish and uncaring*'; the '*emotionally weak*' and those women who are considered '*not fit to be mothers*'.<sup>37</sup> The percentage of respondents' responses to these characteristics of women who would choose abortion is depicted in Chart 6.1 below.

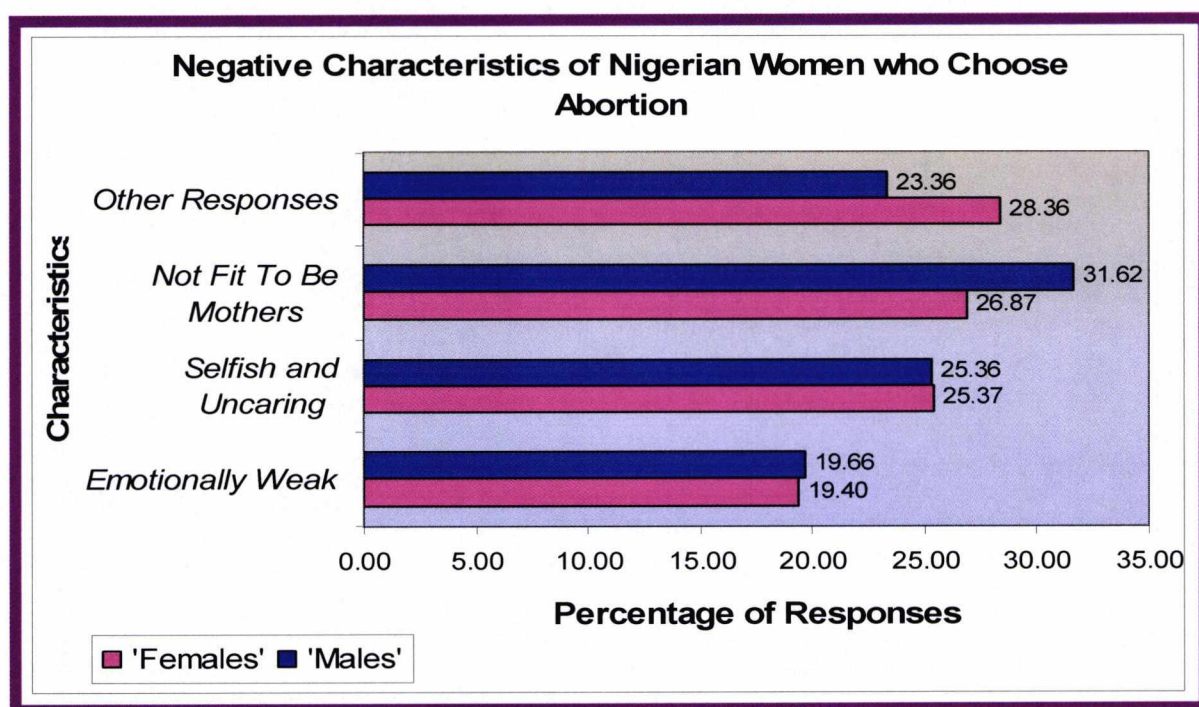
<sup>35</sup> Akinrinola Bankole *et al.* (1999), *ibid*; C. Tietze, and S. K., Henshaw, (1986), (*ibid*); R. N. Likwa and M. Whittaker 'The Characteristics of women presenting for abortion and complications of illegal abortions at the University Teaching Hospital Lusaka, Zambia: an explorative study, *African Journal of Fertility, Sexuality and Reproductive Health*, (1996), 1(1) 43-49.

<sup>36</sup> Prior to the passing of the Abortion Law, 1967 several contributions from the public was received by Parliament because there was a lot of public interest and debate on the issue which showed that the attitude of the British public to abortion had changed from 1861 when the original restrictive law was passed. Stephen Brooke, 'A New World for Women'? Abortion Law Reform in Britain during the 1930s' <http://www.historycooperative.org/journals/ahr/106.2/ah000431.html> (accessed 19 July 2005). Both Sally Sheldon, (1997), (*Footnote 5*), 32-48; and Mary Boyle, (1997), (*Footnote 6*), 37-61; have documented the attitude of members of Parliament to the perceived characteristics of British women who would choose abortion. It is the absence of this type of public debate and contribution by Nigerian public to the issue of abortion that has led to the lack of reform of the law since independence in 1960. Following the passing of the 1967 law, it was further amended by the Human Fertilisation and Embryology Act. The recent call for public contribution After 15 years since its enactment, to further amend the HFEA is a reflection of the sensitivity of British Parliament to advancement in medical science and the changing attitude of people to abortion. It shows Parliament desire to take cognisance of public attitude to the present law in its amendment.

<sup>37</sup> These categories are discussed by both Sheldon and Boyle see Sally Sheldon, (1997), (*Footnote 5*), 35-45 and Mary Boyle, (1997), (*Footnote 6*), 37-45.



Chart 6.1



Source: Field Data Analysis

### ***Emotionally weak***

Women's biology has been described as the reason for their lack of 'manly' characteristics, because women are emotional and biology driven.<sup>38</sup> The percentage difference between the female and male respondents who believed that women who choose abortion are emotionally weak is only 0.26, showing that the characteristics of the pregnant woman seeking abortion as being emotionally weak is an image defined by men and women almost equally. Out of a total of 335 females and 351 males, 19.40 percent females and 19.66 percent males each stated that women who chose abortion are emotionally weak. From these responses, I believe the women who choose abortion are characterised as being emotionally weak and incapable of being decisive and unable to control their emotion.<sup>39</sup> This in effect means that the woman's decision to choose abortion is

<sup>38</sup> Sheila McLean, *Old Law, New Medicine, Medical ethics and human rights* (London and New York: Rivers Oram Press, 1999), 35; McLean states further that 'women's biology is an explanation for what they are, and permits both definition and medicalisation' (ibid). So much so that Foucault says that 'the hysterization of women...involved a thorough medicalisation of their bodies and their sex'-Michael Foucault, *Madness and Civilisation: A History of Insanity in the Age of Reason* (London: Tavistock, 1967), 146.

<sup>39</sup> My reasoning is buttressed by McLean's statement that that 'science and medicine share the characteristics of society, and those who manipulate and control them are equally not free of the

based on irrational thinking and not on a carefully thought out cognitive assessment of her situation. The pregnant woman's needs to get rid of the foetus is drawn more out of her weak inability to make a reasoned judgement because her 'brain and resources vied for her body's limited energy and resources'<sup>40</sup> thereby suggesting that she is incapable of knowing what she wants. The impression this characterisation gives is that society, with the assistance of law, ought to stand as a barrier to the woman's weakness and make the pregnant woman see the unreasonableness of her choice by preventing her from having access to abortion. If access is given to her, it has to be based on the judgement of others; (the doctor under Nigerian law) only on the ground that her life will be in danger with the continuation of the pregnancy. Some other respondents depicted the women who choose abortion as "emotionally weak, thinking of what people around them will say, are afraid to bring children to the world; children they cannot care for, afraid of having a fatherless child and are afraid of not being able to complete their education or apprenticeship".<sup>41</sup> Another response below further states that women who choose abortion are murderers:

### **Text Box 6.1**

...Grossly unsuitable to stay alive themselves. If a woman kills an unborn child for whatever reason (except on medical advice) she is not fit to live herself because she hasn't any respect for the sanctity of life.

### **27 year old Female Civil Servant with Secondary Education, Christian, Single**

*Source: Field Data Analysis*

The statement in Text Box 6.1 is unsympathetic and generalises the characteristics of women who chose abortion as callous murderers. Indeed, one of the respondents said that "It is not only those who kill with a gun that are murderers, those who abort are also murderer. They are wicked, heartless and do

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misconceptions to which this strand of feminist thought would point'- Sheila McLean, (1999), (*ibid*), 35;

<sup>40</sup> Mary Boyle, (1997), (*Footnote 6*), 43.

<sup>41</sup> Field Data Analysis: 38 year old female Accountant with Tertiary education.



not have the fear of God in them".<sup>42</sup> Those respondents who are opposed to abortion are mostly the very religious who condemn women for engaging in recreational sex. These women are the ones Boyle<sup>43</sup> identified as those chastised for lacking the ability to make a distinction between sex for recreation and sex for procreation. This research shows that some of the respondents believe that when women engage in recreational sex, it shows a lack of self control which can be seen as her sexual permissiveness. If sexual intercourse leads to conception as a result, it is believed that choosing abortion by the woman shows she lacks emotional stability and single-mindedness to stand by the consequences of 'her mistake'. Choosing abortion is therefore an easy option which depicts the woman as emotionally weak. The converse of these imputed negative characteristics that I deduce from the study, is that the emotionally stable woman knows that she must keep the baby at all cost because, "it is important for the woman to have all the children in her womb that God has destined her to have".<sup>44</sup> I therefore conclude from the statements made that some respondents believe a pregnancy that results from consensual intercourse must be kept by the woman even where the prevailing social environment surrounding her pregnancy shows she lacks the capability of maintaining the child when it is born.

From the study the woman who chooses abortion is also seen as "emotionally weak because she cannot take the stress of keeping the baby and chooses abortion instead".<sup>45</sup> These statements make a judgement about the character of the woman who chooses abortion by equating her ethical belief with her moral judgement and compartmentalising them from the personal socio-economic reasons that have made her to choose abortion.<sup>46</sup> Sheldon has also identified similar constructions of women used during the Parliamentary debate prior to the passing of the 1967 Abortion Act as a reformer/opponent split. She says that whilst the reformer represents the woman who would terminate her pregnancy as 'an emotionally weak, unstable (even suicidal)...the conservative view her as a selfish, irrational child'.<sup>47</sup> The dichotomy that exists between the opponents and

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<sup>42</sup> Field Data Analysis: 54 year old Female trader with no formal education, Christian, widow.

<sup>43</sup> Mary Boyle, (*Footnote 6*), at, 37-40.

<sup>44</sup> Field Data Analysis 58 year old (male), Chief Imam of the Central Mosque with Koran and Secondary school education.

<sup>45</sup> Field Data Analysis: 33 year old male Civil Servant with tertiary education.

<sup>46</sup> This is because her choice of abortion could be for a variety of reasons within her immediate situation that makes it impossible for her to maintain the child when it is born.

<sup>47</sup> Sally Sheldon: (*Footnote 5*), at 35.

supporters of abortion from this study is more along religious lines. There are respondents who are fanatically religious and oppose abortion for whatever reason (as textbox 6.1 shows); and there are liberal respondents, who see abortion as a necessary aspect of family planning to which the individual should be given her choice to decide.<sup>48</sup>

Other respondents depict the woman as timid and psychologically incapable of withstanding social pressure that will result from keeping the baby. She is thus characterised as the helpless needy and dependant woman who cannot stand on her own without a man beside her. Some of the respondents state that abortion, for the pregnant woman, is an easy choice and a cowardly solution to a problem she brought on herself. Other respondents see the woman who seeks abortion as a calculating opportunist whose plan to trap a man by getting pregnant backfires on her when the more intelligent man finds out her plan and rejects responsibility for the pregnancy. The cohesive nature of societal dictates is often not considered in assessing these women. Being a patriarchal society,<sup>49</sup> the pregnant single woman is usually forced to choose abortion because society and culture, stigmatises a fatherless child and single motherhood. The study also shows that if on the other hand, pregnant women make a choice to keep the pregnancy; its retention is a further evidence of their wayward and emotionally weak character in not being able to withstand the advances of men. Pregnant women are thus left in a 'catch twenty-two, no-win situation' where the combined condemnation of society, culture and law, leaves them gaping at a crossroad of choosing or retaining a pregnancy that will impact on them and their baby's future adversely whatever the choice they make. The statements below show these characterisations of women who choose abortion through the eyes of the respondents:

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<sup>48</sup> As I show in the next 'positive characteristics' sub-heading.

<sup>49</sup> The Federal Government of Nigeria states in its 'National Policy on Population for Development, Unity, Progress and Self-reliance: Federal Republic of Nigeria', 1988, Chapter 5.3.1, that patriarchy 'shall be recognised for stability of the home'.

**Text Box 6.2**

Some of these women try to marry wealthy men and settle down with them by getting pregnant for them. When they are unable to achieve their aim they would seek abortion.

She is emotionally weak because she cannot take the stress of keeping the baby and chooses abortion instead.

**(i), 28 year old male Civil Servant, Single, Christian with Tertiary Education, Single children**

**(ii) 33 year old male in Civil Servant with Tertiary education, married with**

When a woman is pregnant and no-one comes to her aid she will be crying for help, so abortion is the easiest way out. Moreover, she will not have the strength to do any job to take care of herself and the baby.

It may not be her intention to have an abortion, but if there is no-one to take care of her and the baby then she will have no other choice than to have an abortion.

**(iii), 37 year old male Civil Servant, Christian, married with Tertiary education**

**(iv) 48 year old male, Banker with Tertiary education, Muslim, Single**

*Source: Field Data Analysis*

The different statements above depict how cultural norms and expectations impact on the way women are expected to feel towards their unwanted pregnancy. They are all in one villains, and helpless dependant victims, lacking in emotional and decisive strength of character. This characterisation typifies them (according to Sheldon) as ‘a victim of poverty and harsh social circumstances’.<sup>50</sup> Statements from the study show that for Nigerian women, poverty is not the only reason why

<sup>50</sup>Sally Sheldon: (Footnote 5), at 38.

women may choose abortion. Fear of being ostracised and stigmatised by society if they keep the baby who has not been accepted by a man is a greater and more compelling reason for their choice; sometimes, even more so than the poverty they and the baby are likely to face.

What these views tell us is that emotionally stable women culturally, should not have any pregnancy that is unwanted since all pregnancies must be wanted because it is the result of an act deliberately performed by the women. Thus the women are seen as passive subjects that culture scrutinizes and coerces by placing on them a set of unequal value judgements that are different from those by which men are judged. These expectations are protected by the law of abortion in its stringent requirement for legal abortion, so much so that the abortion law punishes women for procuring or attempting to procure their own abortion.<sup>51</sup> The characterisation of women who choose abortion as depicted from the statements makes it seem as if conception takes place in a woman without any input from the man. When pregnancy occurs as a result of omission or indiscretion on both their parts, men are pardoned, but women are castigated and punished for their joint act. In effect, (as stated by Albury) 'pregnancy is often regarded as a moral failure of control and personal responsibility'<sup>52</sup> (that I opine) makes only pregnant women and not men guilty and culpable. I see the abortion law as standing as an effective guard whipping women in line with societal moral rectitude, and consequently ensure their just punishment through a denial of abortion. The baby thus becomes an object of punishment for women's indiscretion (but not the men's). I however see that the resultant socio-cultural ramifications on the life of women and the child that ensue from that denial are not properly evaluated by society and law. I will make an appraisal of the effects on women of being forced to retain such pregnancies shortly.

### **Selfish and uncaring**

The present abortion law<sup>53</sup> makes abortion legal only when the continuation of the pregnancy is a danger to pregnant woman's life. The image of the good Nigerian

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<sup>51</sup> Section 229 Criminal Code and 232 Penal Code Laws of the Federation of Nigeria, 1990.

<sup>52</sup> Rebecca M. Albury, *Beyond the Slogans, the Politics of Reproduction* (St Leonards: Allen and Unwin, 199), 38.

<sup>53</sup> The laws are Section 228 Criminal Code Chapter 27, and 232 Penal Code. Federal Republic of Nigeria: section 228 Criminal Code Chapter 27, and 232 Penal Code.



mother is of a woman who is an epitome of selflessness, and one who places the comfort of children, husband and family above her own. A converse of this image is that of a woman who chooses abortion for reasons other than the fact that her life is at stake; who is not fit to be a mother because she is selfish and uncaring. There is a perception that there exists a symbiotic relationship between motherhood and nurture within the socio-cultural set-up of the Nigerian society. This nineteenth century portrayal of the innate characterisation of 'women's role (and desired virtues) becomes a product and design of nature, mapped upon, and decipherable from, the body'.<sup>54</sup> Therefore, 'societal expectation' were transposed to physiological imperatives'.<sup>55</sup> Because women are by nature endowed with the characterisation of being selfless and caring towards their baby no matter the circumstances of the pregnancy choosing abortion meant the woman was going against nature's endowment of her character as selfless and nurturing. A woman who engages in sex must desire motherhood, and by desiring motherhood nature behoves her to nurture the unborn child no matter what obstacles she may face by that choice, unless her own life will be impaired by the continued existence of the foetus within her. There are several metaphors and proverbs in all Nigerian languages that portray all that motherhood represents. Society states that a 'mother is gold, while a father is a mirror'<sup>56</sup> therefore, women who choose abortion contradicts the social expectation and characterisation of the Nigerian woman who is valued beyond esteem by their sacrifice to nurture their children. By choosing abortion they are depicted as selfish and uncaring and lacking in the finer subtleties of Nigerian womanhood. Adedokun<sup>57</sup> observed that sexual restraint is not difficult for the Nigerian woman because there exists in society supportive taboos and quasi-religious association with sexual laxity and ill-health in children. To this end there was no sacrifice traditional women would not make for their children, including sexual abstinence.<sup>58</sup> In Nigeria, women who lack the courage

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<sup>54</sup> Michael Thomson, 'Employing the Body: The Reproductive Body and Employment Exclusion', (1996) 5 (2) *Social & Legal Studies*, 249.

<sup>55</sup> R. Siegel, 'Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection', (1992) *Stanford Law Review* 44: 261.

<sup>56</sup> This Yoruba proverb (from south-western Nigeria) is 'iya ni'wura baba ni dingi' and shows that a mother is to be cherished while a father is revered for his stability and decisiveness within the family.

<sup>57</sup> Lawrence A. Adedokun, (1983), (*Footnote 19*), 129. However, it is observed from the study that many of these cultural taboos associated with women's sexuality are slowly dying out with modernisation and infusion of Western culture into the Nigerian society.

<sup>58</sup> Apter observed when describing Yemoja (the Nigerian Yoruba goddess of fertility), that the gender stereotyping of women have a ritual design that represents womanhood as selfless, "cool", "subdued", "peaceful" and possessing a mythical antidote to the hot volatile and tough nature of men: Andrew Apter, *Black Critics & Kings: The Hermeneutics of Power in Yoruba Society* (Chicago and London: The University of Chicago Press, 1992), 110-112. Many of the traditional rites

to exercise sexual abstinence are expected to exhibit the innate maternal characteristic of motherhood, by sacrificing their personal needs and desires for the sake of the child growing within them that resulted from their lack of self-discipline.<sup>59</sup> Choosing abortion punishes the child thus reinforces the image of the aborting woman as selfish and unfit to be a mother. The abortion law stands as a constant reminder of these sacred responsibilities towards the foetus, the other children she may have and her family. In effect as pointed out by Sheldon, the implicit assumption of woman as mother is seen in the inability to see the pregnant woman outside the role of wife and mother,<sup>60</sup> which the Nigerian society often does not. According to Boyle the characteristics of motherhood are associated with 'self-denying' and 'self-sacrificing'.<sup>61</sup> Not wanting to be a mother on this occasion is "self-absorbed, self-interested or more bluntly, simply selfish".<sup>62</sup> This attitude is buttressed by the statement below in Text Box 6.3.

**Text Box 6.3**

Responsibility is the price for womanhood.  
A responsible woman will weigh her action  
before taking in\* (sic) after all preventive  
measures have been put in place.  
A responsible mother will never seek for  
an abortion because she knows God will  
hold her responsible for the child she aborted.

**(i) 35 year old male, secondary school  
teacher with Tertiary education, Christian.<sup>63</sup>**

associated with female goddesses (of which Yemoja is one) portrayed women as fertile, willing to bear children and make all forms of sacrifices for their children, even at the risk of their own life. For a woman to choose abortion is a negation of the traditional characteristics of womanhood as being selfless and be willing to have children.

<sup>59</sup> This image is also that depicted of women in Western societies as stated by J. Hagner, *The End of Marriage: Why Monogamy Isn't Working* (London: Arrow Books, 1994), 144.

<sup>60</sup> Sally Sheldon (1997), (Footnote 5), 40.

<sup>61</sup> Mary Boyle, (1997), (Footnote 6), 38.

<sup>62</sup> *Ibid.*

<sup>63</sup> \* "Taking in" is the colloquial phrase for getting pregnant.

Some of the women are careless and selfish. For a first abortion, it can be regarded as a silly mistake and care is taken to avoid future mistakes and sins. But a second, third, fourth etc abortion is regarded as promiscuous, selfish undecided and generally loose and not forgetting- lacking moral values.

**(ii) 27 year old female postgraduate student,  
Christian**

*Source: Field data Analysis*

**Motherhood as a sign of fulfilment**

The assumption of linking motherhood with womanhood is further buttressed by the respondents' responses to the question whether a Nigerian woman needed to have children to be considered fulfilled or accomplished. The responses are depicted in Table 6.1 and it goes to show that if motherhood is associated with accomplishment and fulfilment, women who choose abortion would not be considered fulfilled or accomplished. Boyle<sup>64</sup> has stated that 'the extreme to which the characterisation of mother as selfless is depicted in the Catholic theologian Bernard Haring's statement that if 'it were to become an accepted principle of moral teaching on motherhood to permit a [pregnant mother] whose life was endangered simply to sacrifice the life of her child in order to save her own, motherhood would no longer mean absolute dedication to each and every child'.<sup>65</sup>

<sup>64</sup> Mary Boyle, (*Footnote 6*), at 37.

<sup>65</sup> Benard Haring, Cited in D. Callahan, *Abortion: Law, Choice and Morality*, (London: Macmillan, 1970), 421, as cited by Boyle (*ibid*).

Table 6.1

Responses to the question 'Whether having children is an indication of fulfilment'				
	Female	Percentage Female Responses	Male	Percentage Male Responses
<b>Responses</b>				
Yes	146	54.28	189	53.39
No	62	23.05	72	20.34
Sometimes	56	20.82	87	24.58
I Don't Know	5	1.86	6	1.69
<b>Total Number of Respondents</b>	269	100	354	100

Source: Field Data Analysis

Looking at the percentage of responses in Table 6.1, it can be seen that more than 50 percent of female and male respondents said "Yes" (54.28 percent females and 53.39 percent males) and hold the view that a Nigerian woman should have children in order to be considered fulfilled and accomplished by society. Only 23.05 percent and 20.34 percent respectively said "No". The differences in the percentage of the responses by females and males are negligible for all the responses. Table 6.1 is a cultural representation of societal attitude towards women and their femininity as depicted by the respondents. A woman without a child is not considered fully woman in Nigeria;<sup>66</sup> it would therefore be considered selfish on the part of any woman who is pregnant to want to have an abortion. One of the respondents said "Marriage without children is like a house without windows".<sup>67</sup> Therefore women who choose to nurture and keep a child (despite their surrounding circumstances that make them incapable or incompetent to perform the task of motherhood adequately at that point in time); are believed to have demonstrated one of the characteristics of selfless women. Refusing to have an abortion is considered a selfless sacrifice while choosing abortion is considered selfish. Women's sacrifice proves that they are responsible member of society

<sup>66</sup> Elizabeth Isichei, (1983), (*Footnote 22*), 258-260 stated that the life of women, especially in polygamous household revolved around children. The same is still true today as depicted from the statements made by many of the respondents such as 'childless woman is like an empty water-pot that cannot quench a parched throat'-statement made by a '65 year old female respondent'. Also in the account of Baba in *Baba of Karo, a woman of the Muslim Hausa* (autobiography recorded); by M. F. Smith (Faber and Faber, 1954), a woman without a child would not be considered fulfilled and would often leave a happy marriage for just this reason in search of a partner with whom she can get a child.

<sup>67</sup> Field Data Analysis: 47 year old Town Planner with Tertiary Education, married with children.



worthy of the designation “mother”. The pregnant women’s inability to care for the child or give it a decent quality of life is often over-looked by society in characterising women who chooses abortion as selfish. But, I believe it would be equally selfish for women to send the child out to hawk wares or work as domestic servants at an early age simply because they cannot afford to maintain the child. This would also be a form of child abuse.<sup>68</sup>

**Not fit to be a mother**

When respondents were asked to categorise the Nigerian woman who will seek an abortion, 26.87 percent of females and 31.62 percent of males said that women who choose abortion are ‘not fit to be a mother’: Chart 6.1. This perception is buttressed in the statements of respondents below:

**Text Box 6.4**

The fact that she seeks for an abortion means that if she has a way of killing the ones she has at hand for one reason or other she will certainly do so. So I do not see any reason for any woman to seek for an abortion because once you have sex with a man definitely something must come out of it which a woman must consider before engaging in unsafe sex.

**(i), 34 year old male Civil Servant with Tertiary education, Christian married with children**

<sup>68</sup> Poverty and having more children than a family is capable of maintaining has been identified as one of the reasons why parents send children out to hawk wares. It has been described as a form of child abuse by Hon. Justice H. N. Donli ‘Socio-Legal Consequences of Child Abuse’ in Federal Ministry of Justice Law Review Series, Lagos *Women and Children under Nigerian Law* (Federal Ministry of Justice, Lagos, 1989), 133 and 140-141. Under the Labour Act, Laws of the Federation of Nigeria, 1990 section 158: regulates child labour. In the section, a child under the age of 15 is not permitted to engage in any form of labour, except for members of the family doing light agricultural, horticultural or domestic chores within the home environment as approved by the Commissioner for Labour.

It is improper for a woman to have an abortion as it is usually expected that she must have the baby even when it is unplanned and inconvenient. If she tries to terminate it, she would be regarded as selfish and a harlot.

**(ii) 27 year old female Civil Servant,  
single with Tertiary education**

*Source: Field Data Analysis.*

*Social expectations of motherhood*

I believe these responses give some Nigerians' assessment of pregnant women's perceived sexuality and competency as mothers. However the judgement passed on them cannot be adequately assessed without a clear understanding of the circumstances that made women to choose abortion. A holistic view of prevailing circumstances and the environment that necessitated pregnant women's choices have to be properly evaluated before an unbiased judgement of their character can be done.

What then are the social expectations of a Nigerian woman who is 'fit to be a mother'? What remarkable characteristics do women who are fit to be mothers have that the ones who are unfit do not? A young male respondent said "Some women may have abortions because they are not fit to be mothers".<sup>69</sup> Often, once the woman is pregnant she becomes the moral subject of other people outside herself. My understanding from the survey shows that some respondents made subjective judgements on the moral responsibility of women who chose abortion based on their own ethical beliefs without taking into consideration the underlying deeply personal, socioeconomic and familial constraints that made these women make the choice to seek abortion. The subjectivity of their pregnancy is determined by societal moral purview of what a proper mother ought to be and not necessarily on how that particular woman will act as a mother in her peculiar circumstance. I observe that any decision women make about their pregnancy is

<sup>69</sup> Field Data Analysis: 22 year old male student, Muslim in Secondary.

dictated, scrutinised and controlled by society, the doctor and the law. I thus see women become passive objects of anonymity and are treated as irrational persons who must be told the right choice for them to make as regard their pregnancy based on societal expectations. The law also makes it impossible for the pregnant woman to make a free choice of abortion through the restrictive conditions it stipulates for legal abortion. I therefore perceive the pregnant woman's maternal competence as well as her sexuality, is subjectively based on social expectations of what is the right thing for her to do. According to Boyle maternity is synonymous with motherhood; therefore choosing abortion is to deny the conflation of motherhood and womanhood thereby rejecting the very essence of nature's role assigned to her as a woman.<sup>70</sup>

For the Nigerian woman the complexity of her situation is all the more onerous because society puts upon her a set of social expectations that is not balanced by government assisted social support system to help the pregnant woman maintain the pregnancy and the child when it is born.<sup>71</sup> Her support is mainly from family and their socio-economic status will ultimately determine their ability to assist her. The support too is dependant on the circumstances of her pregnancy, but most especially on the acceptance of the pregnancy by the man responsible it. Women's perceived fitness to be mothers is judged on the basis of whether they got pregnant the 'right way' or not. The 'right' way implies that there is a man who has accepted paternity for the unborn child. Even if the child was not conceived within the confines of matrimony, the child would be regarded as illegitimate socially, but legally, entitled to inherit from its father's property.<sup>72</sup> Without that acknowledgment the pregnant woman is given derogatory names that categorises her as "asewo"<sup>73</sup> (meaning prostitute) therefore unfit to be a decent woman. Worse still, by going ahead to seek an abortion the woman is seen as a negation of all the right virtues of what a mother should be. By rejecting maternity, she

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<sup>70</sup> Mary Boyle, (Footnote 6), at 27.

<sup>71</sup> Since there is no social security system in Nigeria, even where a woman might otherwise have wanted to keep the pregnancy despite the difficulties she may encounter by her choice, she might choose abortion if she has no means of maintaining the child when it is born. This is a theme already discussed in Chapter 5.

<sup>72</sup> Under Nigerian devolution of property law, a child could be illegitimate (because he/she is not the product of a marriage between his/her parents), but could still be acknowledged by his/her father. The status of illegitimacy disentitles him/her inheritance from the father's property, while an acknowledged child is entitled to inherit. According to G. B. A. Coker acknowledgement grants the child legitimacy-G. B. A. Coker *Family Property Among the Yorubas*, 2nd edition, (Sweet & Maxwell, London, 1966), 266. See also *Alake v Pratt* (1955), 15 West African Court of Appeal 20; and judgement of Ademola, Chief Judge of the Federation, in *Lawal v Yunan* [1961] 1 All Nigeria Law Report 245 at 250.

<sup>73</sup> This means 'prostitute', it is derogatory because many of the respondents stated that only prostitutes are known to engage in abortion and not respectable women.

rejects the inevitability of motherhood; in effect her decision makes her unfit to be a mother.<sup>74</sup>

However, the stereotyping characterisation of motherhood as a synonym for selflessness under law and in Nigerian society, is, I believe, not viewed with the same nationalistic vigour as it is perceived under Irish constitutional law as represented by Fletcher.<sup>75</sup> While Hanafin notes that the continuing depiction of woman in Irish constitutional law 'is a contemporary example of patriarchal nationalism's perceived need to safeguard the role of women as reproducer',<sup>76</sup> the Nigerian government recognise that 'couples and individuals have the basic right to decide freely and responsibly on the number and spacing of their children....'<sup>77</sup> My argument, therefore is that the view of government as made in the policy statement is not reflected in the abortion law, because the law does not give Nigerian women the avenue to 'freely' choose the number of children they would wish to have. I believe Nigerian women are still thereby being characterised with the traditional characteristics of selfless producers of children. The self-sacrificing mother is a cultural representation which changing societal demands on individual families have transformed. Therefore choosing to regulate their reproduction in order to be able to bear the number of children they are capable of maintaining shows pregnant women as responsible persons who would be willing to make selfless sacrifices for the few children they decide to have.

The conception of women's role mainly as mothers is also found in the British Abortion Act 1967 where section 1(1) (a) allows abortion where the continuation of the pregnancy 'would...involve...injury to the physical or mental health of...any existing children of the family'.<sup>78</sup> This section of the law would most appropriately fit the Nigerian social context because several of the respondents have stated that they believe abortion ought to be allowed if continuing the pregnancy will affect the health of any existing children women already have. This view is in keeping with the traditional practice of fertility control in Nigeria when it was considered a taboo

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<sup>74</sup> Sally Sheldon see (*Footnote 5*), at 40 says this image of the woman as mother is appropriated for the cause of both the reformist and conservatives.

<sup>75</sup> Ruth Fletcher, 'Post-colonial Fragments: Representations of Abortion in Irish Law and Politics', *Journal of Law and Society* 28(4) (2001), 568-589 at 574.

<sup>76</sup> P. Hanafin, 'Defying the Female: The Irish Constitutional Text as Phallocentric Manifesto' (1997) 11 *Textual Practice* 249 cited in Ruth Fletcher, (*ibid*).

<sup>77</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-reliance, 1988 Chapter 1.5.

<sup>78</sup> Sally Sheldon, (1993), (*Footnote 10*), at 16.



for any woman to get pregnant while the woman lactates.<sup>79</sup> It was believed the new pregnancy would harm the existing child and every effort was made to prevent the woman getting pregnant during this period.<sup>80</sup> However, in Nigeria, it is not only professionals who make the categorisation; in most cases it is ordinary Nigerians who do.

This was demonstrated during the fieldwork, where several respondents stated that women in traditional society were more maternal and exhibited characteristics of women fit to be considered proper mothers than contemporary Nigerian women.<sup>81</sup> Can we then say that this perception is accurate? The characterisation of a fit woman to be a mother is historical as well as traditional and the assessment is tied to their fertility. Identifying fertile women as fit to be mothers is an extension of traditional societal evaluation when large families were needed to maintain the agrarian and subsistent life of the people then. Fertile women were assets to the family and contributed to its wealth, which made their fertility one of the essential characteristics of their identity as women and proper mothers. The historical antecedent for the desire for high fertility by Nigerian women is also as a result of high infant mortality rate where the severe social environment plagued by disease forced women to have many pregnancies to balance the high infant mortality at the time.<sup>82</sup> A social equilibrium in the population was thereby achieved. But with improved social and health facilities; education of women; late marriages and career search by women infant mortality has dropped over the years.<sup>83</sup> But while the necessity for large families in Nigeria has dropped, the linking of the female attributes to her fertility has remained. But this fact does not necessarily mean that traditional women did not practice abortion. The myth was that traditional women did not practice abortion; therefore their high fertility increased their positive social characterisation of good motherhood. However, without being able to speak with women in the past our comparison with women of

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<sup>79</sup> Lawrence A. Adedokun, (1983), (*Footnote 19*), 129-130.

<sup>80</sup> The respondents stated that traditional forms of abortifacients were used.

<sup>81</sup> Unfortunately, there was no specific question in the questionnaire on this comparison so a proper analysis of what characteristics made traditional women more of a fit mother than contemporary ones could not be done. It is worth examining at a future research. William Bascom, (1969), (*Footnote 18*), 61-63, stated that even then the traditionally women of Southern Nigeria had their sexuality traditionally determined. A woman's sexuality was geared towards fertility and procreation because it was of immense benefit to the sustenance and continuity of society then. See also N. A. Fadipe, (1970), (*Footnote 18*), 83-86.

<sup>82</sup> Elizabeth Isichei, (1983), (*Footnote 22*), 259. Isichei believes that the high mortality rate could be attributed to sickle cell anaemia (which was an unknown disease at that time) which affects many people in the early eighteenth and nineteenth century in Nigeria.

<sup>83</sup> Odile Frank 'The Demand for Fertility Control in Sub-Saharan Africa' *Studies in Family Planning* (1987) 18 (4) 12.

the present cannot be adequately done and the issue remains recondite. The excerpt below from the in-depth interview with a male High Court judge sheds some light on the issue:

**Text Box 6.5**

Abortion was not common in the traditional society, but they had native contraceptives such as a special ring as well as herbs which were specially produced by older women experienced in such matters. But when the contraceptives fail, they will find a way of aborting it. This was always a closely guarded secret, but it was done for different reasons. It could be that the pregnancy came too soon after a previous one or that a woman got pregnant while her own daughter had started producing children as well. A woman was expected to stop having children once her own daughters started having children as well.

**52 year old male, High Court Judge**

*Source: Field Data Analysis*

*Other Negative Responses*

The respondents gave a number of other negative responses categorising women who chose abortion besides the three categories discussed. The percentage of ‘other negative responses’ given by the respondents is just as high as my other three characteristics imputed to the woman who chooses abortion. The characterisation ranged from the derogatory to the compassionate with 28.36 of females and 23.36 of males giving women these other characteristics. However, most of the statements alluding to the characteristics of women who choose abortion empathised with them by trying to understand the circumstances for their choice rather than condemning them it. This is seen from a cross-section of the responses below:

**Text Box 6.6**

Some women are in a polygamous marriage and their husband may have many wives, so she may not want to bring children she cannot cater for.

Majority of abortion cases I've heard of are among teenagers who cannot make out a reasonable means of survival, even married women too whose economic status are bad. Anybody else aborting apart from the above reasons is a nuisance to society.

**(i) 41 year old male, Farmer, with Secondary school, education Traditional Worshiper**

**(ii) 22 year old male, Secondary school student, Muslim**

Circumstances will influence her decision. Socio-economic reasons as well as health reasons can make a woman decide to terminate a pregnancy.

Women in most cases are known to be children lovers, in this regard, if a woman now seeks abortion it should be to the fact that she did not have enough money and does not want the child to suffer.

**(iii) 45 year old female Secondary School teacher with Tertiary education, Christian**

**(iv) 14 year old Secondary school student, Christian**

*Source: Field Data Analysis*

Because the 'other responses' given on the perceived negative characteristics of women who choose abortion flow into respondents' positive characterisation under 'other responses'; I will discuss both together under positive characteristics below.

## 6.3 Positive characteristics of women who choose abortion

### **The Impact of education on respondents' characterisation of women who choose abortion**

Bearing in mind the historical antecedent to the introduction of abortion law into Nigeria, as I stated at the beginning of this chapter; we can observe that the law was supposedly put in place to protect the moral sanctity of Nigerian womanhood.<sup>84</sup> Understanding the characteristics of the type of woman who would choose abortion today, would enable us to evaluate the appropriateness of the law on abortion for the majority of the women the law is meant to 'protect'. Bankole *et al*<sup>85</sup> state that getting a 'better understanding of the relationship between induced abortion and the women's background characteristics can improve our ability to identify subgroups in a population who have the highest level of unintended pregnancies and induced abortion' because it would help policymakers and programme planners in helping women to plan their pregnancies. I believe also that the positive characteristics identified by respondents not only give us the respondents' perceived evaluation of the characteristics of the women who choose induced abortion; it also gives us an insight into the background characteristics of the respondents making the evaluation. Such information is important to policy makers in their assessment of the suitability of the law as it relates to the society. The information should assist in understanding the areas of the abortion law that need reform.

Most empirical studies on the characteristics of women who choose abortion have focused on the demographic characteristics of these women<sup>86</sup> and not on the perception of others to their perceived characteristics. My focus otherwise is on whether the educational attainment of respondents impact on their characterisation of women who are likely to chose induced abortion. While the data below is not a measure of the demographic characteristics of women who

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<sup>84</sup> Though I maintain that the moral standard on which the law was based was on the British colonial ruler's notion of morality based on Victoria ideals. This ideal found accord in Nigeria because of the need for large families for agriculture, and the high mortality among children due to disease at the time

<sup>85</sup> Akinrinola Bankole; *et al* (1999), (*Footnote 2*), 68-77; R. N. Likwa and M. Whittaker 'The Characteristics of women presenting for abortion and complications of illegal abortions at the University Teaching Hospital Lusaka, Zambia: an explorative study, *African Journal of Fertility, Sexuality and Reproductive Health*, (1996), 1(1) 43-49; C. Tietze, and S. K., Henshaw, (1986), (*Footnote 34*).

<sup>86</sup> Akinrinola Bankole *et al*; (1999), *ibid*



choose abortion; its importance is that it can help to evaluate attitudes of people to abortion and whether the law is indeed intended for the women it is put in place for in the eyes of the Nigerian public. Table 6.2 is an analysis of the educational attainment of the respondents and how it impacts on their assessment of the positive characteristics of women who seek abortion. The table shows that despite the differences in educational attainment of the respondents those with tertiary, secondary and primary education gave inability of women to take care of the child as the major reason why women seek abortion. Observe that the percentage differences in the responses between females and males are significantly close for this reason. For example 71.05 percent females and 72.16 percent males with secondary education fall in this category.

Respondents' educational attainment however impact on their perception of the emotional stability of women who seek abortion. It is interesting to note that all respondents with no formal education did not think women who seek abortion are emotionally stable with than 50 percent of them giving other reasons why women seek abortion.<sup>87</sup> A higher percentage of respondents (that is, 22.22 percent females and 16.00 percent males) with no formal education than the other groups with higher educational attainment state that women who seek abortion can 'sometimes be very respectable'; but neither of these respondents thinks the women are 'emotionally stable'. Overall the responses show that across all the educational groupings, all the respondents seem to believe that most women who seek induced abortion do so because they will be unable to care for the child when it is born showing that the perceived overarching reason for abortion choice is economic.

**Women Who Choose Abortion Are Unable to Care for the Child**

Chart 6.2 shows the positive characteristics of women who choose abortion in the respondents' opinion. What I observe is that although respondents were asked to give the positive characteristics they expect from women who would choose abortion, rather, they gave reasons why they think women would choose to have an induced abortion rather than their character. This is unlike what respondents did for their assessment of the pregnant women's negative characteristics.

<sup>87</sup> I discuss other reasons given below.

Because of this, in discussing the positive characteristics I will also give an evaluation of the demographic characteristics of a cross-section of the respondents in order to understand whether the demography of the respondents affects their perceptions. I go on to discuss each of the four main characteristics identified.

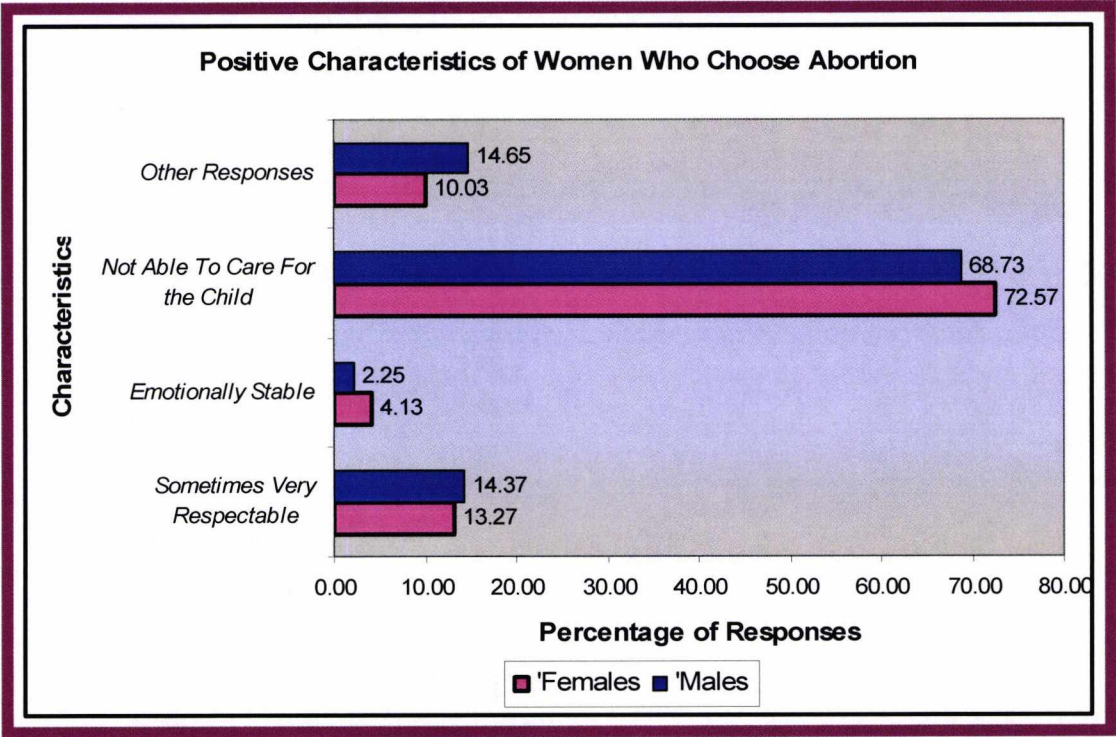
**Table 6.2**

<b>Influence of Respondents' Educational Attainment on their Positive Characterisation of Women Who Seek Abortion</b>					
<b>Respondents with Tertiary Education</b>					
	<b>Sometimes Very Respectable</b>	<b>Emotionally Stable</b>	<b>Not Able to Take Care of the Child</b>	<b>Other Responses</b>	<b>Total</b>
<b>Female</b>	27	6	149	18	200
<b>Percentage</b>	13.50	3.00	74.50	9.00	
<b>Male</b>	31	4	163	37	235
<b>Percentage</b>	13.19	1.70	69.36	15.74	
<b>Respondents with Secondary Education</b>					
<b>Female</b>	15	6	81	12	114
<b>Percentage</b>	13.16	5.26	71.05	10.53	
<b>Male</b>	15	4	70	8	97
<b>Percentage</b>	15.46	4.12	72.16	8.25	
<b>Respondents with Primary Education</b>					
<b>Female</b>	1	2	11	2	16
<b>Percentage</b>	6.25	12.50	68.75	12.50	
<b>Male</b>	3	0	9	4	16
<b>Percentage</b>	18.75	0.00	56.25	25.00	
<b>Respondents with No Formal Education</b>					
<b>Female</b>	2.00	0	5	2	9.00
<b>Percentage</b>	22.22	0.00	55.56	22.22	
<b>Male</b>	1.00		2	3	6.00
<b>Percentage</b>	16.67	0.00	33.33	50.00	
<b>Total Respondents</b>					<b>693</b>

Source: Field Data Analysis



Chart 6.2



Source: Field Data Analysis

*Not able to care for the child*

A total of 339 females and 355 males responded. Overlaps occur in some of the figures where more than one response was chosen by respondents. From Chart 6.2 it is seen that 72.57 percent females and 68.73 percent male stated that women would choose abortion because they are unable to care for the child. The respondents identified reasons why women would choose abortion from the surrounding circumstances of their particular situation. A female respondent said “The more the children the more the responsibility and if the woman is not capable of taking care of the children's needs then it will not increase her social standing”.<sup>88</sup> Another male undergraduate said “in Nigeria of today, even married woman terminate their pregnancies because of the number of children they have before; but it’s mostly due to economic reasons”.<sup>89</sup> The statements show that the respondents view abortion as a necessary choice made to enable women aspire to the standard of living they would want to attain. Their acceptance of abortion is

<sup>88</sup> Field Data Analysis: 29 year old female, Banker, with tertiary education, divorced, with children.  
<sup>89</sup> Field Data Analysis: 25 year old male teacher, with tertiary education.

devoid of religious sentiments, but on the practicality of living within the present social environment of Nigeria which compels individuals to make reproductive choices with an acute awareness of the economic ramifications of that choice to their entire life. This feeling is put aptly by a male respondent when he said:

**Text Box 6.6**

It may be seen as a sin if abortion is done, but one has to consider individual attainment of economic standard, educational level, food, shelter and many more before getting pregnant. If abortion is sought (to achieve these values) there is nothing bad in that.

**24 year old male undergraduate with  
Tertiary education, Muslim**

Source: Field Data Analysis

The responses show empathy for pregnant women by their understanding of the practicality of their choice which the law does not provide an avenue for. Once again economic incapacity is the compelling reason why women would choose abortion. I observe that the inability to care for the child as reason for their choice of abortion depicts pregnant women as responsible persons who made their choice out of necessity and compassion for the unborn child. The choice is not out of selfish individual desire for self-preservation, but out of an evaluation of what future they would be able to give the child when it is born. Rather than bring the child to the world to suffer they would prevent such suffering through not giving birth to the baby in the first place. This opinion is made by respondents who cut across all levels of the demographic groups within the study area.<sup>90</sup>

<sup>90</sup> Table 6.2 gives a breakdown of the educational attainment of the respondents within the study group, which is fairly representative of the social economic class the respondents belong to bearing in mind that the more educated a person is, the likelihood that his socio-economic level will increase.



This observation is buttressed by a comparison of respondents' responses of the positive and negative characterisation of women who choose abortion in Chart 6.3. From a total of 700 respondents Chart 6.3 shows that the majority of 70.61 percent of respondents state women choose abortion in Nigeria mainly because they cannot care for the child. Are we therefore to assume that if pregnant women had the capacity to care for the child they would not choose abortion? Possibly not; because, through my interactions with several of the respondents there is a general desire by the younger generation of both gender to have fewer children than their parents and grand-parents did as is shown in an earlier research.<sup>91</sup> Many respondents cited the need to have a better quality of life for themselves and the children they choose to have. This research shows that the number of children desired as appropriate by many of the younger respondents was between two and three but not more than four. This finding concurs with the findings of another earlier research where it is shown that between 1980 and 2003, the birth-rate among Nigerian women aged 15-19 decreased by 27 percent (from 173 to 126 per 1,000 women this age).<sup>92</sup> A young male respondent gave an insight into the changing attitudes for reduction in family size in Nigeria when he said:

#### **Text Box 6.7**

In present day Nigeria, we need to know that many children are a burden on parents. They will spend their life catering for the children but where there are just two or three children there will be proper care so as to educate each child to any level

#### **25 year old male undergraduate**

Source: Field Data Analysis:

<sup>91</sup> Aderibigbe shows that the average number of children married public servants between 40-55 years old in the study had was 4-5 children per couple: Titilayo Aderibigbe, *Will and Will Making Among Public Servants: A Case Study of the Nigerian Institute of Social and Economic Research*, (Nigeria: NISER 2001).

<sup>92</sup> Susheela Singh; Suzette Audam and Deidre Wulf, 'Early Childbearing in Nigeria: A Continuing Challenge', The Alan Guttmacher Institute, 'Research in Brief 2004 Series Number 2, [www.guttmacher.org](http://www.guttmacher.org) (accessed 23 November, 2004).

The respondents who believed women are forced to choose abortion because they are unable to care for the baby cut across all the demographic characteristics of the study group. I observe however, that most of the younger generation have no inhibition in controlling the number of children they will have through abortion because of the need to prevent suffering for the child. Overall, the older generation of 50 years and above who invariably, had a larger family size of 5 or more children believed that a woman should only have the number of children she and her husband can adequately cater for<sup>93</sup> as the statements below show:<sup>94</sup>

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<sup>93</sup> The number of children the respondents believed a family should be able to cater for adequately was not a question specifically asked in the questionnaire. But a similar study carried out in the same area states that older people over 50 considered four to five children to be adequate and most had this number of children on the average. The younger generation tended to favour smaller family size of 2 or three children see Titilayo Aderibigbe, (2002), (*Footnote 90*), 17 and 21.

<sup>94</sup> Many of the respondents did state that contraceptive devices should be used by women to prevent the need to have abortions. But, when contraceptives fail many felt legal abortion should be an option open for women.

**Text Box 6.8**

No woman would want to have a child and watch it suffer, so she may feel it is better to terminate the pregnancy in time.

**(i) 28 year old female undergraduate  
Christian, Single with a child**

Some of these women have reasons for their actions, it could be for economic reasons, so I don't blame them unless they are engaged in prostitution.

**(ii) 25 year old male Banker,  
Muslim, with Tertiary education**

The only way a mother can be fulfilled in life is to give her children almost all that it takes to be responsible in life and if otherwise she cannot do so, it will be unfair to bring such a child into the world.

**(iii) 25 year old male, Lawyer,  
with Tertiary education, Christian**

I think it is not advisable to bear children you cannot take care of. Not all women who seek abortion are bad, selfish or emotionally weak.

**(iv) 26 year old female  
undergraduate, Christian**

They also believe that to bring to the world a child that is very controversial will bring sadness to them and they may lose their dignity (and respect within the community

**(v) 44 year old male, Accountant,  
with Tertiary education, Christian**

There is no point having more children when you cannot afford to take good care of yourself talk less of the children. Even the children will blame you when they cannot compete with their mates.

**(vi) 45 year old female  
Business-woman, with no  
formal education, Traditional  
believer**

Children (under-aged girls) who are not ready to have children do so (have abortion), some may be in school and would not want anything to impede their education. They may not also be able to cater for the child adequately when it is born.

**(vii) 15 year old female, Secondary  
School student, Christian**

A woman should first consider her ability to take care of the child before bringing the child to the world.

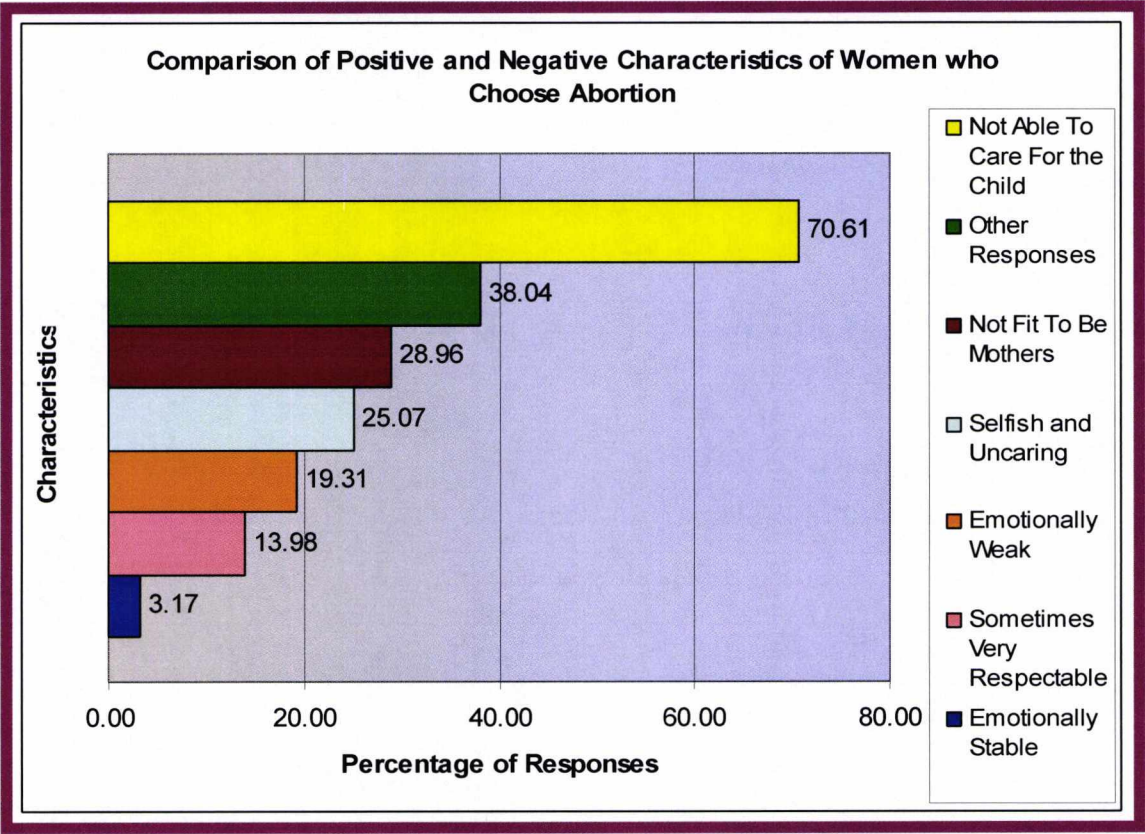
**(viii) 18 year old male  
undergraduate, Christian**

Source: Field Data Analysis

The eight responses in Text box 6.8(1)-(viii) show a relational comparison of responses given by people of similar educational background, or within the same age group. I have also compared the responses across the three main religions followed in Nigeria, that is: Christianity, Islam and Traditional Belief. For example Text Box 6.8(i) and (ii) compare responses between a male and a female within the same age group of 28 and 25 years; similar educational background (university level); but following different faiths of Christianity and Islam respectively. Text Box 6.8(iii) and (iv) show similar demographic characteristics but respondents are of different gender. Text Box 6.8(v) and (vi) are a male and female (respectively), within the same age group (44 and 45), but the similarity ends there because the Accountant in Text Box 6.8(v) has tertiary education and is a Christian, the business-woman in Text Box 6.8(vi) has no formal education and is a Traditional believer. Text Box 6.8(vii) and (viii) are a female and male within the same age group of 15 and 18 in secondary school and university respectively. The connection in all these responses is that all of them are of the view that women should be able to have a choice of abortion if they are incapable of maintaining the unborn child. The data presented shows that the need for abortion choice is not limited to a particular demographic sub-group and can be said to cut across most socio-economic variables of the population studied.



Chart 6.3



Source: Field Data Analysis

**‘Sometimes very respectable’**

In Chart 6.2 it is seen that ‘sometimes very respectable’ comes a distant second by a wide margin in the hierarchy of responses of positive characteristics of women who choose abortion. 13.27 percent of female and 14.37 percent of male respondents recognise that women who choose abortion are respectable. In the overall comparison of positive and negative characteristics shown in Chart 6.3 only a total of 13.98 percent respondents said women who choose abortion are respectable. These figures are not surprising because respectability, to my mind, is a philosophical concept that imputes an identity to a person based on the value system of the person making the evaluation. The evaluator’s perception is influenced by their background and socio-cultural environment to which they belong. Respect therefore has an intrinsic value that is bound to the heritage of the community which a person belongs. To understand the notion of respect for a woman within the socio-cultural environment of Nigeria; we need to understand

how a woman's femininity is perceived. Respect for the Nigerian woman historically springs from her ability to procreate. According to Mbiti<sup>95</sup> the African woman's fertility 'secures her marriage and earns her a greater respect than before from her relatives'. In other words the Nigerian concept of respectability for a woman is tied to her fertility. A childless woman has 'no mouth'<sup>96</sup>, no voice, no respect within her family and community. The fact that respectability for a woman is synonymous with fertility is shown in this research and depicted in the statement below:

### **Text Box 6.9**

In our society if a woman doesn't have a child, she is not regarded, (sic i.e. respected), in fact nobody would want to identify with her in the family, even when it is the husband that has the problem. It is the woman that is blamed. But where a woman has children, she has a say in the family.

**33 year old female Secondary school  
Teacher with Tertiary education,  
married with children**

*Source: Field Data Analysis*

Though there still exists a strong conceptualisation of a respectable woman as a woman who is able to bear children and maintain a home, attitudes are changing, especially among the young and some of the older generation. This research shows that it is becoming accepted that women can be regarded as respectable

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<sup>95</sup> John S. Mbiti *An Introduction to African Religion* (Heinemann Educational Books, 1975), 82.

<sup>96</sup> In the Nigerian traditional socio-cultural perception, for a woman to have 'a mouth' means to be able to speak within the society and for her to command enough respect so that people within her community listen to her. The entrance into society for a woman is through the children she has for her husband especially if they are males. In almost all customary laws in Nigeria, wives do not inherit, but get an inheritance through the children she has: Justice Chukwudifu Oputa JSC, 'Women as Children as Disempowered Groups' in Federal Ministry of Justice, Lagos: *Women and Children Under Nigerian Law* (Federal Ministry of Justice, Lagos, 1989), 33. In traditional society barren women do not inherit properties from their husband's house because their inheritance is through their children. When her husband predeceases her she remains in the home at the pleasure of the Head of the Household if she is of good behaviour or is not acquired in a form of Levitate marriage to her husband's brother. See Chapter three for a full discussion on traditional perception of Nigerian women, her femininity and reproductive rights.

even if they doesn't have a child. Also, 'the fact that a woman undergoes an abortion does not mean that she is not respectable. Respondents acknowledge that "respectable women do have abortions for different reasons".<sup>97</sup> Women who choose to have an abortion may in fact make the choice because they are responsible and respectable as the statements below show:

### **Text Box 6.10**

There are some women who are respectable and have abortions for many genuine reasons<sup>98</sup>...some women who seek abortion are sometimes respectable<sup>99</sup>...(while) some respectable women still have abortion if there is nobody who will be responsible for the baby when it is born.<sup>100</sup>

#### **(i) Cross-section of male responses**

They are highly strong, considerate, decision makers. She might not be emotionally, financially, psychologically stable for motherhood. Personally I cannot give birth to a child who I cannot take care of as a result of money, understanding by my parents or boyfriend.

#### **(ii) 22 year old female undergraduate, Christian, single**

*Source: Field Data Analysis*

The statement in Text Box 6.10(i) is a selection of male responses across different demographic characteristics; while Text Box 6.10(ii) is a statement by a young female respondent. These statements represent a link between the perception of modern Nigerian men and women and the changing attitude to women who choose abortion.<sup>101</sup> Even though the responses stating that women who choose abortion are sometimes respectable are in the minority from the data, these responses represent the growing attitude of Nigerians to women and their social status in regard to their fertility. It would be interesting to learn at a later study how

<sup>97</sup> Field Data Analysis: 27 year old female with Secondary education, Student Christian single.

<sup>98</sup> Field Data Analysis: 34 year old male Civil Servant with Tertiary education and 22 year old male student with Secondary education, Muslim,

<sup>99</sup> Field Data Analysis: 40 year old male Trader with Secondary education, Muslim, married.

<sup>100</sup> Field Data Analysis: 21 year old male, university graduate on his NYSC, Christian, single.

<sup>101</sup> See Table 6.1 above.

the cultural perception of women, her fertility control and the changing desire among the younger generation of Nigeria for smaller family size impact on development, population and policy. I believe that in time these emerging differential patterns of needs will influence the Legislature to make laws that are socially acceptable for dealing with the differing patterns of societal needs in the area of family relations, women's autonomy and reproduction in Nigeria.

### **Emotionally Stable women choose abortion**

In *R v Bourne*<sup>102</sup> Judge Macnaughten directed the jury that 'preserving the life of the mother' could properly include preventing her from becoming a 'physical or mental wreck'. In recognition of the fact that the abortion could make the 15 year old victim become a 'mental wreck', (if forced to bear a baby conceived through gang rape), the jury found Dr Bourne not guilty of performing an abortion on the girl. As in *Bourne* women's emotional stability has been tied to their biological and hormonal state.<sup>103</sup> Historically, the construction of the mind/body dualism is known to be central to the social construction of gender,<sup>104</sup> which assumes that a woman's emotion is controlled by hormonal changes in her biological cycle.<sup>105</sup> 'Women's generative organs gave women all the characteristics of body and mind',<sup>106</sup> and according to Thomson 'determine every aspect of her life'.<sup>107</sup> More often than not, it is assumed that pregnancy makes women incapable of emotional stability because experts have stated that women's reproductive cycle was the most definitive and controlling part of their physiology.<sup>108</sup> Flowing from all this, I conclude that the traditional social attitude is that a woman arriving at a decision to choose abortion cannot be trusted, because the monthly 'follicular release of the ova'<sup>109</sup> incapacitates and beclouds her judgement. Medicine and law have for a

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<sup>102</sup> *R v Bourn* (1939) 1K B 687 at 693-694.

<sup>103</sup> P. Cheah and E. Grosz 'The body of the law: notes towards a theory of corporate justice' in P. Cheah; D. Fraser and J. Grbich (editors), *Thinking Through the Body of the Law* (Sydney: Allen & Unwin, 1996), 4.

<sup>104</sup> Michael Thompson 'Employing the Body: The Reproductive Body and Employment Exclusion', *Social & Legal Studies* (1996) 5 (2) 249.

<sup>105</sup> F. Hollick, *The Diseases of Women, Their Cause and the Cure Familiarly Explained*, (London: T. W. Strong, 1848), 42.

<sup>106</sup> Quoted in B. Ehrenreich and D. English, *For Her Own Good: One Hundred and Fifty Years of the Experts' Advice to Women* (London: Pluto, 1979), 108.

<sup>107</sup> Michael Thompson (1996), (Footnote 103), 248.

<sup>108</sup> Carl F. Stychin, 'Body Talk: Rethinking Autonomy, Commodification and the Embodied Legal Self' in Sally Sheldon and Michael Thompson (editors), *Feminist Perspectives on Health Care Law* (London and Sydney: Cavendish Publishing Ltd, 1998), 214.

<sup>109</sup> Michael Thompson, (1996) (Footnote 103), 249



long time accepted as definitive the *hysterization*<sup>110</sup> of the female body and her irrationality and emotional misbehaviour as being connected to her pregnant state.<sup>111</sup> Abortion law in Nigeria follows in the footsteps of the British law in imputing that a pregnant woman could not be regarded as emotionally stable enough to make the rational evaluation to choose abortion without the expert advice of doctors who must certify that her life is in imminent danger which justifies their decision to give her access to legal abortion.<sup>112</sup> But the difference between British and Nigerian law is that there is a recognised medical/social need for abortion within the terms of the British Abortion Act 1967 which is absent in the Nigerian Criminal or Penal Codes. No Nigerian doctor has so far challenged the abortion law in court on grounds that relate to the emotional or psychological health of the woman who seeks abortion as Dr Bourne did in the *Bourne* case; therefore, we are unable to ascertain if Nigerian courts will make provisions for therapeutic privileges for the pregnant woman within the terms of the law based on her emotional state.

There are only eight recorded judgements dealing with abortion in Nigeria that I found during my research. Because all cases were brought under either the Criminal or Penal Code the judgements revolved around the culpability of the accused (who was a doctor, quack or agent provocateur). None of the judgements focused in any way on the mental state of the women (who were usually dead victims anyway). It is difficult therefore to assess what the attitude of Nigerian courts is to a pregnant woman's emotional state in relation to abortion.

Moreover, societal traditional idolization of children coupled with the criminality of the abortion process does not give room for concluding that pregnant women's choice of abortion is one made by emotionally stable women. Consequently, it is not surprising to see that only 4.13 percent female and 2.2 percent male respondents stated that women who choose abortion are emotionally stable (Chart

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<sup>110</sup> *ibid* at 249.

<sup>111</sup> See W. C. Taylor, *A Physician's Counsels to Women in Health and Disease* (Springfield, MA: W. J. Holland, 1871) 284-5; F. Hollicks, *The Diseases of Women, Their Cases and Cure Familiarly Explained* (London: T. W. Strong, 1848), 242.

<sup>112</sup> Similarities between the two legal systems end in that the British Abortion Act 1967 section 1 (1)(a) allows abortion where the continuation of the pregnancy "would involve...injury to the physical or mental health of...any existing children of the family". There is no provision for the mental or physical health of any existing child under Nigerian abortion laws.

6.2).<sup>113</sup> Note also in Chart 6.3 in the overall comparison of the characteristics of women who choose abortion, only a total of 3.17 percent of the respondents accepted that women who choose abortion could in fact be emotionally stable when making their choice. It would otherwise be improbable to explain why conservative estimates of about 60,000 women have been known to carry out abortion annually in Nigeria.<sup>114</sup> Of course, as I will demonstrate, it cannot be the case that all women who choose abortion are emotionally unstable and hysterical people.

I believe it is possible to argue that the minority of respondents, who actually believe that women are capable of reasoned judgement when they are pregnant, recognise the fact that because the pregnant woman is the one who knows her capability and ability to maintain the child when it is born, her choice evolved from a deliberate, calm assessment of her individual situation. This is because for Nigerian women, unlike their sisters in some developed countries,<sup>115</sup> their economic status and socio-cultural environment would determine her choice. Choosing abortion is in consequence an example of well reasoned cognitive evaluation of women's overall environment at the time of their pregnancy and how it will impact on the unborn child. In other words, I argue that many pregnant Nigerian women who choose abortion were emotionally stable when their choice of abortion was made.

Furthermore, I suggest that the characterisation of pregnant women as emotionally stable by the few respondents is a recognition of the fact that women are capable of making conscious choices, have the ability to exercise their procreative freedom and recognise the need to assert their bodily integrity. Because, to do otherwise will amount to socio-economic suicide and stigma for many of them and the child they may have.<sup>116</sup> The responses from a varied demographic sample of respondents showed below buttresses my argument; because their choice was

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<sup>113</sup> This overall percentage is only among the respondents with primary education and above as can be seen from Table 6.2 while no respondent without any formal education agreed that women who chose abortion were to be seen as emotionally stable.

<sup>114</sup> C. Tietze and S. K., Henshaw, 1986), (*Footnote 34*).

<sup>115</sup> Some developed countries like Britain, France and Italy have social security services and health care facilities that could influence a pregnant woman's choice of abortion if she knows that she would be given economic assistance with maintaining the child when it is born.

<sup>116</sup> An example of what the type of stigma means is this statement from a 29 year old Male Secondary school teacher, with tertiary education and single: 'For the future of both the mother and her child and to remove the stigma from the mother abortion should be allowed when she wants it'.

made sometimes out of fear of social stigma or pressure, fear of abnormality of the foetus, economic incapacity or rape:

**Text Box 6.9**

The pregnant woman may have fear for her future if she carries an unwanted pregnancy, she may be concerned about the social stigma, and could be a very responsible woman who has made a mistake in life.

Women sometimes seek abortion for good reasons. Maybe the child will be born abnormal, while others do it in order not to bring shame onto themselves and their family because they are not married. Sometimes loose women tend to abort to enable them to flirt the more.

**(i) 62 year old male Retired civil Servant Christian, Widower**

**(ii) 28 year old male undergraduate, Christian, single**

Women would rather not give birth to children who will be hungry because she can't feed them so that they will not turn out to be prostitutes and armed robbers.

It might be due to some circumstances that warrants termination for example where a young girl is raped and her cervix is not well developed to carry the pregnancy, or where the mother's life is at stake.

**(iii) 62 year old female, Trader with Secondary education, Christian, married.**

**(iv) 26 year old female undergraduate Christian, single.**

*Source: Field Data Analysis*

*Other Positive Responses*

The respondents gave other positive responses to the characterisation of women who choose abortion. The reasons are many and varied but mainly consist of reasons why abortion was chosen while others believe abortion should be liberalised to allow women pursue educational advancement or career demands. Some others see it as a form of population control while some said having too many children ages a woman faster.

## Summary

In characterising the woman who chooses abortion in Nigeria, the majority of the respondents concede that the choice is as a result of her inability to care for the child. The statements show a failure of the Nigerian law and policy makers to accommodate and provide for the changing needs of women since the incorporation of the abortion law into the legal system under the British. There is also an exhibition of reluctance on the part of society to make a concerted effort to challenge policy makers on the reproductive needs of women to effect a change in the law. Abortion is restrictive in Ireland as it is in Nigeria; but there is public effort to effect reform of Irish abortion law to accommodate the needs of women by society through the court. Fletcher<sup>117</sup> states that the successful challenge by the Family Planning Association of Northern Ireland (F.P.A.N.I) on appeal to getting a declaration holding the state accountable for its duty to safeguard women's reproductive health and welfare, and clarify the circumstances in which abortion is lawful is significant. F.P.A.N.I's success is an acknowledgment of the responsibility of the state to its women citizens and the health care professionals serving their needs. Most important of all Fletcher sees this as an identification of accommodating women's needs 'as an aspect of the rule of law and its commitment to equality, fairness and clarity'.<sup>118</sup>

In Nigeria women who make abortion choices are sometimes given negative and positive characteristics by society. The negative characterisation does not take into consideration the socio-economic situation pregnant women find themselves. Their choice of abortion could in fact be recognition of their responsibility as good mothers who are unwilling to bring to the world children who will be considered outcasts or who will not be able to have the standard of living a mother would want to give her child. The two major reasons why Nigerian women choose abortion is because of lack of economic capacity to maintain the child and if the putative father denies responsibility for the pregnancy.

The Nigerian government through its 1988 National Population Policy<sup>119</sup> and 1995 Health Policy<sup>120</sup> recognise the need to promote the health of women and

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<sup>117</sup> Ruth Fletcher, 'Abortion Needs or Abortion Rights? Claiming State Accountability for Women's Reproductive Welfare' *Feminist Legal Studies* (2005) 13: 123-134, 123.

<sup>118</sup> Ruth Fletcher, (2005) *ibid*, 124

<sup>119</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance.



adolescents as a natural and positive part of life, and generally on the reproductive health needs of the population. Government's interest is as a result of research which shows that its adolescents are sexually active.<sup>121</sup> Research has also shown that abortion is common and affects the health of women adversely on individual bases and the population as a whole.<sup>122</sup> But policy statements are not enough if the law does not meet the reproductive and health needs of the population. Women cannot exercise their reproductive needs legally if law prevents them from doing so as the abortion law does. Therefore access to legally safe abortion for reasons other than to save the woman's life should be recognised as an integral part of the health needs of Nigerian women.

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<sup>120</sup> Federal Republic of Nigeria: Federal Ministry of Health 'Time for Action: Report of the National Conference on Adolescent Reproductive Health in Nigeria, January 26-29, 1994 Abuja Nigeria.

<sup>121</sup> Susheela Singh; Suzette Audam and Deidre Wulf, 'Early Childbearing in Nigeria: A Continuing Challenge', The Alan Guttmacher Institute, 'Research in Brief 2004 Series Number 2, [www.guttmacher.org](http://www.guttmacher.org) (accessed 23 November, 2004).

<sup>122</sup> Abiodun Raufu, (2002), (Footnote 3), 988; S. K. Henshaw, and K. Kost, (1996) (Footnote 34), 140-147; Akinrinola Bankole *et al*; (1999), (Footnote 2), 68-77; C. Tietze, and S. K., Henshaw, (1986), (Footnote 34).

# CHAPTER SEVEN

## UNTYING THE TIRED WOMB: ARRIVING AT AN ACCEPTABLE REFORM OF THE ABORTION LAW IN NIGERIA

"The law as it concerns abortion is very weak, in Nigeria. It is outdated and it is abused because it is not compatible with the society. It is therefore broken with impunity. The law on abortion should be amended to allow it to be done for reasons other than to save the woman's life. This is because with a proper law in place, abortion would be done properly because it goes on daily. While the rich women can afford to go to proper hospitals, the poor ones are forced to go to quacks. Abortion may not be a savoury thing for women, but its legalisation would save many of them from unnecessary death and the puncturing or danger to their wombs. Our society is not serious or realistic about the effects of abortion. The society also pretends that it does not go on. Though abortion is against all the known cultures in Nigeria, there is hardly any part of the country where it is not done. We need to wake up and face reality and do something about amending the law on abortion because abortion is here to stay".<sup>1</sup>

This quotation by a male respondent in the study area raises many of the social and legal issues that are discussed in this chapter. The abortion debate is often perceived as a clash of 'rights'- the rights of pregnant women to exercise control over their reproduction against those of the foetus to life.<sup>2</sup> This ultimately brings in the question of morality,<sup>3</sup> which I believe is ancillary to, but not necessarily central to the reproductive choice women make because women make those choices within specifically individual and social environment.<sup>4</sup> Social change is often

<sup>1</sup> Field Data Analysis: Excerpts from In-depth Interview: 48 year old Male Lecturer in a University in the study area.

<sup>2</sup> McLean states that the use of the phrase 'maternal/foetus conflict' disguises a number of suppositions, and the use of the language is designed to sway the listener into believing (among other points) that there are two patients who are adversaries, when in actual fact there is legally only one-the pregnant woman: Sheila McLean, *Old Law, New Medicine: Medical ethics and human rights* (London and New York: Rivers Oram Press, 1999 a), 51-52.

<sup>3</sup> That is, the moral right of the mother to exercise her reproductive freedom, which is both social and individual at the same time and operates 'at the core of social life' as well as within and upon women as individual bodies' Rosalind P. Petchesky *Abortion and Woman's Choice, The State, Sexuality, & Reproductive Freedom* (revised edition) (USA: Northeastern University Press, 1990), 2.

<sup>4</sup> Choices are not made in a social or cultural vacuum-(Alison Jaggar, *Feminist Politics and Human Nature* (Toronto, New Jersey: Rowman and Allenheld, 1983), 40; but all women across the world have the uniqueness of being able to have a shared experience of being human that is different distinctly from men, but can only be understood by women ((Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989), 9-19; Emily Jackson, *Regulating Reproduction Law, Technology and Autonomy*(Oxford: Portland Oregon, 2001),2-3) because of their reproductive capacity. But even within this shared experience, women across different cultures make their reproductive choices within their socio-cultural environment. The choice of abortion Nigerian women can make can only be done within the available social, cultural and legal environment they operate in.

effected through law reform.<sup>5</sup> I opine however, that law reform can only be effectively embarked upon by taking cognisance of the cultural peculiarities of the particular society for which the reform is proposed.<sup>6</sup> For Nigerian women morality is not the only overarching reason for demanding access to abortion because other equally compelling social factors compel women to choose abortion.<sup>7</sup> According to Fegan and Rebouche<sup>8</sup> '...vague universalist moral claims conceal other more subtle dominant norms and values', these norms and values receive little attention from the legal, public or governmental institutions. There are other moral complexities of abortion, which receive little attention even from within orthodox perspectives, such as 'the *factual context* of pregnancy, the *values* which inform the regulation of pregnancy and the *history* of abortion regulation'.<sup>9</sup> I will focus on social issues of abortion not addressed by law, by addressing them it is possible to arrive at abortion law reform that is acceptable to a majority of the people.

This chapter will focus on the many issues that are not discussed under Nigerian abortion legislation or addressed by the courts.<sup>10</sup> But legislative clarification and judicial determinations of 'rights' in reproductive health matters, especially abortion, is important in defining the limits of women's abortion choices in the face of a vague and static abortion law. It is by discussing these issues that we can untie the tired womb of thousands of women who seek abortion each day in Nigeria and arrive at a just law that will adequately address their need for abortion in contemporary Nigeria.

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<sup>5</sup> Eileen V. Fegan and Rachel Rebouche, 'Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency' (2003) 11(3) *Feminist Legal Studies* 221-254, 223 state that since the 19<sup>th</sup> century, feminists have explored the possibilities of using law to effect social change, such as achieving equality, suffrage and freedom in a variety of political, practical and philosophical perspectives.

<sup>6</sup> Carol Smart *Feminism and the Power of Law* (London: Routledge, 1989), 138, cautions feminists of placing women's concerns before law because it might invoke powers already loaded against women. This is because law has the power to 'resist and disqualify alternative accounts of reality' for women (ibid, 5).

<sup>7</sup> Chapter five shows that the overarching persuasive influence for abortion choice by women is economic rather than moral or ethical considerations.

<sup>8</sup> Eileen V. Fegan and Rachel Rebouche, (2003), *Footnote 5* at, 222.

<sup>9</sup> Feminist Legal Action Group (F.L.A.G.) 'Reproductive Control: A Condition of Women's Equality and Freedom' submission to the (Irish) Interdepartmental Working Group on Abortion (March 1998), 6 quoted in E. V. Fegan and R. Rebouche, *Ibid at*, 222, The emphasis is as in the text. I address the factual context of abortion in chapter 5 to 8 while the historical and value issues which forms the focus of regulation is addressed in chapter 1 and 3 of this thesis.

<sup>10</sup> The issues have not received judicial clarifications because there have not been cases dealing with these issues before the courts as there are in other jurisdiction in England, United States of



I introduce the chapter by looking at the competing rights of parties to abortion from the traditional and contemporary perception. I follow with the rights of pregnant women to choose abortion. In discussing this, I examine ethical issues in abortion such as, rights to abortion in cases of rape and incest. Thirdly, I examine the rights of adolescent girls to abortion under different individual social environments within the patriarchal socio-cultural system of Nigeria. The ethical issue of abortion in cases of foetal abnormality follows this. The fifth sub-heading discusses the rights of putative fathers. I end with the rights and duties of the doctor and conclude with a summary of the chapter.

## 7.1 Competing Rights of Parties to Abortion

### Traditional and Contemporary Perception

When a woman is about to have an abortion there are several people involved in various ways with the termination of the pregnancy who are affected or involved by the choice of abortion. Law recognises some of these people others are not. In this section, I discuss the rights of the competing parties to abortion through the perception of Nigerian society, government and the abortion law as is applicable in Nigeria. In doing so, I make a comparison with English abortion law and point out the lacuna in the Nigeria law and project how Nigerian courts would decide on many aspects of abortion law that have been litigated upon in England but have not in Nigeria. I end by looking at the attitude of the respondents to the rights of the parties to abortion through data from my empirical study in my discussion of the different parties.

The underlying foundation of reproductive freedom demanded by women has its basis on two essential ideals. Firstly on the biological connection between women's bodies, sexuality and reproduction and secondly on the historical foundation that since women are the bearers and carers of children they ought to be the ones to decide on contraception, abortion and childbearing.<sup>11</sup> But 'the law does not recognise unfettered rights of an individual over his body in the same way as we have proprietary rights over objects we own'.<sup>12</sup> What the law does allow is the freedom to use or refuse to use our bodies in such a way and to such extent that we do not violate public decency. This is what Harris referred to as 'bodily use freedom principle'.<sup>13</sup> According to Munzer,<sup>14</sup> we do not therefore have the legally recognisable rights to use or misuse our bodies as we please. This is the statutory held principle by British and Nigerian courts. However, in Nigeria the concept of proprietary rights over women's bodies by someone supposedly holding a superior right over them come in conflict under traditional and Islamic principles on the one hand, and Constitutional law on the other. The traditional rights men had over women's bodies are similar under traditional and Islamic law

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<sup>11</sup> Rosalind P. Petchesky (1990), *Footnote 3* at 2.

<sup>12</sup> *R v Brown* [1994] 1 AC 212; Carl F Stychin, 'Body Talk: Rethinking Autonomy, Commodification and the Embodied Legal Self' in Sally Sheldon and Michael Thomson, *Feminist Perspectives on Health Care Law* (Cavendish Publishing Company, 1998), 211.

<sup>13</sup> J. W. Harris 'Who owns my body' (1996) 16 OJLS 55 at 62.

<sup>14</sup> S. R. Munzer *A Theory of Property* (Cambridge: CUP: 1990), 37.

on the one hand; but differ under statutory laws applicable in Nigeria.<sup>15</sup> Constitutional law as it stands today in Nigeria accepts that there is equality of all persons<sup>16</sup> but traditional and Islamic law agree that husbands or fathers have some rights over his wives or daughters. Traditionally, men (whether husband or father) had proprietary patriarchal powers over females.<sup>17</sup> It seems these rights extend to men's control over the foetus growing inside women's bodies. This is because if men had the traditional right to dispose of women as chattels, or marry them off as they pleased, they therefore also had control over their bodies and consequently the foetus inside them as well.<sup>18</sup> Through the culture of patriarchy, Nigerian men seek to have access to, and control over, the pregnant female body even in modern times. I argue further that law has helped patriarchy to reinforce the subjugation of women's reproductive decision because when these laws were enacted men dominated the medical and legal profession and made it to suit their interest. Over time, neither gender has been willing to change the status quo.<sup>19</sup> I observe that patriarchy subliminally limits women's reproductive choices in Nigeria and most social and political structures unwittingly reinforce this control. This assertion is historically true of most societies as observed by Rowland when he said:

In the relationship between men and women  
as social groups, patriarchal values and  
structures effectively set the limits of women's  
choices. Social institutions such as the  
family reinforce and maintain the patriarchal

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<sup>15</sup> Under traditional law, the concept over proprietary right by a father over his child is predicated upon the notion that he owns his children. This gives him the right over his daughter's body, (not to abuse her sexually himself) but to treat her as he would any of his chattels. Under Islamic law too, the father or husband had the right to chastise his wife and give his daughters away as he pleased.

<sup>16</sup> The Constitution of the Federal Republic of Nigeria 1999 section 17(2) (a) states: "every citizen shall have equality of rights, obligations and opportunities before the law".

<sup>17</sup> If a man has paid the bride price for a woman to her family and the woman subsequently decides to marry someone else. The suitor who has paid the bride price on her customarily is entitled to claim the children she may have for the new partner. This practice has been upheld by the Supreme Court as being repugnant to natural justice and good conscience *Edet v Essien* (1932) 11 NLR 47.

<sup>18</sup> My assertions are made from a logical argument that if a woman is regarded in tradition as a chattel that a man has unfettered control over, (i.e. all that encompasses her as a human), (just as in the slavery days when a slave owner had unfettered 'right' to sell his slaves and their off-springs as he pleased), the man also had unfettered right over the foetus she carried. This proprietary ownership is vividly described by Klein when he said of slave: 'He did not control his children nor did they inherit from him except when the master wished' M. A. Klein, 'The Study of Slavery in Africa', (1978) *Journal of African History*, 602, cited in Elizabeth Isichei *A History of Nigeria* (London, Lagos & New York: Longman Group Limited, 1983), 425.

system...[and government] set up systems that are structured to control which women have children, when, how and how many. The new reproductive technologies extend their power to do so in ways unimaginable a few decades ago.<sup>20</sup>

Patriarchy grants men ownership of the child when it is born and arguably, these rights extend to the foetus that the woman carries<sup>21</sup>. It is also not clear how far the constitutionally guaranteed autonomous freedom of all Nigerians extend in modern times to the body of the pregnant female who is a wife or daughter in practice.<sup>22</sup> In reality, I believe the dominance of traditional and Islamic laws that accept the superiority of men over women obscure the fundamental autonomous freedom of women under the Constitution in Nigeria.<sup>23</sup> I therefore state, that this superficial autonomous freedom over their body by women exists only in law but not in reality. My study shows the perception of the people to this issue varies; but the majority of the respondents accept that women ought to exercise a right over their body with minimal interference by men. When seeking abortion, if the pregnant woman is married or under-age or the man is the putative father of the foetus, most respondents accept the putative father should be given a right to be consulted, as I discuss shortly.

According to Stychin,<sup>24</sup> it is acceptable that the 'commodification' of the female body is historically and culturally specific and is tied to 'historical and cultural circumstances', however, in Nigeria there exists a lingering acceptance by society that men should intrinsically have control over their pregnant female body (as I

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<sup>19</sup> Sheila McLean(1999 a) *Footnote 2*, at 30, (says that patriarchal societies systematically put its member into roles that have slotted women into positions where men made their reproductive choices for them while medicine and science provided justifications for this incursion.

<sup>20</sup> Robyn Rowland, 'Living Laboratories: Women and Reproductive Technology' (London: Cedar, 1992), 5-6. Reproductive technology is seen as an extension of the historical patriarchal desire to control women's reproduction.

<sup>21</sup> During the field study, the chief Imam of the Central Mosque told me that if a woman gives birth to a child within nine months of her divorce, the child is presumed to belong to her former husband (which was the same under the Marriage Act, though it is contestable in present time with DNA technology).

<sup>22</sup> Legally a woman is autonomous, but the autonomy women enjoyed varied across different parts of Nigeria with women of the southern parts generally exercising more freedom and autonomy than women in the north parts of Nigeria: Elizabeth Isichei *A History of Nigeria* (London, Lagos & New York: Longman Group Limited, 1983), 257-259.

<sup>23</sup> Titilayo Aderibigbe 'Women's Rights: Law and Practice in Nigeria' in Layi Erinoshio; Babatunde Osoimehin and Janice E. Olawoye *Women's Empowerment and Reproductive Health* (Nigeria: Social Sciences and Reproductive Health Research Network, 1996), 48-49.

<sup>24</sup> Carl F. Stychin (1998), *Footnote 12*, at 218-219.



observe from several of the respondent's responses). The mature and independent unmarried pregnant women seem however to be able to exercise greater autonomous control over their choice of abortion independent of the putative father as I discuss under the rights of pregnant women below. For instance, when a male respondent was asked about what he thought should be the status of a wife he said, "A married woman belongs to a man".<sup>25</sup> While in the case of an unmarried girl, another male said:

**Text Box 7.1**

It depends on the traditional culture of the place. For example, among the Yanko when an unmarried girl is pregnant, the baby belongs to the girls' father. The child will bear his name and on his (the girl's father's) death, the child will inherit as other children of the family. However in most of southern Nigeria, especially among the Yoruba, the child is considered a bastard, especially if there is no man to claim responsibility (for the child).

**24-year-old male undergraduate, Christian**

*Source: Field Data Analysis*

I argue that in men's supposed pursuit to protect the child (that traditionally belongs to them), Nigerian men with the backing of culture seek to control what women can and cannot do to their bodies in order to protect the foetus they carry. In practice, (but not under medical regulation) what I discovered is that doctors insist that the husband of the pregnant woman (or the father of the pregnant unmarried girl) sign the consent form for an abortion and not the adult female or other female relation of the pregnant woman or girl.<sup>26</sup> What this shows is that medicine recognises the superiority of the claim of men over women in cases of abortion even though the foetus is within the control of women's bodies and adult male and females are recognised as having equal status constitutionally.

<sup>25</sup> Field Data Analysis: 27 year old male soldier, Christian with tertiary education.

<sup>26</sup> Consent by a male figure is not limited to abortion cases alone, but to all other forms of medical procedures.

Coming to modern times, patriarchy is still the socially and politically adopted forms of social relationship in Nigeria. On it hinges many other form of social and traditional devolution and it has formed the bases of many modern laws in Nigeria.<sup>27</sup> Patriarchy in Nigeria is antiquated, even though it was often interpreted in ancient times to give men unfettered control over women, including their bodies; to maintain the social order women had to procreate and were forbidden to dispose of the child in traditional society unless their own life might be lost in the process of termination. This forms the basis of acceptance of abortion law in Nigeria, which tallied, with the Victorian patriarchal concept in England where it originates. Women's rights were therefore subsumed in the rights of the child they carried. However, in contemporary Nigeria, (as in traditional times), women have always resisted total control of their bodies by men and have often taken the initiative to control conception sometimes without men's knowledge. Nevertheless, in modern Nigerian society it is an acceptable fact that legally each individual controls his or her body.

However, the Nigerian government explicitly endorses patriarchy. Paragraph 5.3.1 of the NPP states:

*The patriarchal family system in the country shall  
be recognised for stability of the home.*<sup>28</sup>

What is not clear from this statement is whether state endorsement of patriarchy also extends to the traditional rights of men over female bodies and consequently the foetus. With incorporation of the British medicalisation of pregnancy into the Nigerian legal system,<sup>29</sup> medical doctors have assumed increased rights over the pregnant female body under the guise of professionalism. A pregnant woman is denied access to abortion unless she can satisfy two medical professionals that her life is at stake. In effect, the right of the doctor over the pregnant female body is superior to that of the pregnant woman herself. The concern we have in the

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<sup>27</sup> Inheritance laws are based on the concept of patriarchy, so are custody proceedings and several taxation laws are grounded on the concept of patrimony.

<sup>28</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988, (referred to as NPP in the text henceforth).

<sup>29</sup> The abortion laws in Nigeria were British abortion laws incorporated into Nigerian legal system as I examined in Chapter two. by this integration, Nigerian doctors also compromised the rights of control of the pregnant woman over her body through the incorporation of the British legal system into Nigerian law. The doctors gained a right over the pregnant woman because of the doctors

abortion issue within the socio-cultural environment of Nigeria, (as endorsed by law and medical profession), is the apparent competition by all these protagonists over access to and control over the pregnant female body without acknowledging women's right to speak about their bodies or that of the foetus. Thus, all the parties to the abortion issue, the pregnant woman, the putative father of the foetus, (or the father of the pregnant unmarried girl) and the medical doctor, all seek control over women's bodies under the assumed protection of women from themselves. I will include the silent foetus in the identified parties because, while all interested parties claim to be acting for the best interest of women, most often it is supposedly the right of foetuses to life that is being protected by everyone else including pregnant women.<sup>30</sup>

Having discussed traditional and contemporary perceptions of the rights of the parties to abortion, I go on to examine the rights pregnant women (married and unmarried), the putative father of the foetus (and the father of the pregnant unmarried girl), the rights of the foetus and finally those of the medical doctor. My focus will be on pregnant women not as objects but as autonomous subjects within a socio-cultural environment that gives them legal freedom without the enabling law to exercise these rights. I portray my examination through the analysis of the empirical data I collected.

Behind these identified claimants, I analyse the views of feminist theorists who advocate for control of the pregnant female body.<sup>31</sup> They are sometimes seen as a conceptual abstraction who asserts that women are essentially autonomous, independent beings who ought to have freedom of control over their body. This included the life within them from any other third party interest extrinsic to them. In my analysis, I examine whether feminist theory has a place within the Nigerian society as far as the issue of abortion is concerned or whether societal perceptions of women's autonomy hold sway.

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professional expertise that often do not recognise that the woman may have a better understanding and assessment of her capacity to cope with the pregnancy more than the doctor..

<sup>30</sup> In the preceding chapter I discussed the fact that women who seek abortion do so in order to protect the child. They would prefer not to bring a child to the world if they believe they lack the capacity or have the social environment to give it a decent quality of life.

<sup>31</sup> Many of these have been referred to in the preceding discussions. See Jo Bridgeman & Susan Millns in their introduction on 'Why law's engagement with the female body' in Jo Bridgeman & Susan Millns *Feminist Perspectives on Law: Law's Engagement with the Female Body* (Sweet &

## 7.2 “Whose Body is it Anyway, Will You Feed My Baby”? Exploring the Limits and Circumstances when a Pregnant Woman can have an Abortion in Nigeria<sup>32</sup>

The rights of fetuses are diametrically opposed to the right of pregnant women who choose abortion. A reading of Sections 229 and 233 of the Criminal and Penal Codes show that these laws seem to impart the foetus with the recognition accorded a living child.<sup>33</sup> Both laws seek for the protection of the foetus *in vitro*. The differences between the two laws apart from the lengths of the sentences stipulated, is that under the Criminal Code a woman can be punished for attempting to procure her own miscarriage while under this and other sections of the Penal Code relating to abortion, the pregnant woman is not mentioned.<sup>34</sup> I believe that (though not mentioned specifically), the pregnant woman can be punished for attempting her own miscarriage from the explanatory note attached to the Code. This is true also because, the word ‘whoever’ is encompassing rather than exclusionary and courts try to maintain as much as possible uniformity in the law in the whole of Nigeria. What is clear is that the two laws pitch the interest of the mother against those of her unborn child. Part of the elements of the offence is that it is immaterial that the woman was in fact with child or not once it is established that it was a voluntary act not done by a medical doctor “in good faith for the purpose of saving the life of the woman”.<sup>35</sup>

What is observed is that both codes combine the crime of abortion under the section 58 of the English Offences Against the Persons Act 1861, which proffers no defence to procuring the miscarriage of a woman; and section 1(1) of the Infant

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Maxwell, 1998) 2-6; also, Sally Sheldon ‘The Abortion Act A Critical Perspective’ in Ellie Lee *Abortion Law and Politics Today* (Palgrave 2001) 56-57.

<sup>32</sup> The quoted part of the title is taken from a remark made by a female graduate in the study area.

<sup>33</sup> See chapter 1.2 pages 13-14 for the full quotations of the sections.

<sup>34</sup> The few cases that have been decided in Northern states of Nigeria have not punished the pregnant woman for procuring her own miscarriage and in fact, no decided cases in the southern states where the Criminal code applies have similarly decided so far. This is understandable because it is unlikely that the woman, her doctor or her family will bring such a case to court because of the stigma abortion still carries. It is only in exceptional cases where the doctor have been negligent (medically or legally) and the police decide to prosecute. My finding is not peculiar to Nigeria as noted by Brooks before 1967 in England that more than 10,000 people signed a petition in support of a doctor whose practice came to legal attention when a woman at his clinic died and that abortion was seen as an alternative to poverty, shame, unemployment and homelessness’. Furthermore... ‘Prosecution was made difficult not only by the secrecy surrounding abortion but by the popular sympathy with the practice’: B. Brooks *Abortion in England: 1900-1967* (Beckenham: Croom-Helm, 1988 cited in Mary Boyle, *Re-thinking Abortion, Psychology, gender, power and the law* (London and New York: Routledge, 1997), 14.

<sup>35</sup> Laws of the Federation of Nigeria, 1990, Caption 42, sections 297 Criminal Code and section 232 Penal Code.



Life Preservation Act 1929, (which gives a doctor a defence to voluntary procurement of miscarriage of a woman to preserve her life). In reality, it is only when the woman is at a critical stage that doctors agree to an abortion, as seen from the respondent who stated that the doctor allowed abortion for his neighbour's wife only "After her husband had given her a tough beating she started bleeding so her doctor had to abort the pregnancy because it would be harmful to her and the child".<sup>36</sup>

The criminal law in Nigeria punishes women for acts done or attempted on the foetus during pregnancy. While it is acknowledged that there is not yet any legal proceeding where a pregnant woman has been punished for attempt or procurement of her abortion, this is because the woman will not give evidence against the abortionist in court. This is more as a need for the woman to protect herself and the doctor (or abortionist) who she sees as a rescuer rather than an accomplice.<sup>37</sup> The criminal prosecution of women in Nigeria for terminating their pregnancy without offering them an alternative means of providing for the child, or attempting to change social attitudes towards those who keep the child without the putative father's acknowledgment amounts to double tragedy for the women concerned. Their predicament is akin to the traditional norm of asking a widow to drink the water used to wash the corpse of her husband in order to absolve her of complicity in his death.<sup>38</sup> Respect for and preservation of the foetus should be recognised, but this recognition should be balanced with the rights of women and the understanding of surrounding reasons why they would make such a choice. Ikenotos<sup>39</sup> states that, 'The criminal prosecution of women for acts against foetuses is the strongest form of reinforcing the ideology...that bad mothers should

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<sup>36</sup> Statement made by a 47 year old Male, Muslim, with no formal education.

<sup>37</sup> In *State v Johnson Oke and Dr Kehinde Shomope* (1975) 9 CCHCJ 1305 at 1310 the second accused (a medical doctor) who was said to have procured the abortion for the 4<sup>th</sup> prosecution witness (the pregnant woman whose pregnancy was aborted) was discharged and acquitted because the woman was reluctant to testify against him among other failures in the case. Justice C A Johnson in the case said '...it would be unfair and unjust to hold rigidly to the contents of the accused's statement without the surrounding circumstances as concessionary and corroborative evidence against him [the doctor and 2<sup>nd</sup> accused]. Also from interviews with prostitutes during this research, many of them stated that they would not disclose the identities of doctors who they routinely go to for abortion because they regarded the doctors as performing services that made their lives bearable. Because of the sensitivity of abortion issue in Nigeria the issue of protection of medical doctors who procured abortion for women and why they guarded their identities could be the subject of further research.

<sup>38</sup> This is a traditional practice in some states in eastern parts of Nigeria of Edo State which has been condemned by members of the society and women's right campaigners but which has not completely died out. The widow's refusal to drink the water is usually out of repulsion rather than an admission of guilt of complicity in her late husband's death.

<sup>39</sup> L.C. Ikenotos 'Codes of Perfect Pregnancy' (1992) 33 *Ohio State Law Journal*, 1205 at 1266.

be punished is expressed when criminal law is utilised'. This is true of Nigerian abortion law.

Scrutinising the wordings of both codes shows that they do not afford women a right to choose abortion. Even in situations where their life is in danger due to the pregnancy, it is the doctor rather than the woman who decides.<sup>40</sup> It seems that Nigerian doctors' first duty is to preserve the life of the foetus and will only attempt termination if the pregnant woman's life will be lost. Although the law presumes, a doctor's first duty when confronted with the competing rights of women and foetus is to save the woman. In the absence of legal pronouncement on whose rights prevail in reality, one cannot be certain. This is in contrast to the British courts that explicitly states that they do not give legal recognition to the existence of a foetus independent of its mother. In *Re F (In Utero) (Wardship)*<sup>41</sup> for example, the court there stated "an unborn child...had no existence independent of its mother",<sup>42</sup> therefore the rights of the child are tied to its mother. There is a lacuna in the Nigerian abortion law in that they do not stipulate what exactly are the rights of pregnant women to demand an abortion. If these rights were explicitly stipulated through judicial pronouncement, it would resolve the issue of the legal status of foetuses. The legal status of foetuses would undoubtedly depend on social perception of the status of foetuses. This status would nevertheless be dependent on what society stipulates it to be. Once society is able to agree on the socio-legal status of the foetus it will in effect have determined the constitutional limits of the rights of its mother also. This is because undoubtedly, the rights of foetuses will provide limits to the rights of the mother to do anything with the foetus *in vitro*. What would follow would be a whole trajectory of ascertainable legal rights of pregnant women flowing from being able to establish the social perception of their rights in relation to the foetus. This will open up a clearer outline of a range of ancillary issues that impinge on the rights of the mother, her autonomy and the limits of law to control her in respect of acts she can do during pregnancy that affects the unborn child. These are issues respondents were asked to determine as I discuss below.

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<sup>40</sup> This is the same situation under the English Offences Against the Persons Act 1861.

<sup>41</sup> *Re F (In Utero) (Wardship)* [1988] 2 All ER 193.

<sup>42</sup> *ibid* at 307; see also *Roe v Wade* (1973) 410 U.S. 113.

## Responses to circumstances when a woman should have access to abortion

Having discussed the legal limits of the rights of the pregnant woman to abortion, the respondents were asked to respond to circumstances when they believe abortion should be made available to pregnant women. Table 7.2 shows their responses. The respondents were asked to choose their answers from *strongly approve*, *approve*, *mildly approve*, *strongly disapprove*, *disapprove*, *mildly disapprove* and *I don't know*. The results show ambivalence in 'ethical' and 'pragmatic-practical' considerations identified by Furedi<sup>43</sup> in a similar earlier study in Britain. While it seems that the results presented below contradict my earlier findings of endorsement by respondents about the need to have abortion when the woman is unable to feed the child when born, or due to the non-acceptance by the putative father, this would be a wrong interpretation. The results in Table 7.2 merely show a society struggling to come to terms with the moral/ethical dilemma of abortion and the pragmatic/practical necessity for it within the prevailing socio-economic environment of Nigeria. Furedi highlights this dilemma also<sup>44</sup> in the English population. I observe from the study that the ethical values stipulated by the various religions have led to a formidable marriage with cultural edification of children. Together, I believe that these two value-systems often throw people into dilemmas of deciding what to do with the practical necessity of an abortion and the ethical stipulation of religiosity and culture that forbids abortion.<sup>45</sup> Hardley states that women, 'because of their unique relationship to the fetus (not the same thing at all as 'owning their own bodies'), are more likely to make a morally informed judgement than anyone else about abortion and the other moral claims in their lives'.<sup>46</sup> This research has shown that the choice of abortion is an economic choice made with concise moral considerations by women by balancing their

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<sup>43</sup> Ann Furedi, 'Wrong but the Right Thing to Do: Public Opinion and Abortion' in Ellie Lee (editor), *Abortion Law and Politics Today* (Palgrave, 2001), 159. The study was an opinion poll carried out in February 1997 by MORI for the Birth Control Trust in Britain.

<sup>44</sup> Ann Furedi, *ibid*.

<sup>45</sup> I have highlighted the historical antecedence of why children were so important in pre and post colonial Nigeria in chapter three as a need to replenish the population that was needed for the agrarian society generally. This research has also highlighted the fact that majority of respondents see abortion as an economic necessity and not a moral decision. This is seen in the statement by a 30 year old male respondent with tertiary education and a secondary school teacher when he said: 'Due to the economic situation in the country bearing too many children will lead to inadequate feeding, shelter, improper care etc'. Though records are scanty about abortion in pre-colonial Nigeria, historical records have shown from other countries that generations of women desired and needed abortion and the evidence of peoples' attitude to abortion according to Reagan showed they believed it was not a moral issue but an 'appropriate response to an unwanted pregnancy in specific situations' Leslie R. Reagan, *When Abortion was a Crime: Women, Medicine, and the Law in the United States, 1867-1973* (Berkeley, Los Angeles and London: University of California Press, 1997), 45.

immediate social necessities of caring for existing family members with competing ethical beliefs.<sup>47</sup>

Table 7.2 shows that where their physical or mental health will not be affected, the net percentage approval for women asking for abortion in that situation is negative in all the different circumstances the respondents were asked to assess. The percentages vary however, with the type of social considerations for the abortion. This explains why the highest percentage of minus 55.01 was against couples seeking abortion "*When the gender of the baby is not the desired one the couple want*".<sup>48</sup> Likewise, opinions were negative (with a net percentage of minus 34.96 percent of respondents against abortion) "*When the woman does not want children for whatever reason*". However, notice that the net percentage margin of respondents who are against abortion '*Where the woman has had all the children she wants*' and '*When the woman cannot afford to feed another child*' are similarly low with minus 6.16 percent and minus 2.87 percent respectively. On the other hand, observe that '*When the pregnancy affects the woman's health*' and '*When the pregnancy is a risk to the woman's life*', the net percentage approval in both cases were positive with a net of plus 55.02 percent and plus 62.75 percent respectively supporting abortion in both situations. The results show the public moral consideration for the preservation of the foetus. The table shows that the general overriding opinion is that when the life or health of the mother will be affected by the continuation of the pregnancy, Nigerians will then accede to abortion. Despite the attitude of respondents towards the preservation of the foetus' life on moral grounds, there is still a strong feeling that women should not be forced to bring children they cannot maintain into the world as discussed earlier in chapter five.

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<sup>46</sup> Janet Hadley, *Abortion: Between Freedom and Necessity* (Virago Press, 1996), 56.

<sup>47</sup> I observe from this research that for a majority of married women their partners are usually in support of the abortion (one 48 year old nurse stated that husbands sometimes come to the hospital with their wives), because the economic demands of caring for the family is a shared effort in contemporary Nigeria especially among the middle and low income class of the population.

<sup>48</sup> This shows that traditional attitudes toward preference for male children as opposed to female ones are changing in contemporary times.



Table 7.1

## Circumstances when a woman should have access to abortion

When should a pregnant woman have an Abortion?			
	Number of Respondents	Percentage of Responses	*Net Approve+/- Percentage
<b>When the woman has had all the children she wants</b>			<b>-6.16</b>
Strongly Approve	154	22.06	
Approve	65	9.31	
Mildly Approve	95	13.61	
Strongly Disapprove	222	31.81	
Disapprove	113	16.19	
Mildly Disapprove	22	3.15	
I Don't Know	27	3.87	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman cannot afford to feed another child</b>			<b>-2.87</b>
Strongly Approve	109	15.62	
Approve	87	12.46	
Mildly Approve	136	19.48	
Strongly Disapprove	205	29.37	
Disapprove	130	18.62	
Mildly Disapprove	17	2.44	
I Don't Know	14	2.01	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman's health is likely to be affected by the pregnancy</b>			<b>+56.02</b>
Strongly Approve	269	38.54	
Approve	152	21.78	
Mildly Approve	111	15.90	
Strongly Disapprove	80	11.46	
Disapprove	43	6.16	
Mildly Disapprove	18	2.58	
I Don't Know	25	3.58	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman/girl has been raped</b>			<b>+43.27</b>
Strongly Approve	241	34.53	
Approve	127	18.19	
Mildly Approve	110	15.76	
Strongly Disapprove	102	14.61	
Disapprove	62	8.88	
Mildly Disapprove	12	1.72	
I Don't Know	44	6.30	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman/girl became pregnant as a result of incest</b>			<b>+4.73</b>
Strongly Approve	192	27.51	
Approve	50	7.16	
Mildly Approve	73	10.46	
Strongly Disapprove	169	24.21	
Disapprove	81	11.60	
Mildly Disapprove	32	4.58	
I Don't Know	101	14.47	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	



<b>When the woman's life is at risk if she continues with the pregnancy</b>			<b>+62.75</b>
Strongly Approve	311	44.56	
Approve	146	20.92	
Mildly Approve	96	13.75	
Strongly Disapprove	72	10.32	
Disapprove	31	4.44	
Mildly Disapprove	12	1.72	
I Don't Know	30	4.30	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman's health is at risk if she continues with the pregnancy</b>			<b>+56.02</b>
Strongly Approve	269	38.54	
Approve	152	21.78	
Mildly Approve	111	15.90	
Strongly Disapprove	80	11.46	
Disapprove	43	6.16	
Mildly Disapprove	18	2.58	
I Don't Know	25	3.58	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the woman does not want to have children for whatever reason</b>			<b>-34.96</b>
Strongly Approve	64	9.17	
Approve	53	7.59	
Mildly Approve	96	13.75	
Strongly Disapprove	302	43.27	
Disapprove	126	18.05	
Mildly Disapprove	29	4.15	
I Don't Know	28	4.01	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	
<b>When the gender of the baby is not the one desired by the couple</b>			<b>-55.30</b>
Strongly Approve	41	5.87	
Approve	47	6.73	
Mildly Approve	56	8.02	
Strongly Disapprove	395	56.59	
Disapprove	109	15.62	
Mildly Disapprove	24	3.44	
I Don't Know	26	3.72	
<b>Total</b>	<b>698.00</b>	<b>100.00</b>	

\*The Net approve +/- Percentage is derived by totalling all the Strongly/Mildly Disapprove and Disapprove and subtracting their total of from the total of Strongly/Mildly Approve and Approve figures for all the variables.

Source: Field Data Analysis

## Women's Right to Abortion in cases of Rape and Incest under the Law

Both rape and incest are criminal offences under Nigerian law.<sup>49</sup> The wording of rape shows it is a gender specific offence committed only by males against females. The law is however silent on what is to be done when conception results from the sexual assault of rape or incest. Within the wordings of the abortion law in Nigeria, it is not clear whether it will permit doctors to perform a 'surgical operation'<sup>50</sup> when pregnancy results from either rape or incest '...if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case'.<sup>51</sup> Decided cases in Nigeria so far do not deal with the question of whether it is lawful for a doctor to perform an operation on a woman because the continuation of the pregnancy will affect her *mental state* because the pregnancy results from either incest or rape, as was the case in *R v Bourne*<sup>52</sup>. The few decided cases involving registered medical doctors performing abortions in Nigeria have been on the criminal responsibility of the doctor in performing an abortion or after the act of abortion had begun and the doctor subsequently used his medical expertise to save the pregnant woman's life.<sup>53</sup> In such situations, the doctor is held not culpable for an act already started.<sup>54</sup> In the absence of decided Nigerian cases, the respondents' attitudes gives an insight into their perception of the rightfulness or otherwise of abortion in cases of rape and incest as discussed below.

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<sup>49</sup> Section 357 Criminal Code Chapter 77 Laws of the Federation of Nigeria, 1990; Rape is defined under the Criminal Code under section 357 as: "unlawful carnal knowledge of a woman or girl, with or without her consent, or if the consent is obtained by force or by means of threats, intimidation of any kind, or by fear of harm or by means of false and fraudulent misrepresentation as to the nature of the act or in the case of a married woman, by impersonating her husband". The same law is defined under the Penal Code applicable to the Northern states in Nigeria.

<sup>50</sup> This is the wordings of the marginal notes to section 297 of the Criminal Code, which exempts a doctor from criminal liability if an abortion is performed for the preservation of the mother's life.

<sup>51</sup> Section 297 Criminal Code, Chapter 77 Laws of the Federation of Nigeria, 1990.

<sup>52</sup> *R v Bourne* [1939] 1 KB 687, [1938] 3 All ER 615.

<sup>53</sup> The cases of *State v Johnson Oke and Dr Kehinde Shomope* (1975) 9 CCHCJ 1305 and *Commissioner of Police v Modebe* 1980 (1) NCR 367 both involved registered medical practitioners who were discharged and acquitted or referred to the Nigerian Medical Association for disciplinary action on him.

<sup>54</sup> *Ibid.*



## **Respondents' Responses to Rights to Abortion in Cases of Pregnancy Resulting from Rape**

Table 7.2 shows that there is a net percentage approval of plus 43.27 percent for abortion in cases of rape and plus 4.74 percent approval in cases of incest. Before discussing the wide disparity in the net percentage approval of abortion in both cases, I will first discuss the justification of abortion itself in circumstances of rape and incest and for the other circumstances shown in the table. Radcliffe-Richards<sup>55</sup> in dealing with the justice behind allowing one woman to have an abortion in the case of rape and denying another who has not been raped, concludes that women who are raped do not deserve to suffer by being forced to have a child imposed upon them through a violent criminal act. The general principle is that "we should sympathize with and help the victims of misfortune-like the woman who has been raped-while not rushing to the rescue of people who have only themselves to blame in other cases".<sup>56</sup> For Nigerian women, carrying a child that is the result of rape amounts to a social death sentence to not only them, but also the child (when born) and their entire family. The women are stigmatised and ostracised from the community, they would find it almost impossible to get married and it could jeopardise the marital future of their female siblings because men would not want to marry girls from that family.

The socio-cultural construct of the Nigerian society, regardless of their ethnicity, places premium on persons being able to trace their ancestry and having an acknowledged paternity. Without it, the child is disinherited, disowned and treated almost as a non-person. Faced with such a dilemma abortion would be preferable to pregnant women than the life sentence of social disgrace. This explains why Nigerian society is favourably disposed to women having an abortion when they are pregnant through rape.

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<sup>55</sup> Janet Radcliffe-Richards 'Ethics and abortion law' <http://www.prochoiceforum.org.uk/a17.asp> (accessed June 3 2004).

<sup>56</sup> *ibid.*



## The Right to Abortion when Conception Results from Incest

In English society, the social abhorrence of pregnancy through incest is as definitive as that of rape.<sup>57</sup> While the attitude is the same in Nigeria, clarification needs to be made about social attitudes to different types of incest in Nigeria. In explaining the small net percentage approval of plus 4.73 in Table 7.2 for abortion in cases of incest, I turn to the meaning of incest before explaining the socio-cultural concept of incest within Nigerian society. Shepherd<sup>58</sup> gives three definitions of incest:

Incest is illicit sexual relationship between persons within degrees of consanguinity excluded from such relationship by socially determined regulations.<sup>59</sup>

Incest is the infraction of the taboo upon sexual relations between any two members of the nuclear family except husband and wife, that is, between parents and children or any sibling pair.<sup>60</sup>

Incest may be defined as heterosexual relations between members of the nuclear family, and by extension between family members beyond the nuclear family.<sup>61</sup>

Of the three definitions, the first two are the most appropriate to the Nigerian socio-cultural milieu. This is because in the traditional Nigerian cultures of most ethnic groups, these are two types of incest relations known. It is important to distinguish between the two categories because the social attitudes to them differ as the social sanctions placed on them. The first type of incest relation is sexual intercourse between near blood relations such as mother/son; father/daughter;

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<sup>57</sup> Joseph Shepherd, *Incest: A Biosocial View* (New York and London: Academic Press, 1983) gives a comprehensive sociobiological and theoretical literature on the universal abhorrence to incest in almost all human societies. Barbara Brookes, (1988), *Footnote* 36 at 8 & 38; The tragic-comedy play 'The Gods Are Not To Blame' by Rotimi is based on Sophocles' *Oedipus Rex*, examines the social abhorrence of incest in traditional Nigerian society; Ola Rotimi (Heinemann Educational Books, 1978).

<sup>58</sup> Joseph Shepherd, (1983) *ibid*, at 25-26.

<sup>59</sup> Reo Fortune, *Encyclopaedia of the Social Sciences*, (1953) Volume 2: 620, quoted in Joseph Shepherd *ibid* at 25.

<sup>60</sup> Margaret Meade (1968), Volume 7, *International Encyclopaedia of the Social Sciences* 115 in Joseph Shepherd (1983) *ibid* at 26.

<sup>61</sup> David M. Schneider in Julius L. Gould and William L. Kolb (editors) *A Dictionary of the Social Sciences* (New York: The Free Press, 1964) quoted in Joseph Shepherd *ibid* at 26

brother/sister; and uncle/niece. This type of incest in Nigeria is considered a heinous offence such that only the mentally unstable will commit it. Such people are traditionally ostracised from the community or sent to the traditional healers for healing. The offspring of such unions are often kept a closely guarded secret or sent away from the community; whichever is more expedient at the time of the commission of the crime.<sup>62</sup>

The second type of incest (which is socially acceptable and practiced even today within many ethnic groups), is the sexual intercourse between a deceased brother's widow and his living brother, (that is, Levirate marriage where the late brother's wife is inherited). Many ethnic groups even force the widow to marry a brother of her late husband in order to keep the children and his property within the family. This practise is to encourage the continuation of the genealogical line of the dead relative. It was also done as a form of social security to ensure the proper care of the deceased man's children. The philosophical awareness behind this is because many Nigerian traditional cultures believe that the existence of the individual is the existence of the corporate. A Nigerian proverb puts it succinctly "I am because we are; and since we are, therefore I am".<sup>63</sup>

Sexual intercourse between a son and his father's wife (who is not the man's mother) in a Polygyny family; or a nephew with his uncle's wife is acceptable to a lesser degree. This occurs in situations where the man is old and is unable to perform his conjugal duties towards his wife who may be young and closer in age to the son or nephew. The children born from such relations are regarded as the biological son of the actual husband of the wife who is pregnant. I give this background explanation on incest to explain the percentage disparity between respondent's approval of abortion when conception results from rape and incest. Therefore, a child born through incest can still be acknowledged and claim inheritance from its mother's husbands (not necessarily his/her biological father) because s/he has a known paternity under acceptable situation.

Though the sexual practices I have mentioned are dying out, social abhorrence to children created as a result of the union is not as strong as those children created through rape. Therefore, I believe that while abortion may not be permissible in

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<sup>62</sup> This is the information given to me by my 97 year old great aunt that has been corroborated by many of the older respondents during the field study.

rape cases but will be acceptable in forms of incest that is not socially repugnant.<sup>64</sup> I argue however, that these differences do not justify distinction between treating one foetus one way and another differently.<sup>65</sup> I also argue that the constitutional non-discriminatory clause justifies this.<sup>66</sup> I believe that the differing attitude to the products of the two types of conception shows that abortion is a value-laden practice that cannot be separated from the socio-cultural practices that are interwoven with the cultural heritage of the Nigerian people. The premise placed on one type of humanity from another is a reflection of the overall value-system of Nigerians.

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<sup>63</sup> John S. Mbiti, *African Religions and Philosophy* (Heinemann, 1975), 144.

<sup>64</sup> The Criminal and Penal Code do not specifically permit abortion resulting from rape or incest, but I believe that public sympathy would be more lenient to allowing abortion resulting from conception between blood relations as opposed to those with no blood ties as I discuss here. See also S. K. Henshaw, and K. Kost, 'Abortion Patients in 1994-1995: characteristics and contraceptive use', *Family Planning Perspectives*, (1996).

<sup>65</sup> My argument is that a woman should be able to have the right to an abortion regardless of the method of its conception. The law cannot make distinctions between one type of foetus and another on the basis of 'how' and 'who' contributed to the conception.

<sup>66</sup> The Nigerian constitution 'No citizen of Nigeria shall be subjected to any disability, or deprivation merely by reason of the circumstances of his birth': The Constitution of the Federal Republic of Nigeria, 1999, S. 42 (2).

### 7.3 Adolescent Girls' Rights to Abortion

My need to focus particularly on the adolescent girl in this chapter stems from the fact that more adolescents than married women in Nigeria have abortions.<sup>67</sup> The resultant health effect on Nigerian female adolescent population due to complications as a result of illegally procured abortion will have long-term effect on the population as a whole.<sup>68</sup> The World Health Organisation has earlier identified the physical and health consequences for adolescent mothers.<sup>69</sup> Adolescent females who choose induced abortion in Nigeria are mostly unmarried and only 4 percent of married adolescents use contraceptives.<sup>70</sup> Since abortion is more prevalent among unmarried adolescents,<sup>71</sup> I believe that knowing their attitude towards abortion would give policy makers a clearer idea about specific details to include in a reformed abortion law.

Table 7.3 shows the attitudes of respondents between age 14-19 and 20-30 to '*Circumstances when unmarried girls should be allowed to have abortion*'. The responses in the table show that a net percentage approval of minus 7.89 of adolescents aged between 14 and 19 years are against abortion if the reason for the abortion is that *the pregnancy will bring shame to the girl or her family*. A respondent who is a secondary school teacher said that a girl in school who gets pregnant would almost immediately think of procuring an abortion because "she may be ashamed of the pregnancy due to what the society may think of her".<sup>72</sup> These girls do not confide in their teachers when they are pregnant but often seek advice from their friends to direct them to appropriate places where abortion can be procured. In most cases, these young girls go to unqualified abortionists because they lack the economic capacity to go to proper medical centres. During

<sup>67</sup> Susheela Singh and Renee Samara, 'Early Marriage Among Women in Developing Countries' *International Family Planning Perspectives* (1996) 148-157 & 175.

<sup>68</sup> Young women form part of the human resources of any country, complications from illegally procured non-septic abortion could lead to their death, or infertility and other serious health problems which will ultimately affect the population.

<sup>69</sup> The World Health Organisation, 'A Picture of Health? A Review and Annotated Bibliography of the Health of Young People in Developing Countries', (Geneva: Adolescent Health Programme, 1995); see also George Acsadi and Gwendolyn Johnson- Acsadi; 'Optimum Conditions for Childbearing', (London: International Planned Parenthood Federation, 1986).

<sup>70</sup> Allan Guttmacher Institute 'Early Childbearing in Nigeria: A Continuing Challenge' (2004) *Research in Brief* (Series Number 2).

<sup>71</sup> According to statistics in Allan Guttmacher Institute 'Early Childbearing in Nigeria: A Continuing Challenge' (2004) *ibid*, this is because few sexually active adolescents use any form of modern contraceptive, with only 4% of adolescent women mostly in urban areas using modern contraceptives compared to 24% of unmarried sexually active adolescent women aged 15-20.

<sup>72</sup> Field Data Analysis: 35 year old male secondary school teacher with tertiary education.



the field study, my discussions with medical personnel in the University College Hospital<sup>73</sup> revealed that the nurses and doctors stated that they do not procure abortions for unmarried girls as a rule. But that complications arising from attempted abortions elsewhere are referred to them and treated not as an abortion cases, but as one of saving the life of the patient concerned. Most cases dealing with abortion that present themselves to hospitals are prophylactic and are at best post-abortion treatment to save the life of the woman after a botched abortion elsewhere. This was the main issue considered by the Nigerian court in one of the rare and well-considered cases on abortion, that of *Commissioner of Police v Modebe*.<sup>74</sup> In that case, the judge noted that the deceased patient after attempting a failed self-induced abortion did not go to hospital because of:

the inhibition of being exposed to the curious gaze of her fellow-workers in the hospital, which was perhaps the motive that led her to seek help from the accused instead of seeking the treatment from the hospital where she was working.<sup>75</sup>

What this case shows is that even at the point of death, women will not seek post-abortion treatment from hospitals (even where access to such treatment is easily available to them,) because of the societal stigma associated with unmarried women getting pregnant, and worse still attempting an abortion.

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<sup>73</sup> The University College Hospital (UCH) is the oldest public teaching hospital in Nigeria and it is situated in the study area Ibadan.

<sup>74</sup> *Commissioner of Police v Modebe* (1980) 1 NCR 367. In this case the accused, -Modebe, a medical doctor was charged under section 233 of the Penal Code, (Laws of Nigeria Northern 1963 Caption 89 (now revised), for causing death by miscarriage. Modebe had treated the woman (now deceased) in his home after she came to him for complications from attempted abortion from self-induced abortion using self-medication. Modebe gave her first aid treatment for septic abortion, including removal of part of the foetus from her uterus manually. He advised her to seek further medical treatment from the hospital where both the deceased and the accused were employed as a dresser and doctor respectively. Modebe is accused of intentionally causing death by miscarriage contrary to section 233 of the Penal Code which act, led to the death of the deceased. By not using 'his best endeavour to ensure that the follow-up treatment was continued at the hospital at the earliest opportunity in view of its urgency'. (*Per* Olagunju, J at 387) he was deemed to have also been negligent in his professional conduct. Modebe was discharged and acquitted because his inaction, though reprehensible 'cannot be regarded as acts done in furtherance of a miscarriage and neither can they, on the theory of causation, be regarded as sufficient to break or supersede the original cause. *A fortiori* in a case of miscarriage which is of a continuous nature and which once started is irreversible'. The prosecution was found not to have proved their case against the accused (*ibid* at 388).

<sup>75</sup> *Per* Olagunju, J. in *Commissioner of Police v Modebe* (1980) 1 NCR 367, at 387.

In my discussions with schoolteachers during the fieldwork, most of them in secondary schools felt that young girls of school age ought to be given access to legal abortion along with sex education because both the girl and the baby will be an added burden on her immediate family and society. Most teachers agree that girls especially need to be educated to give them a better future. This perception is because an unexpected pregnancy almost always stops the pregnant girl's education or vocational training as seen from the statements by secondary school teachers below in Text Box 7.2:

**Text Box 7.2**

<p>She will always have a feeling of inferiority because of what she has done; and it (the abortion) may lead to some complications in her body system.</p>	<p>Most times girls have abortion without their parents knowing and most times the girls do it to cover the shame they face from society. At other times parents will prevent her from aborting it because of their religious belief.</p>
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**(i) 25 year old female Secondary Schoolteacher, Christian with Tertiary education**

**(ii) 32 year old female, secondary Schoolteacher with Tertiary education**

*Source: Field Data Analysis*

The respondents between the ages of 20 to 30 years are also against adolescent abortion for the stated reasons but by a wider margin of a net percentage approval of minus 93. What this disparity shows is that adolescents under the age of 19 years are more likely to seek abortion if the pregnancy will bring shame to them than the more matured 'young adults' aged between 20 and 30 years. In Table 6.3 notice further that only 31.58 percent of adolescents aged between 14 and 19 strongly disapprove of abortion in circumstances where the pregnancy is likely to bring shame to the girl or her family while 40.28 percent of respondents aged between 20 and 30 strongly disapprove of abortion for the same reason. The approval margin between the two age groups is not much (about 9 percent); it

shows that most Nigerians within the age of 14 and 30 generally do not approve that abortion should be allowed for the reason that the girls will be ashamed to carry the pregnancy. This is confirmed in the statement made by a respondent below:

**Text Box 7.3**

Any unmarried girl who engages in sex must know she could get pregnant and must face the consequences if it happens and not have an abortion as an escape route.	Girls these days are insecure and don't think of the outcome (of having sex) before going into it. They should therefore be left to face the disgrace.
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**(i) 18 year old Female Trader,  
Muslim with no formal education**

**(ii) 29 year old Male Quantity  
Surveyor, Christian with  
tertiary education**

*Source: Field Data Analysis*

I believe the reason why the respondents in the 20-30 age bracket are more opposed to adolescents seeking abortion in order to save them from social stigma is likely that at this age they tend to be more independent and self-sufficient than the adolescents in the 14-19 age groups. I reason that at 20-30 years most adults would have attained the maturity that it takes to make a conscious decision whether or not to keep the pregnancy and are most likely able to withstand the social stigma of an unplanned pregnancy whatever their final decision. The younger adolescent females of 14-19 years of are likely to be still dependent on their parents for sustenance and are usually unlikely to have the single-mindedness to make such critical choices that will have a long-term effect on their future even if they have the capacity and competency. This is because they lack the economic viability to maintain the child independent of their family. Their choice would be greatly influenced by their parents'. In the in-depth interview, a High Court judge is of the opinion that when girls within this age bracket are pregnant, the society also views it as a moral failure on the part of their parents, (especially the mother) to train their daughters properly. The social failure on the part of these mothers is depicted in the Yoruba proverb that "it is the thread that the mother passes to her daughter that the daughter weaves into cloth"; in other words 'like mother like daughter'. In effect, mothers are stigmatised along with

their daughters. What is not clear is whether mothers are likely to encourage their daughters to seek abortion in order to avoid social disgrace.<sup>76</sup>

Research has shown that 'Nigerian women who have children while still adolescent face severe social and health disadvantages, including curtailed educational opportunities, which reduces women's social and economic status, long term elevated rate of perinatal death and material complications and death';<sup>77</sup> I believe having a right to legitimately access abortion will help to alleviate these associated problems adolescent women face. The need for adolescent women to have rights to abortion becomes more pertinent when we realise that only about four percent sexually active married adolescent women use any form of modern contraceptives in Nigeria compared with 24 percent of sexually active unmarried adolescents.<sup>78</sup> Earlier research has shown that adolescent women prefer the use abortion services<sup>79</sup> rather than contraceptives. This research confirms these earlier findings in that adolescents between the ages of 14-19 would readily seek abortion, therefore being able to access abortion through a reformed abortion law would stem the health problems associated with illegally procured abortion that most of these adolescents use.

For many Nigerian adolescents, I believe education offers the gateway to a better future and a higher standard of living. Girls who are pregnant while still in school or in any vocational apprenticeship feel a sense of failure (along with their parents). Several respondents stated that these girls also face a bleak future especially if the putative father denies responsibility for the pregnancy.<sup>80</sup> It is often impossible for such girls to return to mainstream academic institutions/vocational training they were in before they got pregnant because most institutions will not

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<sup>76</sup> I did not make this a specific question in the study and could not therefore make a concrete evaluation on it.

<sup>77</sup> The Alan Guttmacher Institute: (2004) *Footnote 70* at 5.

<sup>78</sup> Ibid.

<sup>79</sup> Valentine O. Otoide, Frank Oronsaye and Friday Okonofua 'Why Nigerian Adolescent Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (2001) 27(2) *International Family Planning Perspectives* 77-78 at 77.

<sup>80</sup> Even where the putative father accepts responsibility for the pregnancy, the girl invariably has to stop her education or vocational training. It is usually the family of the putative father who cares for the pregnant adolescents if the parents are not educated. A girl with educated parents or who are economically viable will care for their daughter, usually by sending her away to some relation in order to avert the daily social stigma of seeing the pregnant girl in public within her known immediate community. Whatever the case a girl who chooses to keep the pregnancy is indirectly punished for her indiscretion while the putative father is socially unaffected. The disruption of her education/vocation and removal from her immediate surrounding will also have long-term effect on her psychological state.



accept them back. They are stigmatised as bad examples to other students in the institution. To be able to continue with their education such girls will need to move away from their immediate environment to another community if they wish to continue in education. Because of the social and economic problems associated with adolescent girls' pregnancy, I believe most feel it is often more expedient for them to access legal abortion.<sup>81</sup>

Table 7.2 shows there is a net percentage approval of 2.38 adolescents between the ages of 14-19 who approve of pregnant girls accessing abortion '*when the pregnancy will stop the girl's education*' as opposed to minus 27.22 percent respondents between ages 20-30 who disapprove. I believe that the differences in the approval/disapproval percentage between the two age brackets is due to the same reason I stated earlier that younger girls dependent on their families would choosing abortion to avoid societal humiliation and also to enable them complete their education. Conversely, the low percentage of young adults aged 20-30 years who disapprove of abortion for adolescents when it will prevent future academic achievements shows the high value placed on education by this older age group and the fact that they would have attained a measure of economic independence, which gives them lesser necessity to choose abortion. However, the general acceptance of abortion when the pregnancy is detrimental to educational realisation is depicted in the statement in Text Box 7.4:

**Text Box 7.4**

If the unmarried girl feels the pregnancy could have a detrimental effect on her academically, she might as well do away with the pregnancy.

**26-year-old Male, Theatre Artist with  
Tertiary education**

*Source: Field Data Analysis*

<sup>81</sup> This finding from my research is confirmed by the study by Otoide *et al* that shows abortion is preferable for adolescents especially when they are not ready to get married: Valentine O. Otoide,

All the respondents in both age brackets accept that a girl should be allowed to have an abortion if she is *'not physiologically developed and not able to carry the pregnancy to term'* as seen in Table 7.2. In the in-depth-interview conducted with the Chief Imam of the Central Mosque he said:

**Text Box 7.5**

In Islam '*Laluri*' means a young girl who is not physiologically developed enough, in that case she should be allowed to have an abortion because 'it is better for the water to pour away than for the calabash to be broken'. If she is developed enough to carry the pregnancy through, an unmarried girl should keep the pregnancy where a man rejects responsibility for it.

**60 year old Male, Muslim, Religious Leader**

*Source: Field Data Analysis*

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(2001) Footnote 80 at 77.

Table 7.2

**Circumstances when unmarried girls should be allowed to have abortions**  
**Responses of Respondents Aged 14-19 and 20-30**

	Number of Respondents' Responses	Percentage of responses	Net Approve +/- Percentage	Number of Respondents' Responses	Percentage of responses	Net Approve +/- Percentage
<b>When the girl is young and the pregnancy will bring shame to her family</b>						
	<b>Age 14-19</b>			<b>Age 20-30</b>		
Strongly Approve	9	23.68	-7.89	38.00	10.56	-93.00
Approve	8	21.05		33	9.17	
Mildly Approve	0	0.00		56	15.56	
Strongly Disapprove	12	31.58		145	40.28	
Disapprove	5	13.16		66	18.33	
Mildly Disapprove	3	7.89		9	2.50	
I Don't Know	1	2.63		13	3.61	
Total	38	100.00		360.00	100.00	
<b>When the pregnancy will stop the girl's education</b>						
	<b>Age 14-19</b>			<b>Age 20-30</b>		
Strongly Approve	5	11.90	+2.38	42.00	11.67	-27.22
Approve	11	26.19		28.00	7.78	
Mildly Approve	5	11.90		59	16.39	
Strongly Disapprove	14	33.33		153	42.50	
Disapprove	5	11.90		60	16.67	
Mildly Disapprove	1	2.38		14	3.89	
I Don't Know	1	2.38		4	1.11	
Total	42	100.00		360.00	100.00	
<b>When the pregnant girl is physiologically unable to carry the pregnancy to term</b>						
	<b>Age 14-9</b>			<b>Age 20-30</b>		
Strongly Approve	10	26.32	+47.37	95.00		+35.84
Approve	6	15.79		74.00		26.39
Mildly Approve	13	34.21		71		20.56
Strongly Disapprove	2	5.26		63		19.72
Disapprove	6	15.79		35		17.50
Mildly Disapprove	3	7.89		9		9.72
I Don't Know	0	0.00		13		2.50
Total	40	105.26		360.00		3.61
						100.00

Source: Field Data Analysis



## 7.4 Rights of disabled fetuses

Under Nigerian law, a foetus is not given legal rights independent of its mother. The law that provides for this is Chapter 27 of the Criminal Code, which states:

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.<sup>82</sup>

Historically too the British legal system, has always treated the foetus as part of its mother.<sup>83</sup> In *Re: F (In Utero) (Wardship)*<sup>84</sup> the court stated that ‘an unborn child had no right of action in English civil law and no existence independent of its mother...’, the rights of the foetus are tied to its mother.<sup>85</sup> My findings suggest that Nigerian society always seek to protect the healthy fetuses, (though protection is different from legal recognition). Attitude toward abnormal fetuses however are conditioned by the extent of its deformity and the extent of liability that child will place on its mother when it is born, but more on the expected quality of life it may have. Nigerians’ social attitude towards the rights of fetuses correlates with the value placed on living children but that in turn depends on whether the child will be an asset or a liability to itself in future. Attitudes toward the foetus also have their origin in the traditional and agrarian subsistence of Nigerian people that has continued through the ages to present times. Over time, society has equated the wealth of the community with the value of women and the extent of their ability to procreate as I have depicted in chapter three. Healthy children were needed to till the land and children with physical or other forms of disabilities were more of a burden and not an asset to communal life. The healthy foetus was thereby

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<sup>82</sup> Section 307 Criminal Code Act, Chapter 77 Laws of the Federation of Nigeria 1990 (first enacted 1<sup>st</sup> June 1916) and Section 5(2) Penal Code Caption 105 is similarly worded.

<sup>83</sup> Dawn E Johnson ‘The Creation of Fetal Rights: Conflicts with Women’s Constitutional Rights to Liberty, Privacy and Equal Protection’, (1985-1986), 95 *Yale Law Journal*: 599-625, 601.

<sup>84</sup> See also *Roe v Wade* (410 U.S. 113 1973).

<sup>85</sup> In *Burton v Islington Health Authority* [1993] QB 204 and *de Martell v Merton and Sutton Health Authority* [1992] 3 All ER 833, the two cases dealt with damages done to a foetus while in the womb. The first was a claim of negligence against the hospital authorities in the performance of a D and C operation and in the second while the plaintiff’s mother was in labour. In both cases the



protected by society, including forbidding women to terminate their pregnancies unless their own life was at stake. Several taboos and restrictions were placed on pregnant women to prevent them giving birth to disabled babies in traditional Nigeria; such as preventing pregnant women from eating snails<sup>86</sup> or forbidding pregnant women from going out after dark or insisting that they tie a stone in a knot on one edge of their wrapper.<sup>87</sup>

Social attitudes toward the abnormal foetus tend to put it in an adversarial position against its mother; but this research shows society will readily accept abortion in cases of foetal abnormality. However, the Criminal Code gives no directives to women or doctors whether they can terminate their pregnancy for reasons of foetal deformity. Because the language of the Code makes no distinction about the physical or mental disability of the foetus and the woman's choice of abortion as is found under Section 1 (1) (a) and (b) of the British Abortion Act 1967. The Nigerian Criminal Code (and Penal Code) erodes women's freedom to choose whether to retain or reject their pregnancy because of foetal abnormality through legal abortion. But when the rights of fetuses come in conflict with those of their mother, this research shows that the collective morality of society will always bend towards the protection of the mother and her ability to cope with a disabled child within her prevailing social circumstances.

Traditionally, all fetuses were given equal protection by Nigerian society because society then had no means of detecting the foetus's physical or mental state while in the womb. Nevertheless, disabled babies were stigmatised and were not expected to survive the harsh agrarian community of traditional Nigerian communities.<sup>88</sup> With the use of modern biological technology, foetal abnormality is

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Court of appeal reiterated that the foetus has no legal personality until after birth so that 'if injury is done to an unborn child no pot is broken' pp 830-832.

<sup>86</sup> Eating snails was believed to make the pregnant woman give birth to a child that would dribble like an imbecile.

<sup>87</sup> This was believed to prevent evil spirit from entering the soul of the foetus. These are taboos told to be by my mother who is from a royal family and growing up as a child they were taught these taboos through folk-tales in the evenings. These taboos and others were confirmed to me by older respondents I spoke with.

<sup>88</sup> Joseph Muta'a Hellandendu, 'Coping with Physical Disability: Women's Lives in the Rural Areas of Kilba Society' in Mere N Kisekka (editor), *Women's Health Issues in Nigeria* (Nigeria: Tamaza Publishing Company Limited, 1992), 78; but that is not to say that women were not attached to their disabled child even in traditional times as noticed by an English Missionary in Western Yoruba town in Nigeria in 1890: Reverend Pied, 'De Porto Novo á Oyo, *Les Missions Catholiques*, 1892 at page 314 cited in Isichei, Elizabeth, *A History of Nigeria* (London & Lagos: Longman Group Limited, 1983), 260.

now easily detected in the womb at an early foetal gestational age.<sup>89</sup> I believe Nigerian society seems to make a distinction between the rights of normal fetuses and one that are handicapped. It can be said Nigeria has followed the Britain example that also make this distinction between a normal and a disabled child under the English Abortion Act, 1967 by virtue of section 1 (1) (d). In trying to find the principle that support the tendency of many societies to accept abortion more readily when a woman is pregnant with an abnormal child and when she is not; Radcliff-Richards ponders whether it seems that the normal foetus is being regarded as having entitlements (such as a right to life) that the abnormal foetus does not.<sup>90</sup> She argues further that British societal concern seems to be for the foetus rather than the pregnant woman increasingly in modern England.<sup>91</sup> In Nigeria, I opine from this study that public concern remains with the mother more than with the disabled child, but for reasons that are similar but shows diametrically opposite concerns for the rights and dignity of mother and child. Concern for mothers not to be compelled to care for a disabled child is justified on the bases of the inability of mothers to cope within the difficult socio-economic circumstances of their environment that may be further impeded by the lack of social infrastructure to maintain the children. Concern for the severely disabled children is a question of their dignity not to be compelled to live a life where their autonomy and self-respect is compromised.<sup>92</sup> For Nigerian society, the focus is considerably on mothers and their ability to cope with the care of a disabled child, in a society where disabled people are often kept away from public view or confined to begging on the street unless they are born to educated and affluent families who can provide them with proper care and education. While no one would advocate the killing of a child with physical or mental incapacities once it is born; respondents' attitude in this study show they would, rather such children are

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<sup>89</sup> From personal experience and information gathered from this and previous research, ultrasound routinely forms part of anti-natal care in all government-funded and most private hospitals in Nigeria.

<sup>90</sup> Janet Radcliff-Richards 'Ethics and abortion law', <http://www.prochoiceforum.org.uk/a17.asp> (accessed June 03 2004), 2-4.

<sup>91</sup> Ibid.

<sup>92</sup> This argument is comparable to that of Biggs where she asked 'whether respect for human dignity extends beyond the dignity of the individual...to the wider community....The dignity of one (in this case the mother) may be achieved by compromising the dignity of others' (that is, the foetus): Hazel Biggs 'Euthanasia and death with Dignity: Still Poised on the Fulcrum of Homicide' (1996), *Criminal Law Review* 875-888, 886. My argument is who is to determine whether a disabled child is not worthy of existence? I believe modern technology will reveal the information of the extent of the foetus' disability and his expected quality of life, it is for the mother to make the choice to choose abortion under the circumstances, because the value of her own life will be similarly affected as much as that of the disabled child.

prevented from being born at all at the foetal stage through termination of the pregnancy.

### ***Justifying abortion for foetal defects under Nigerian law***

Leaving social issues aside, I turn my attention to provisions of the law in cases of foetal abnormality in Britain and Nigeria. Nigerian law does not specifically make provision for abortion in cases of detected foetal abnormality. The law simply allows abortion where the life of the mother would be at risk by the continuation of the pregnancy unlike under the provisions of section 1 (1) (a) to (d) of the British Abortion Act 1967. Section 1 (1) (d) specifically allows abortion:

where there is a substantial risk that if  
the child were born it would suffer from  
such physical or mental abnormalities  
as to be seriously handicapped<sup>93</sup>

Provided two doctors agree that at the material time, the risk is indeed substantial. Jackson<sup>94</sup> states that there are no statutory checklists of qualifying conditions or guidelines for the doctor to base their decision on. The assessment depends entirely on the joint opinions of two medical doctors.<sup>95</sup> Though criticism is made that genetic diagnosis does not satisfy Section 1(1) (d) to justify abortion for foetal abnormalities,<sup>96</sup> the Nigerian law makes no provision or provide guidelines to justify abortion for foetal defects even on grounds of the health of the pregnant woman or on the effect the physical or mental disabilities will have on the child. The section that absolves doctors from criminal liability when they perform operations on pregnant women in Nigeria is Sections 297 and 232.<sup>97</sup>

Neither of these two provisions refers to what should act as guide to medical doctors in arriving at their decision to allow abortion for pregnant women. I believe this lacuna in the Nigerian law is because the Legislature has not focused specifically on abortion and address it as a health problem worthy of concrete legislation as the Abortion Act 1967 does. Making abortion a part of the Criminal law strips abortion and related reproductive health matters of the seriousness it

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<sup>93</sup> British Abortion Act 1967, Section 1 (1) (d).

<sup>94</sup> Emily Jackson, (2001), *Footnote 4* at 79-81.

<sup>95</sup> *Ibid* at page 80.

<sup>96</sup> *Ibid* at page 78, also Sally Sheldon, *Beyond Control: Medical Power and Abortion Law* (London: Pluto, 1997), 30.

<sup>97</sup> See the full text of both sections of the Codes in chapter 1.2 pages 14 and 19 for Sections 232 Penal Code and 297 Criminal Code respectively.

deserves as a latent health problem. The absence of legislative provisions addressing abortion also means that there is absence of case law to fill the gaps or interpret provisions of the law when the language is obscure as is the situation in many of the cases decided in Britain.<sup>98</sup>

In the absence of clear legislative provision, I will therefore justify my argument for abortion for foetal abnormalities in Nigeria under the provisions of Section 297 of the Criminal Code.<sup>99</sup> Because fetuses have no legal identity under Nigerian law as I stated earlier, I assert that Section 297 could be used to justify abortion where there is an identified foetal defect under the social necessity to have healthy children who will be able to live within their social environment. Further argument under the section could be premised on the impact of maintaining the disabled child on the mental health of its mother. Also I argue that doctors would be absolved of criminal liability under Section 297 as the words: "having regard to the patient's state at the time", which could be argued as referring to the pregnant woman's mental state at the time she discovered that she is carrying a child with foetal defects. I make further justification on the potential effect on existing children. Moreover, reference to the wording "and to all circumstances of the case" suggests that the doctor is required to look at all the prevailing circumstances of the pregnant woman's situation in arriving at his decision. The reference could also mean that the doctor is able to give an evaluation of the pregnant woman's social environment and the impact the birth of a disabled child will have on the quality of life it will live.<sup>100</sup> In addition, abortion could be justified because it would benefit the child, as it would be an act of mercy to prevent it being born with such physical and mental disabilities that its quality of life is compromised.<sup>101</sup>

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<sup>98</sup> *R v Bourne* decided that preservation of the health of the mother also included her mental health. Macnaughten, J was able to direct the court and interpret section 58 of the Offences Against the Person's Act 1861 to mean that the 'preservation of the mother's life could be construed that the probable consequences of the continuance of the pregnancy will be to make the pregnant woman (girl in this case) a physical or mental wreck. Similarly, *Paton v The Trustees of The British Pregnancy Advisory Services and Another* [1978] 2 All ER 987; [1979] QB 276 and *C v S* [1988] QB 135 defined the rights of putative fathers in abortion.

<sup>99</sup> Section 232 of the Penal Code justifies the same argument.

<sup>100</sup> In a similar study by Lee and Davey, among university students in Britain, many believed justification for aborting a foetus with disabilities should be on the basis of the quality of life it will live and not on the convenience of its parents: Ellie Lee and Jenny Davey, 'Attitudes to abortion for fetal abnormality: a study of young people's opinions', <http://www.prochoiceforum.org.uk/aad1.asp> (accessed July 20 2005).

<sup>101</sup> Section 1 (1) (d) of the Abortion Act 1967 allows abortion based on the 'substantial risk' that the child will be born 'seriously handicapped'. The determination of serious handicapped according to Davies is vague and 'there appears no consensus on what degree of mental or physical damage can justify abortion up to term' under the section: Michael Davies, *Textbook on Medical Law* (2<sup>nd</sup> Edition) (Oxford University Press, 1998), 279.



I make further justification for legal abortion in cases of detected foetal abnormality under the provisions of the NPP,<sup>102</sup> which endorses the promulgation of “legislation which protects the family<sup>103</sup>... (and) National family programmes (that) shall make available a variety of methods of fertility regulation to ensure free conscious choice by all couples”.<sup>104</sup> The NPP recognises also that, “Women of child bearing age constitute an important proportion of the population and a great national reserve for development”.<sup>105</sup> Under this policy statement, “free conscious choice” could also mean free choice to access legal abortion under Section 297 of the Criminal Code. For women to be able to contribute to national development they need to be able to make free conscious choice as to what to do with a foetus with detected abnormalities in order to preserve their mental health.

My argument for legal abortion in cases of foetal handicap by no means suggests that handicapped fetuses have fewer rights than able-bodied ones, or that normal fetuses have greater rights than the ones with disabilities. Neither do I suggest that the quality of disabled people’s life is worthless. I focus on the disabled child itself, and envisage the quality of life it will be able to live when it has physical and mental disabilities that will make the quality of its life intolerable within the prevailing social circumstances of Nigeria. This is because abortion decisions are not made in vacuum, but are made within the complex realities of the society the woman will bring up her disabled child. My observation of disabled people in Nigeria shows they are not given the same provisions or access to the same quality of life as able-persons.<sup>106</sup> Often the individual families take care of their disabled members, if they have the economic capacity to do so. Most disabled people are often ostracised from community or confined to a life of begging on the streets.<sup>107</sup> Access to medical care for disabled people cost more than for able-

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<sup>102</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988.

<sup>103</sup> *Ibid* Section 5.1.2.

<sup>104</sup> *Ibid* Section 5.1.7.

<sup>105</sup> *Ibid* Section 5.4.

<sup>106</sup> Hellandendu also made this observation when he said ‘disabled people are quite deprived in educational, economic and other social pursuits’ in Nigeria: Joseph Muta’a Hellandendu (1992), *Footnote* 88 at 78.

<sup>107</sup> There are no specific national social security system to assist people with disabilities except through voluntary organisations and a few state run schools for the physically impaired. I had the opportunity to interact with a disabled girl who was 19 and one of a set of twins, (she had an able bodied twin brother who was away because he was a bus conductor on long distance transport services). Her parents were illiterates. She told me she missed her twin brother sorely because he was the only one who cared to give her a bath or change her clothes. Since her parents were divorced she had no-one to care for her. Her step-mother gave her food regularly, but she had to lap it up like an animal because there was nobody to feed her. She got around by rolling herself on the ground. She had never been to school, never left her house and had no friends and was locked

bodied ones. Disability is often life-long; therefore, the care required is too. Many families may not be able to cope adequately with the care of disabled children who will likely become dependant adults without the financial support from government, which could affect the mother's mental state and health. The comment by Onyekakeyah<sup>108</sup> sums up the social deprivation disabled people in Nigeria face:

Regrettably, here in Nigeria, the situation is completely different. Disabled people are treated with disdain. Perhaps, in the mind of some people, they were not supposed to have been born. Consequently, they have no rights; no provision is made for them in the scheme of things. The authorities have no programme for the disabled. These unfortunate folks suffer untold hardship to eke out a living by begging on the streets. Many live in sub human abject poverty condition. Often, they are harassed by the authorities and bundled into waiting tipper lorries and dumped at where only God knows.<sup>109</sup>

The quotation is a reflection on attitudes to abortion due to foetal disability, and I discuss respondents' attitude next.

### **Respondents' attitude to abortion in cases of detected foetal abnormalities**

I turn to the attitude of the people towards abortion when there is detected foetal abnormality. Respondents were asked to give their reaction to a woman being allowed to have an abortion *when it is detected that the foetus has congenital (or hereditary), physical or mental disabilities*. Table 7.3 shows their responses to each foetal circumstance. There is a positive percentage response towards allowing women to have legal abortion once it is detected that the foetus is likely to

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away for several years until she complained so much that they allowed her to stay on the balcony of her fathers house so she at least had the opportunity to talk to people passing by; which is how I met her for the first time. In discussions with her she dreamed of being able-bodied otherwise she wished for the peaceful sleep of death and wished she had never been allowed to live.

<sup>108</sup> Luke Onyekakeyah 'The disabled and the rest of us' *The Guardian Nigeria* [www.guardiannewsngr.com/new](http://www.guardiannewsngr.com/new) (accessed July 12, 2005).

<sup>109</sup> *Ibid* Onyekakeyah was comparing the care of the disabled in Nigeria with Japan where he had been to study.

be born with some kind of disability. A net percentage of 57.16 of respondents would approve of abortion when it is detected that *the foetus has some congenital problem*.<sup>110</sup>

In the same vein, a positive net percentage approval of 47.71 respondents would endorse abortion '*when the foetus has detected physical handicap*' while 43.55 net percentages respondents would approve of abortion when the foetus has '*some detected mental disability*'.

The percentage of the responses depicted in Table 7.3 shows that respondents' responses are not made arbitrarily; it is an expression of a pragmatic evaluation of the social condition mothers caring for a disabled child in Nigeria would face. Respondents by their response visualise the type of existence both the mother and child would have within prevailing social circumstances. They hereby projected into the future and momentarily abstracted the foetus from its mother and clothed it with personhood. It is the realisation that the mother would undergo immense social upheavals in raising the child, which will ultimately affect her mental state and health and those of members of her family that the positive acceptance of abortion for foetal disability is made by respondents as shown in Table 7.3. The choice is not an expression of a denial of the right of the disabled to life but a prevention of a life that will stand very little chance of a meaningful existence within the society it will be born. The table show that Nigerian parents with a conscious consideration of the prevailing social condition, disabled people face would rather exercise the choice of terminating foetuses with detected abnormalities rather than give birth to handicap children who would face a lifetime of social discrimination and stigma. In essence, Nigerian women would readily choose abortion at the foetal stage than wait for the child to be born disabled physically or mentally when they are already emotionally attached to it. Because she knows that, the social and economic environment available for such children will make it extenuating for them to live decent quality of life with serious physical or mental disabilities.

A Nigerian undergraduate puts this attitude across when she said:

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<sup>110</sup> The respondents were clearly made aware that 'congenital' in this instance refer to 'hereditary' problems. This fact did not change their opinion and most believed it was better the congenital problem be eradicated from the family if it were possible not to give birth to children who would have these hereditary disabilities.

**Text Box 7.6**

Due to the circumstances surrounding them (foetus with abnormalities) which might cause problem for the child. The baby should (only) be terminated or aborted only if there is some symptoms of the baby being genetically affected with disease or Down's Syndrome. Both parents with the doctor should really sit and decide if they would be able to bear the loss of the unborn child or the side effects in the long run if the child is born.

**20-year-old female undergraduate**

*Source: Field Data Analysis*



Table 7.3

Abortion for Different Fetal Handicaps			
	Number of Respondents' Responses	Percentage of Responses	Net Approve +/- Percentage
<i>Abortion for Fetal Congenital Problems</i>			
Strongly Approve	278	39.83	<b>+57.16</b>
Approve	159	22.78	
Mildly Approve	98	14.04	
Strongly Disapprove	81	11.60	
Disapprove	38	5.44	
Mildly Disapprove	17	2.44	
I Don't Know	27	3.87	
<b>Total</b>	<b>698</b>	<b>100</b>	
<i>Abortion for Fetal Physical Disability</i>			
Strongly Approve	220	35.95	<b>+47.71</b>
Approve	121	19.77	
Mildly Approve	92	15.03	
Strongly Disapprove	118	19.28	
Disapprove	0	0.00	
Mildly Disapprove	23	3.76	
I Don't Know	38	6.21	
<b>Total</b>	<b>612</b>	<b>100</b>	
<i>Abortion for Fetal Mental Disability</i>			
Strongly Approve	269	38.54	<b>+43.55</b>
Approve	130	18.62	
Mildly Approve	85	12.18	
Strongly Disapprove	114	16.33	
Disapprove	51	7.31	
Mildly Disapprove	15	2.15	
I Don't Know	34	4.87	
<b>Total</b>	<b>698</b>	<b>100</b>	

Source: Field Data Analysis

## 7.5 The Rights of Putative Fathers in Abortion

The Nigerian government's policy statement on the 'role and responsibilities of men in family life'<sup>111</sup> states:

In our society, *men are considered the head of the family and they take far reaching decisions including the family size, subsistence and social relations.* At this transition period from subsistence to industrial economy, *the average man bears greater paternalistic burden in caring for the family.* Special information and enlightenment programmes are necessary to increase *awareness of men* as to the need of having the appropriate size of family they can foster within their resources.<sup>112</sup>

A critique of the above statement portrays men as having a hegemonic control over the family including making procreative choices for women. This government statement suggests that women are not expected to make independent choices about their fertility and procreation, that choice is within the exclusive preserve of men. How far this perception conforms to social reality will be seen shortly. I had earlier shown in the preceding chapter that Nigerian women would not readily give birth to a child if the putative father does not acknowledge responsibility for the pregnancy. However, I show here that Nigerian women would also not readily relinquish their right to choose when to procreate even when the directive is from their men.

The Criminal and Penal Codes do not give any guidelines on the rights of putative fathers when a woman is carrying a pregnancy for which they are responsible. Before we conclude that the NPP statement is conclusive as pointing to the right of putative fathers to decide on abortion, let us be aware that the statement is not

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<sup>111</sup> This is the heading of Section 5.3 of the 'National Policy on Population for Development, Unity, Progress and Self-reliance': Federal Republic of Nigeria, 1988.

<sup>112</sup> *Ibid* Section 5.3. The italics are mine. The language of the policy statement is paternalistic, it gives the assumption that choice of family size is made by men to the exclusion of women who bear and nurture the children.

law, but a policy directive by the Federal Government of Nigeria. Policy statements are the general plan of action by the maker for the person it is intended. The NPP is at best a plan of action by the Federal Government to State governments and citizens; it becomes law when it is promulgated as such. Policy statements have persuasive influence on State governments, but do not become law until they are made law, which then makes it binding on citizens.<sup>113</sup> I argue that the only persons Nigerian law gives a right of control over women's bodies in the case of abortion are medical doctors by virtue of section 279 of the Criminal Code.<sup>114</sup> The language of the National Population Policy echoes the perception of the male dominated government on the role of men in procreation, which tends to subsume women's right of control of their fertility into those of men. Women's interest in procreation is often believed by government from this statement to be secondary to men, even though women are the bearers and carers of children.<sup>115</sup>

I recognise that for procreation to take place both men and women contribute equally in the formation of the foetus. However once conception is completed, the burden of nurture continues within the confines of women's bodies for the next nine months of the pre-natal stage and for several years after delivery. Trying to control what happens to fetuses *in vitro* would amount to taking control of women's bodies. The government endorsed social order of patriarchy<sup>116</sup> gives the impression that patriarchy is reason enough for men to have control over women's body on the basis that 'the average man bears greater paternalistic burden in caring for the family'.<sup>117</sup> Since they are given the endorsement to determine family size, carrying this argument further would mean that men can also insist on women having abortions if they do not have the means to care for the child.

<sup>113</sup> Indeed many of the policy statements in the National Policy on Population have been made into law by many States such as giving a woman maternity leave with pay only after two years of a previous maternity leave.

<sup>114</sup> Criminal Code, Laws of the Federation of Nigeria, Caption 42, 1990. Similar argument can be made under section 232 Penal Code because the language of both statute suggests that the choice is made by the doctor and not the pregnant woman which indirectly gives the doctor control over the woman's body, see Sally Sheldon, (1997), *Footnote 97* at, 30; and Mary Boyle, *Re-Thinking Abortion: Psychology, gender, power and the law* (London and New York: Routledge, 1997), 71-73.

<sup>115</sup> McLean states there have been battles between the two social groups of men and women over the control of women's fertility and procreative potentials: Sheila McLean, , *A Woman's Right to Choose* (Rivers Oram, 1999 b), 6. I also argue that the policy statement is evidence of the continued assumption of Nigerian government that it is men who 'take far reaching decisions including the family size', : Section 5.3, *National Policy on Population For Development, Unity, Progress and Self-reliance*: Federal Republic of Nigeria, 1988.

<sup>116</sup> Section 5.3.1 of the National Policy on Population states: 'The patriarchal family system in the country shall be recognised for stability of the home'.

<sup>117</sup> *Ibid.*



Conversely, they may insist on women getting pregnant because they can maintain the child. Governments need to be cautious about encroaching upon the private lives of its citizens. The Wolfenden Report in England in 1957 enunciated the principle where it was stated that in separating morality from law 'the state has no business in the bedroom of the nation'.<sup>118</sup>

Having dealt with policy issues what does the Nigerian law say on the rights of the putative father in abortion first, before I discuss the perception of the people on the issues from the empirical study?

While I find it apparent that the sections of the Criminal and Penal Codes dealing with abortion are laconic and do not comprehensively address present issues of abortion within the context of prevailing social circumstances; a careful reading of the sections in the codes are implicit enough to categorically state that the putative father is not conferred with any right to contribute to or determine abortion. The pregnant woman herself is not conferred with such rights that are given only to the doctor.<sup>119</sup>

My findings also show that there has been no case of the putative father exercising his right in abortion in Nigeria. This is indeed to be expected since abortion is a criminal offence whereby Nigerian courts as a former British colony, often refer to English decisions when deciding cases that have no precedence in Nigerian courts, so, even if a putative father should seek to enforce his right over the foetus, the Nigerian courts are likely to reject it.<sup>120</sup> To do otherwise would be infringing on the rights of women as distinct and independent persons under the Constitution.<sup>121</sup>

Where a Nigerian putative father seeks to enforce an injunction against his partner to prevent her abortion using the acknowledged ground of patriarchy or using Article 4 of the African Charter on Human and Peoples' Rights (as Paton did at the European Court of Human Rights);<sup>122</sup> the Nigerian courts would likely arrive at similar decisions as the High Court in *Paton v BPAS*<sup>123</sup> and the appellate court in

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<sup>118</sup> Wolfenden Report 1957, The Report of the Committee on Homosexual Offences and Prostitution [http://www.glbtc.com/social-sciences/wolfenden\\_report.html](http://www.glbtc.com/social-sciences/wolfenden_report.html) (accessed 25 June 2005).

<sup>119</sup> Laws of the Federation of Nigeria, 1990, Sections 297 Criminal Code and 232 Penal Code.

<sup>120</sup> As was done in *C v S* [1988] 1 All ER 1230;

<sup>121</sup> Constitution of the Federal Republic of Nigeria, 1999 section 34 (1).

<sup>122</sup> Where he used a similar Act under Article 2 of the European Convention of Human Rights.

<sup>123</sup> *Paton v BPAS* [1978] 2 All ER 987.



*Paton v United Kingdom*.<sup>124</sup> In *Paton v BPAS* a husband sought to have an injunction against his wife to prevent her from having an abortion without his consent. The High Court stated that the putative father had 'no legal right enforceable in law or equity to stop his wife having this abortion or to stop the doctor from carrying out the abortion'.<sup>125</sup> Furthermore, the court also stated citing *Montgomery v Montgomery*<sup>126</sup> that the 'the court could only grant an injunction to support a legal right which the putative father clearly does not have under law'.<sup>127</sup> The Criminal and Penal Codes, the Nigerian Matrimonial Causes Act,<sup>128</sup> the Constitution and the African Charter<sup>129</sup> do not give the putative father the right to an injunction against his wife if a decision has been made by two doctors for the woman to have an abortion. Even where the putative father is not married to the mother, the 'illegitimate father'<sup>130</sup> does not have a right to prevent abortion by the mother carrying their child.<sup>131</sup> Under Nigerian legislation, both sections 297 and 233 of the Criminal and Penal Codes respectively, do not give putative fathers a right of consultation when an abortion is to be performed. In practice however, medical doctors told me that they would certainly inform the putative father where abortion is performed legally to save the pregnant woman's life even though it is not a legal requirement. This practice is obviously against the principle of medical confidentiality. But Nigerian doctors practice within their social and cultural environment and naturally conform to the patriarchal social system which is recognised by Schmidtke when he said that 'scientists are at least no better and no worse than the society of which they are members',<sup>132</sup> Nigerian doctors therefore conform to the social requirements of the society they live in which still believe that husbands have some interest in their wife's medical treatment and ought to be consulted. I argue that consultation does not detract from the fact that a wife is a distinct individual and ought to have the ultimate choice to decide any form of medical treatment, including abortion without seeking consent from any other person. Not even her husband.

<sup>124</sup> *Paton v United Kingdom* (1980) 3 EHRR.

<sup>125</sup> Sir George Baker in *Paton v BPAS* [1978] 2 All ER 987 at 988.

<sup>126</sup> *Montgomery v Montgomery* [1964] 2 All ER 22 at 23.

<sup>127</sup> *Paton v BPAS* [1978] 2 All ER 987 at 988.

<sup>128</sup> Federal Republic of Nigeria, Matrimonial Causes Act, 1970, Section 71.

<sup>129</sup> These are all laws in Nigeria that have provisions that guarantee the rights of individuals.

<sup>130</sup> Per Sir George: Baker *Paton v BPAS* [1978] 2 All ER 987, 990.

<sup>131</sup> In *C v S* [1979] GB 276 a putative father sought to prevent his girlfriend from carrying out an abortion and the court decided he had no legal right

<sup>132</sup> J. Schmidtke, 'Who owns the Human Genome? Ethical and Legal Aspects' *Journal of Pharmacy and Pharmacology* 44 (supplement 1) 205 at 205.

Despite the absence of cases on the right of the putative father in Nigeria on abortion, I believe Nigerian courts would arrive at similar conclusions as British decisions even under the present law. I use the decision of Sir Baker in *Paton* to support my assertion where he said: 'Counsel have been unable to discover any extant decision in those countries whose laws derive from the common law that the consent of the husband is required before an otherwise legal abortion can be performed on the wife'.<sup>133</sup> Since Nigeria derived her laws from the Common Law, there is no legal requirement that a husband is to be consulted when abortion decision is made by two medical practitioners. Furthermore, I buttress my argument on the basis that even in custody proceedings, where it is acknowledged that patriarchy gives ownership of children to their father; the Nigerian courts do not consider the interest of the father as being superior to that of the mother.<sup>134</sup> The only recognisable right fathers have in law in Nigeria is that 'the husband has a right to have a say in the destiny of the child he conceived',<sup>135</sup> but that is only after the child is born and given legal recognition.<sup>136</sup>

Paton appealed to the European Convention of Human Rights (ECHR) where he challenged the British Court's decision on the basis that it infringed upon the right of the foetus to life under Article 2<sup>137</sup> and his own right to family life under Article 8.<sup>138</sup> He again failed. The European court reiterated that any foetal right to life is subordinated to the health of the pregnant woman, even though the foetus is not a person until it is born. Under Article 8, the court stated that it was the woman's right to family life that is being decided and not Paton's.

A Nigerian putative father could also seek to enforce his right over the foetus by invoking Article 4 of the African Charter and section 33 of the Nigerian Constitution. His argument for his right to enjoy family life could also be argued

<sup>133</sup> *Paton v BPAS* [1978] 2 All ER 987 at 992.

<sup>134</sup> *Theresa Williams v Rasheed Williams*, [1987] 2 NWLR (Part 54), 56, Supreme Court of Nigeria.

<sup>135</sup> *Ibid.*

<sup>136</sup> Section 71 Matrimonial Causes Act 1970 Section 71 gives equal rights to both parents in custody proceedings but the paramount consideration is the interest of the child concerned. But Nwogugu opines that this is only legal semantics because the right of the Nigerian father to custody is only in abeyance if custody is given to the mother. Eventually custody will revert to the father when the child is old enough for social reasons. E I Nwogugu *Family Law in Nigeria* (Nigeria, London: Heinemann Educational Books, 1974) 260. But my view on this is based on Section 39 of the Nigerian Constitution which guarantees equality of all people, and Article 18(3) of the African Charter on Human and Peoples' Rights, which stipulates non-discrimination against women; the court ought to be able to give custody to the mother if it is in the best interest of the child and not to the father in future simply because of social practice under patriarchy.

<sup>137</sup> African Charter on Human and Peoples' Rights, Article 2 guarantees everyone's right to life.

<sup>138</sup> African Charter on Human and Peoples' Rights, Article 8 guarantees a citizen's right to family life.

under Section 37 of the Constitution.<sup>139</sup> Using similar laws to the ECHR under the African Charter and the Nigerian Constitution to support a Nigerian putative father's case to restrain his partner from carrying out an abortion, I will examine the relevant sections of the law. Article 4 of the African Charter states:

#### **Article 4**

Human beings are inviolable.  
Every human being shall be  
entitled to respect for his life  
and the integrity of his person.  
No one may be arbitrarily  
deprived of this right.<sup>140</sup>

While Section 33 of the Constitution states:

Every person has a right to life,  
and no one shall be deprived  
intentionally of his life, save in  
execution of the sentence of a  
court in respect of a criminal  
offence of which he has been  
found guilty in Nigeria.<sup>141</sup>

My argument is that there is inconsistency between the social understanding and approach, and what the legal approach would be to the rights of putative fathers in abortion. I believe Nigerian courts are likely to hold that pregnant women's rights as independent human beings under Article 4 of the African Charter and section 33 of the Constitution must be recognised and respected above that of the foetus they carry. Especially since Section 27 of the Criminal Code categorically stipulates that, a child does not have legal recognition until it is completely expelled from its mother's body.<sup>142</sup> In the same vein a Nigerian putative father's argument that a doctor's decision to perform an abortion on his partner without his consent would likely not be upheld because it is the right to family life of the

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<sup>139</sup> The Constitution of the Federal Republic of Nigeria, 1999, Section 37 guarantees 'Right to private and family life'.

<sup>140</sup> Article 4 African Charter of Human and Peoples' Rights 1979.

<sup>141</sup> The Constitution of the Federal Republic of Nigeria, 1999 Section 33.

<sup>142</sup> Section 307 Criminal Code Act, & Section 5(2) Penal Code, Laws of the Federation of Nigeria, 1999.

pregnant woman that is paramount and not that of the putative father. However, despite my arguments, the issues are not conclusive or resolved by English and European judgements. *Parton v UK*<sup>143</sup> does not cover or mention the foetus just as sections 33 of the Nigerian Constitution and Article 4 of the African Charter do not as well. Stauch<sup>144</sup> observed that Article 2 of the ECHR does not cover foetal rights at all and the limited rights to life it confers on the foetus in the early stages of its development gives way to the right to life of the mother as the pregnancy progresses. The European court does not also acknowledge that the foetus has a right to life equal to that of a child when it is born when it said:

The 'life' of the foetus is intimately connected with, and cannot be regarded in isolation from, the life of the pregnant woman. If Article 2 were held to cover the foetus and its protection were, in the absence of any express limitation, seen as absolute, an abortion would have to be considered as prohibited even where the continuance of the pregnancy would involve a serious risk to the life of the pregnant woman. This would mean that the 'unborn life' of the foetus would be regarded as being of higher value than the life of the pregnant woman.<sup>145</sup>

I argue therefore that since Section 307 and 5(3) of the Criminal and Penal Codes (respectively) are categorical on the time when a child is recognised as a human being, even the 'margin of appreciation left to signatory States to decide for themselves whether the unborn child enjoys a weak right (as opposed to no right) and, at what stage of development',<sup>146</sup> as stated by Stauch, cannot even be entertained by Nigerian courts judging by the language of these sections.

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<sup>143</sup> *Parton v UK* (1981) 3 EHRR 408.

<sup>144</sup> Marc Stauch 'Pregnancy and the Human Rights Act 1998' in Austen Garwood-Gowers, John Tingle and Tom Lewis, *Healthcare Law: The Impact of the Human Rights Act 1998* (Cavendish Publishing Limited, 2001), 261-263.

<sup>145</sup> *Parton v UK* (1981) 3 EHRR 408, paragraph 19.

<sup>146</sup> *Parton v UK* (1981) 3 EHRR 408 at 262.



## **Respondents' responses to a putative father's control over abortion choice**

Having dealt with government policy statement and the law with regard to the right of the putative father in abortion, I turn my attention to the perceptions of Nigerians on the issue from this study.

Charts 7.1 and 7.2 show the responses of the respondents to the right of the putative father in abortion. Chart 7.1 shows that '*when a putative father demands that his pregnant partner seek an abortion*' out of 698 respondents, 68.06 percent of females and 67.13 percent of males disapprove of him being given such rights. However, 28.66 and 28.93 percent of females and male respondents respectively approve that the putative father should have the right to demand abortion. What the chart shows is that both Nigerian men and women accept the fundamental right of women to make abortion choices independent of the putative father.

I had earlier shown in Chapter 5 that most Nigerian women, (especially the unmarried ones), would be unwilling to giving birth to a child if the putative father denies responsibility for the pregnancy. What is the reaction of men and women when the sole reason for having an abortion by pregnant women is that '*the putative father rejected the pregnancy*'? Chart 7.1 shows that 56.73 percent of females and 64.91 percent of males (respectively) disapprove of women seeking abortions for this reason.

However, Chart 7.2 shows the '*Differences Between Female and Male Opinion of Abortion When the Putative Father Rejects the Pregnancy*', where 40.35 percent females and 35.96 percent male respondents respectively disapprove of women seeking abortion where the putative father has rejected the pregnancy. Notice the margin of differences in the percentage of disapproval in both charts. The fact that more than twice the number of respondents disapprove of abortion when the putative father rejects the pregnancy in Chart 7.2 as opposed to almost half this number when the putative father demands abortion (in Chart 7.1), shows that a greater percentage of Nigerians still hold the belief that women should not give birth to children where the foetus is unacknowledged by its father.

The differences between the responses is that in Chart 7.1 there is an acknowledgement of responsibility for the pregnancy by the putative father, only that he does not want the responsibility of maintaining or being part of the child

when it is born. The consequence of this is that when the child is born, it will have the privilege of having its father's name on its birth certificate if the mother so desires. In Chart 7.2 on the other hand, there is total denial of responsibility and rejection of the pregnancy by the man the woman claims is the putative father. The denial means that the child will not be able to claim its father's name or have recognition by his family when it is born (and invariably the child will be able to inherit from its father's property). This shows that generally, Nigerians still hold to the traditional perception that children not acknowledged by their putative fathers exists without an identity through the male decent (being a feature of patriarchy). Increasingly, educated women who choose to retain their pregnancy where the putative father expressed his intention of accepting responsibility for the pregnancy, but indicates that he wants no part in the upbringing of that child, might keep the pregnancy if the women are economically able to maintain the child. In this instance, the child still has roots through its father as opposed to a child born where no one man is identified as its father.

What the responses also show is that Nigerian women are willing for the putative father to have a say in abortion decisions at their discretion because the child will ultimately bear his name; but women insist on keeping the final choice of abortion to themselves. Once again, showing a disparity between socio-cultural and legal attitudes to putative fathers' interference in pregnant women's abortion choice. In discussions with respondents however, many of the married women believe that abortion decision should be a joint one by both partners. Nolan<sup>147</sup> also noted that in ninety percent of cases, both partners take final decision on abortion. In reality in Nigeria, dispute about abortion decision only arise where the couple are not living together; generally, abortion choice is a consensus between the couple in most non-acrimonious relationships. The statements in Text Box 7.8 from respondents from two different generations, gender and educational attainments shows the conflict between law and social perception of putative fathers' involvement in abortion choice.

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<sup>147</sup> David Nolan, 'Abortion: Should Men Have A Say?' in Ellie Lee (editor) *Abortion Law and Politics Today* 216.

**Text Box 7.8**

If both husband and wife have agreed to have just three or four children and the wife mistakenly gets pregnant, they will agree to abort because they have a limited budget.

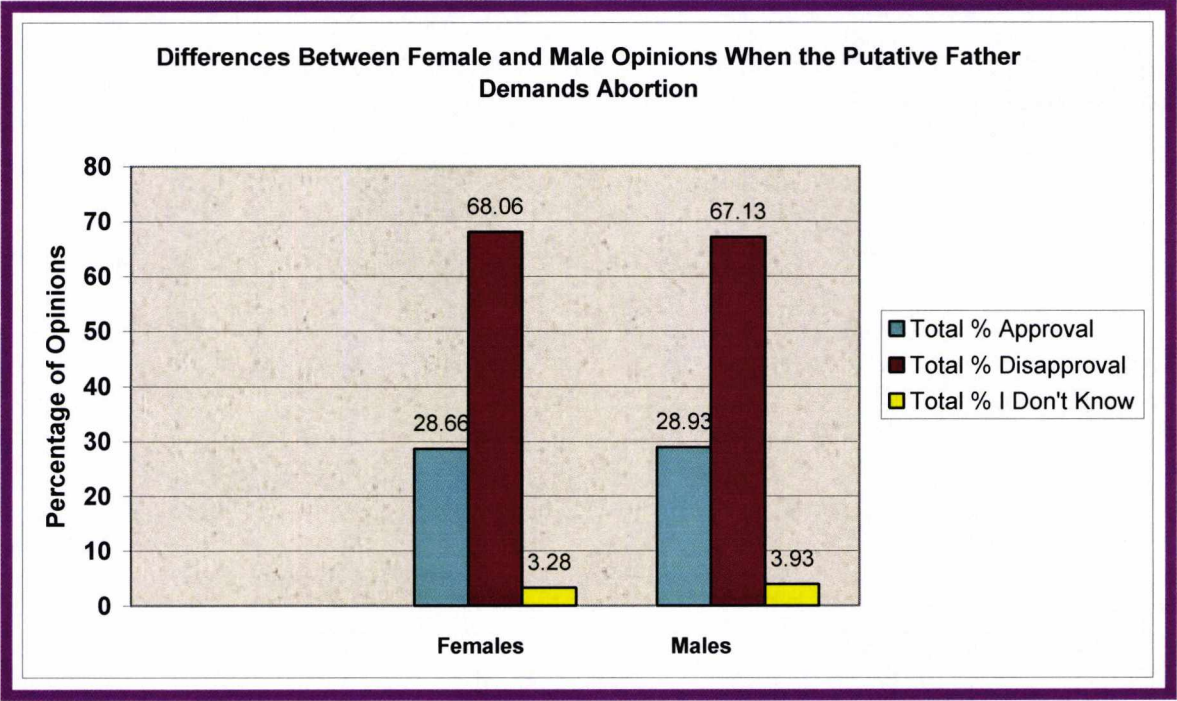
Things are different in present times. If her husband agrees for her to terminate the pregnancy it is okay, her choice also depends on the number of children she has before, it also depends on her religion.

**(i) 20 year old female Catering student with Secondary education, Christian, single**

**(ii) 62 year old male retired Civil Servant with Tertiary education, Muslim, widower**

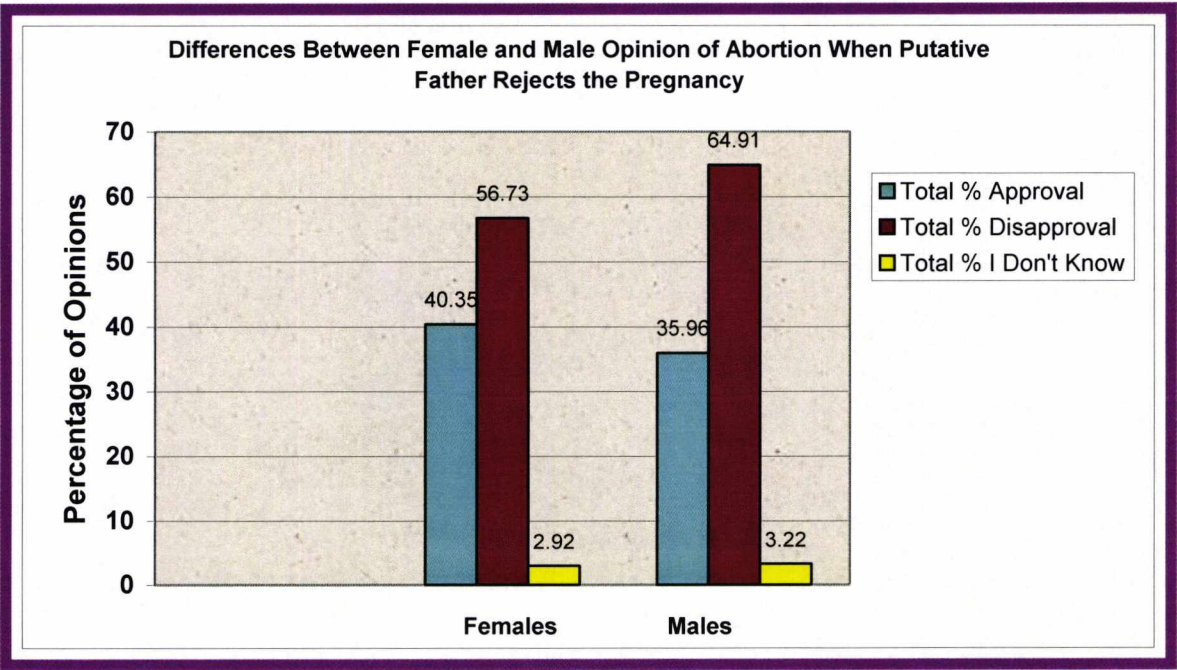
*Source: Field Data Analysis*

Chart 7.1



Source: Field Data Analysis

Chart 7.2



Source: Field Data Analysis



## The rights and duties of doctors in abortion

I have stated in the preceding discussion that Nigerian doctors are given more control practically and legally over abortion decisions than even pregnant women. Because women are liable to imprisonment for seven years for attempting to cause their own miscarriage under section 229 of the Criminal Code,<sup>148</sup> doctors on the other hand at their discretion suffer no criminal liability if they decide women should have an abortion to save their life. Doctors mostly have an accomplice in pregnant women in illegally procured abortions, because they are unlikely to name the doctor as an accomplice thus reinforcing the dominant position of doctors in abortion control.<sup>149</sup> Both the Criminal and Penal Codes absolve doctors of criminal liability if they cause the miscarriage of a pregnant woman if their intention is to save their life. The lacuna in the Nigerian laws is that the codes do not stipulate the extent of the defence available to Nigerian doctors as sections 1 (1) (a) and (b) of the British Abortion Act 1967 does. Since Nigerian doctor are given no guidance on the procedure they are to adopt when an abortion is sought, sometimes their decisions may be arbitrary even when the paramount consideration is their duty to save the pregnant woman's life. The findings of Justice Olagunju in *Modebe's* case illustrate this:

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<sup>148</sup> The corollary section in the Penal Code is section 232 which stipulates a longer prison term of fourteen years or with a fine or both.

<sup>149</sup> Discussions with prostitutes during this research showed that many of them had doctors they readily consulted for abortion when necessary; there is an unwritten code among them that makes them unwilling to name the doctors when the abortion procedure results in complications or death, because the doctors are seen as providing essential services for them. The reluctance to involve the medical doctor was noted by the courts in both cases of *Commissioner of Police v Modebe* (1980) 1 NCR 367 where the dying woman named the accused because she was dying and in *The State v Johnson Oke and Another* 9 CCHCJ 1305 the pregnant woman did not explicitly implicate the second accused (a medical doctor), who attempted to procure her abortion. The reluctance to divulge information in other Sub-Saharan country research is observed by Figa-Talamanca *et al* in a study carried out by the WHO: Irene Figa-Talamanca *et al* 'Illegal abortion: An attempt to assess its cost to the health services and its incidence in the community' (1986) 16 (3) *International Journal of Health Services* 375-389.

Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120 and Francine M., Coeytaux 'Induced Abortion in Sub-Saharan Africa: What We Do and Do Not Know', (1988) 19 (3) *Studies in Family Planning* 186-190, 188. The societal attitude to abortion is comparable to that of England pre-1967 Abortion Act, where in the 19<sup>th</sup> to 20<sup>th</sup> Century when society accepted that abortion was an essential but unspoken part of fertility control, and husbands and society accepted it as such. Barbara Brookes *Abortion in England 1900-1967* (London, New York and Sydney: Croom Helm, 1988), 7-8. In 1922 a London Magistrate, Claud Mullins wrote that 'contraception is not... considered "respectable", but harmful methods of birth control, and even abortion, are': Claud Mullins, *Marriage, children and God* (London: Grant Richards, 1922), 141. cited in Barbara Brookes (ibid) at page 4.

I find that the two shortcomings on the part of the accused- treating a septic case in a septic condition and failing to ensure the follow-up treatment which was indispensable to a complete cure – are factors which aggravated the original cause, i.e. the miscarriage. It is possible that the conditions under which the treatment was given, stripped of its cover of secrecy, were dictated by the urgent nature of the case – an emergency of sort. But his inaction to ensure the follow-up treatment which he was in a position to effect is inexcusable; viewed against the secret way in which the treatment was given, it becomes highly suspicious and *ipso facto* reprehensible.<sup>150</sup>

The type of unprofessional conduct by the medical doctor, illustrated in *Modebe's*<sup>151</sup> case could be avoided if the law meets the needs of women and doctors conform to legal procedures within the law. There would be no need for women to access abortion in secrecy. As a developing country, Nigeria has witnessed the migration of its doctors and medical personnel to developing countries in their search for better standard of living. Society treats the few who choose to remain with reverence. While it is true that the Nigerian Medical Council (NMA), routinely discipline erring members for acts that bring the profession into disrepute, often in cases of abortion pregnant women and their families are unwilling to identify the doctor even in clear cases of medical negligence in the performance of their duty when it concerns abortion. If the pregnant woman survives, she is also not likely to reveal the doctor's identity principally because both she and the doctor are criminally liable for the crime of abortion.<sup>152</sup>

Another factor is to hide the societal shame that abortion brings to them and their family. The courts have often treated doctors with empathy and leniency and have resisted the chance to discipline erring doctors. My research reveals that not a

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<sup>150</sup> Justice Olagunju, in *Commissioner of Police v Modebe* (1980) 1 NCR 367, at 387-388, see Footnote 34.

<sup>151</sup> *Ibid.*

<sup>152</sup> This is the case where the doctor is unable to prove that his attempt/procurement of the woman's abortion was to save her life in accordance with the law. This is the defence of the accused in *Modebe's* case where the accused medical doctor stated that his treatment was not 'with the intention of aborting her (the deceased pregnant woman), but insisted that he gave it as first aid': *Commissioner of Police v Modebe* (1980) 1 NCR 367 at 378.

single doctor has been convicted in abortion cases in Nigeria since 1960 when Nigeria became independent. Only two cases involved the prosecution of registered medical practitioners. In *State v Johnson Oke*,<sup>153</sup> and *Commissioner of Police v Modebe*,<sup>154</sup> the defendant medical doctors in both cases were acquitted. In another case *State v Ade-Ojo*<sup>155</sup> the defendant approached two medical practitioners to procure an abortion for his girlfriend who subsequently died. In the case, both doctors served as prosecution witnesses and while the defendant was convicted, the judge decided that both doctors would have their case referred to the Attorney-General and the NMA for “any action that they may deem fit”.<sup>156</sup>

The lack of clarity or guideline for procuring abortion may result in injustice and the inability of the court to punish erring doctors. In *Modebe’s* case for instance, the judge found “two shortcomings on the part of the accused-treating a septic case in a septic condition and failing to take steps to ensure the follow-up treatment which was indispensable to a complete cure, are factors which aggravated the original cause, i.e. the miscarriage” but Modebe was cautioned and acquitted.<sup>157</sup> Sheldon<sup>158</sup> noted that doctors increasingly take the role of “therapeutic clergy” for the whole population, with increasing medicalisation of abortion more and more women are relying on the doctor in reproductive health based on their expert knowledge. For the majority of women in Nigeria, doctors, hiding behind the veil of expertise often subsume the role of pregnant women and take decisions affecting their reproductive health sometimes without consulting them. With the increase in advancement of medical technology, woman are often treated as inanimate objects that is at best pathological and cannot be trusted to be cognitive when pregnant or make sensible informed decisions about their treatment and their reproductive choice.<sup>159</sup> Medical doctors perform commendable and worthy service to humanity and to women in particular in reproductive health in Nigeria, but with increasing awareness of the dangers of abortion procedures, there has to be a

<sup>153</sup> *State v Johnson Oke* (1975) 9 CCHCJ 1305.

<sup>154</sup> *Commissioner of Police v Modebe* (1980) 1 NCR 367.

<sup>155</sup> *State v Ade-Ojo* (1972) 12 CCHCJ 27.

<sup>156</sup> *State v Ade-Ojo* (*Ibid*) at 31.

<sup>157</sup> *Per Olagunju J in Commissioner of Police v Modebe* (1980) 1 NCR 367 at 388.

<sup>158</sup> Sally Sheldon, *Footnote* 96 at 52.

<sup>159</sup> I buttress this growing trend in the Nigerian society with a personal experience I had in 1983. I had pre-eclampsia when I was 23 weeks pregnant; without bothering to inform my family or me, the doctors took the decision that a Dilation and Curettage had to be performed on me because they believed my life was at stake. It took the intervention of members of my family to insist that other doctors look into my case as see if there were alternative means of protecting my unborn child and me without compromising my life. I received that concession because I am educated and belong to

review of abortion law through the Legislature that will enable the NMA to lay down precise guidelines for their members.

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the same social community as the doctors involved, thousands of other Nigerian women do not have the same opportunity as I had.



## Summary

Nigerian women who make abortion choices are often stigmatised because they do not conform to patriarchal definition of social perception of motherhood that is traditionally defined to keep the hegemonic power of control of women's fertility by men. While this attitude may have served pre-independence social needs, it can no longer be justified because of existing socio-economic necessities that compel women to control their fertility in a safe way without resorting to illegality, because of the outdated abortion law that no longer meet their contemporary needs. Women, (married and unmarried) make choices within individual prevailing social circumstances because 'enlightenment (and her immediate needs) allows her to have an abortion if she chooses and no one can stop her...not even her religion'.<sup>160</sup> Therefore, women whatever their marital status will seek reproductive solutions in ways that are convenient to them, but which are also reflections of the economic and social status they occupy in society.<sup>161</sup>

This denial of social reality is often justified under the veil of protecting foetal interests through restrictive 'codes' of motherhood according to Ikemotos,<sup>162</sup> but the construction of abortion law has only reinforced the subordination of women and does not in any way protect fetal interest but patriarchal notions of motherhood. While societal attitudes towards the child as a gift persist in modern day Nigeria, I find the individual and collective morality (as portrayed by patriarchy) of present Nigerian society runs into conflict when faced with the choice of aborting a foetus with detected handicap. The choice is often predictable, because, faced with economic vicissitude and the expected difficulty the handicapped child will face living with severe handicap, this research shows that most Nigerians would consider it an act of mercy towards the foetus (and empathy towards the woman), if abortion of the foetus with such physical or mental disability is allowed. If this is the case, law ought to conform as best as possible to societal needs. When law fails to achieve this purpose it no longer deserve its place in the statute book and ought to be reformed to meet them.

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<sup>160</sup> Field Data Analysis: statement made by a 32 year old male Engineer with tertiary education.

<sup>161</sup> Economically independent and educated women who often occupy a higher socio-economic level in society are able to access better and safer abortion services than poorer, and less educated and/or economically stable women.

<sup>162</sup> Lisa C. Ikemotos, [1992] *Footnote 41* at 1267.

Patriarchy is the politically and culturally accepted social system,<sup>163</sup> but both men and women equally are opposed to men making abortion choices for pregnant women on that basis, not only because the Constitution does not make a distinction between the rights of citizens along gender lines, but also because women are the ones who bear children. There is a recognition that women should be given the freedom to control their reproduction choice and determine when to procreate. This research shows however that many of the respondents would wish that a consensus were reached between couples when women are married. Single mothers on the other hand have the freedom to make their own choices depending on the individual circumstances surrounding their pregnancy.

The Nigerian abortion law gives abortion decision solely to medical doctors, which denies women their freedom of choice as recognised under the various laws in the country as discussed. There is a lacuna in the Nigerian abortion law that does not give any guidelines to doctors in the exercise of their decision, which they may sometimes take arbitrarily. Nigerian courts are incapacitated by the law and are unwilling/unable to make judicial pronouncement on obscure areas of the abortion law that are violated because of recognisable social problems because of its criminalisation. McVeigh and Wheeler<sup>164</sup> states that 'We expect the law to stand between medicalisation and human right, but it has proved 'unwilling, unable or inefficient when asked to adjudicate on or control issues which are at best tangentially medical' as depicted under Nigerian abortion law. The continuation of criminalising abortion for social needs that directly affect the health of women will only force women to seek abortion from dubious sources with its resultant health effect on women and society.

In the next chapter, I discuss the details of what a socially compatible abortion law should contain. These include who should give consent to abortion and the limits of the gestational age in legal abortion procedures.

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<sup>163</sup>Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988.

<sup>164</sup> S. McVeigh and S Wheeler 'Introduction ' in S. McVeigh and S Wheeler (editors), *Health and Medical Regulation* (Aldershot Dartmouth, 1992), vi.

# CHAPTER EIGHT

## SEARCHING FOR RESPITE FOR THE TIRED WOMB: WHAT A REFORMED ABORTION LAW IN NIGERIA SHOULD LOOK LIKE

"If there must be a law governing abortion-and that is a question worth exploring because some countries do not regulate abortion in this way-is there a watertight and flexible framework? Are there some legal approaches which look plausible but have hidden pitfalls? What is a good law on abortion?"<sup>1</sup>

The opening quotation by Hadley depicts the dilemma of putting in place a socially acceptable abortion law that meets the health needs of women in Nigeria and anywhere else in the world. I believe that laws regulate the activities of societies based on the socio-cultural perceptions of the people. Law therefore should encompass the ethical perception of the citizens as it aims to address the individual problems the society faces. For this reason, I believe the law that may be feasible for one country may not necessarily be the right one for another; that is, cultural and historical attitudes within a society affect the approach taken on the issue of abortion law reform. Bleek<sup>2</sup> observes that abortion may be the most condemned method of birth control, but attitude and actual behaviour are not always congruent on the surface. This research has shown that abortion choices are made because of social necessity, and it is the failure of the law that criminalises these social situations that compel women to seek abortion illegally. This to my mind makes it necessary for the legal ambit for abortion to be expanded to accommodate abortion when needed by women. This research has shown that problems faced by women regardless of their socio-economic status when making abortion choice is with a static law that does not fulfil their needs for fertility control.<sup>3</sup> Whatever moral objection some people may have to abortion, it is according to Tietze and Lewitt<sup>4</sup> 'still the most widespread and the most clandestine method of fertility control in the modern world' and Nigeria is no exception. I believe, however, that law should serve the purpose of the majority of the people

<sup>1</sup> Janet Hadley, *Abortion: Between Freedom and Necessity* (Virago Press, 1996), 166.

<sup>2</sup> Wolf Bleek, 'Induced abortion in a Ghanaian Family', (April 1978) 21(1) *African Studies Review* 103-120, 115.

<sup>3</sup> This issue is the focus of my discussion in Chapter five.

<sup>4</sup> C. Tietze and S. Lewitt 'Abortion' (1969) 220(1) *Scientific America* 21-27, 21.



that it affects and cannot generally satisfy the expectations of all of them.<sup>5</sup> The law on abortion in England for example, according to Bridgeman and Millns 'is not specifically concerned with protecting the right of the woman to choose an abortion or the right of a foetus to life. It is rather more concerned with achieving a compromise between diverse and conflicting interests'.<sup>6</sup> The preceding chapter has shown that majority of people interested in, or are affected by the abortion law as it stands in Nigeria wants it reformed. The following discussion and analysis of the data gives an exploratory evaluation of how Nigerians want a reformed abortion law to look like.

Radcliff-Richards states that one way to find a morally acceptable abortion law '...is to start by working out the moral principles that will form the basis of the law and seeing what the implications are for practice'.<sup>7</sup> Another way Radcliff-Richards suggests is to 'start with some possible or actual law, and test it backwards to see what moral principle would provide justification for it'.<sup>8</sup> The moral principle that would form the basis of a reformed abortion law in my opinion would need to harness all the socio-cultural and legal issues I have discussed in the previous chapters in order to be able to arrive at a uniquely Nigerian law on abortion. Because of the diversity of the culture and religious following of Nigerians, the fundamental issue that may be difficult to resolve to the satisfaction of all Nigerians would be determining the ethical foundation that would form the basis of an acceptable abortion law (which is no different to Western jurisdiction). These are issues that I discuss in the various aspects of this research; it is nevertheless a complex issue that remains recondite and cannot be solved substantively by this or any other research. I believe what is needed is a compromise that would look at the contemporary needs of Nigerian women within the social and economic obstacles they face in their reproductive choices, and balance these with the need to safeguard their health, the quality of life they will be able to attain for themselves, their family and especially the unborn child they carry. Women will then be able to make the choice abortion offers within acceptable legal limits. What these legal limits are will be part of my focus in this chapter. This is why, in

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<sup>5</sup> Jo Bridgeman and Susan Millns, *Feminist Perspectives on Law Law's Engagement with the Female Body*, (Sweet and Maxwell, 1998), 250.

<sup>6</sup> Jo Bridgeman and Susan Millns, *Feminist Perspectives on Law Law's Engagement with the Female Body*, (Sweet and Maxwell, 1998), 250.

<sup>7</sup> Janet Radcliff-Richards, 'Ethics and Abortion Law' <http://www.prochoiceforum.org.uk/a17.asp> (accessed June 3 2004).

<sup>8</sup> *Ibid*

discussing what a reformed abortion law should contain, I also (as of necessity) touch on ethical issues surrounding abortion.

In this chapter, I address what a reformed abortion law should contain in order to make it socio-culturally and morally compatible with the needs of Nigerian women. In essence, is there a moral underpinning to the law and is it acceptable to the people? I begin this chapter by discussing consent for abortion procedure by adult women and the pregnant minor against the background of patriarchy and the fact that no significant body of law protecting the rights of patients exists in Nigeria, save for a blanket regulation to medical personnel that allows other people beside the patient to give consent. Next, I examine the basics of the reformed abortion law within the framework of the existing government policy on population and development. Following from this, I make a proposal for abortion law reform. Lastly, I address the respondents' responses to issues a reformed abortion law should consider. I conclude with a summary.

Though I refer to doctors in the masculine, it does not suggest that all doctors are male, and the gender use is for academic convenience. Also my discussion will not cover the 'killing of unborn child' under sections 328 and 235 of the Criminal and Penal Codes respectively which refer to the later gestational stage of a pregnancy.

## 8.1 Consent for Abortion Procedure

The philosophical utilitarian concept of autonomy lies at the heart of the patient doctor relationship. The principle requires doctors to obtain the consent of their patient before they perform any surgical operation on any patient including pregnant women. Not to do so would amount to an invasion of their body, this would amount to assault. The ethical principle that everyone has a right to self-determination irrespective of gender lies at the heart of medical law. The autonomous independence of all Nigerians finds recognition in the Nigerian Constitution,<sup>9</sup> and further endorsement is given under the African Charter on Human and Peoples' Rights.<sup>10</sup> The right of individuals to control their own body is recognised under Common Law and forms the foundation of the rights of patients to give consent for their medical care. Therefore, a non-consensual touching of a patient by a doctor according to McHale and Fox amounts to assault except in emergency.<sup>11</sup> Justice Cardozo states this universal principle thus:

Every human being of adult years and  
of sound mind has a right to determine  
what shall be done with his own body;  
and a surgeon who performs an  
operation without his patient's consent  
commits an assault.<sup>12</sup>

This principle has also been endorsed by British courts which reiterate that 'any treatment given by a doctor to a patient which is invasive (i.e. involves any interference with the physical integrity of the patient) is unlawful unless done with the consent of the patient'.<sup>13</sup> I however observe from this research that, looming throughout the whole issue of reproductive rights of women in Nigeria is the subliminal shadow of patriarchy. The unspoken but tacit believe that patriarchy gives endorsement to men giving consent for their female relation's surgical

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<sup>9</sup> The Constitution of the Federal Republic of Nigeria, 1999 Section 17 (1) states: "The State Social Order is founded on ideals of Freedom, Equality and Justice"; and 17 (2) (a) states: "every citizen shall have equality of rights, obligations and opportunities before the law".

<sup>10</sup> African Charter on Human and Peoples' Rights (henceforth referred to as the African Charter') became part of the domestic legislation in Nigeria through its ratification in 1984. Section 19 states: "All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another".

<sup>11</sup> Jean McHale and Marie Fox, *Health Care Law, Text and Materials*, (Sweet and Maxwell, 1997), 319.

<sup>12</sup> *Schloendorff v Society of New York Hospital* (1914) 21 New York 125 at 126.



operation (which includes abortion), rather than the female patient concerned, is a denial of the autonomous control of women over their body. Ikemotos states

there is outstanding the idea and practice of controlling women with regard to conception, gestation and childbirth in ways that express dominant cultural notions of motherhood.

The "Code" has roots in the way patriarchy has constructed women as mothers and as wombs...these subordinating social norms are being institutionalized as legal duties.

The result is the regulation of pregnant women.<sup>14</sup>

This subtle desire to control female autonomous rights to give consent for their own abortion as another means of regulating women which I will show in the analysis of Table 8.1. The research shows however, a firm desire by women not to relinquish their right to their men to be the ones to give consent for their abortion.<sup>15</sup> The difficulty of who should give consent for an abortion becomes particularly apparent in the case of pregnant minors in Nigeria as I show below.

### **Giving consent for abortion procedures**

There exists no significant body of law protecting patients' rights in Nigeria.<sup>16</sup> However, the Medical and Dental Council of Nigeria (MDCN) seek to protect patients' rights through some policy guidelines.<sup>17</sup> The MDCN provide guidelines that ensure medical personnel provide patients quality health services.<sup>18</sup> The

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<sup>13</sup> Per Judge, L. J. in *St George's HealthCare NHS Trust v S* (1998) 3 All ER 678.

<sup>14</sup> Ikemotos, Lisa C., 'The Code of Perfect Pregnancy: At the Intersection of Ideology of Motherhood, the Practice of Defaulting to Science and the Interventionist Mindset of Law', [1992] 53 *Ohio State Law Journal* 1205-1306, 1207.

<sup>15</sup> Even though (as I show in Chapter 6) that most married couples in the research area would want some input from the putative father, Nigerian women still want to be the one to make the final decision whether to have an abortion or not.

<sup>16</sup> The Center for Reproductive Law and Policy, 'Women's Reproductive Rights in Nigeria: A Shadow Report' [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November 2002), 2.

<sup>17</sup> Laws of the Federation of Nigeria, 1990, Medical and Dental Council of Nigeria, Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria (Revised Edition).

<sup>18</sup> The violation of the guidelines may result in disciplinary actions being taken by the Council, which could result in suspension from practice: The Center for Reproductive Law and Policy, 'Women's Reproductive Rights in Nigeria: A Shadow Report' [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November 2002), 2.



Nigerian Medical and Dental Practitioner's Act, (NMA)<sup>19</sup> giving guidelines on patient's consent for operations states that doctors: 'must always obtain consent of the patient *or the competent relatives or seek another professional opinion*, before embarking on any special treatment procedure with determinable risks'.<sup>20</sup> Because there is no specific proviso stating that the patient must be incompetent to give her consent under such circumstances, the logical conclusion therefore, is that a relative can do so on her behalf even if she is competent. It could mean also that the doctor can seek another professional opinion and dispense with the patient's consent. My objection with the guideline as it is stated is with its ambiguity because it is possible for patients' authority to be dispensed with even in non-emergency situations or for a relative to give consent for the operation thereby eroding the patient's autonomy.<sup>21</sup>

Without specific guideline stating that patients' consent could be dispensed with only if they are deemed incompetent to give it, I am of the view that Nigerian medical doctors like their United Kingdom counterparts would be relying on the Common law principle that once patients bring themselves to a doctor to be examined, there is assumed a tacit approval on the part of patients that they consent to the doctor doing all that is possible to safeguard their health. The Common law also accepts that when a surgical procedure is done for therapeutic purposes in a manner consistent with medical practice, consent is a defence. The intrusion is therefore justified under the doctrine of necessity.<sup>22</sup> Patients' autonomy according to Shultz<sup>23</sup> is a fundamental principle in health care management that guides the relationship between doctors and patients; and represents the ethical and legal foundation for human right and the need to have individual autonomy and self-determination respected. Though this has never

<sup>19</sup> Laws of the Federation of Nigeria, 1990: Nigerian Medical and Dental Practitioner's Act, Caption 122 hereinafter referred to as the NMA.

<sup>20</sup> Laws of the Federation of Nigeria, 1990, Medical and Dental Council of Nigeria, Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria (Revised Edition) Sections 12-13; The Center for Reproductive Law and Policy, 'Women's Reproductive Rights in Nigeria: A Shadow Report' [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November 2002), 2. The italics are mine for emphasis.

<sup>21</sup> While I did not come across any decided case on this issue during my research, I am of the opinion that consent by proxy, (except in emergencies) should not be given for a competent adult or minor for abortion which is the view in *Paton v UK* (1980) 3 EHRR 408.

<sup>22</sup> Glanville Williams, *The Sanctity of Life and the Criminal Law* (London: Faber & Faber, 1958), 152; David W. Mayers, *The Human Body and the Law* (2<sup>nd</sup> edition) (Edinburgh University Press, 1990), 35.

<sup>23</sup> Marjorie Maguire Shultz, 'From Informed Consent to Patient Choice: A New Protected Interest' (December 1985) 95(2) *The Yale Law Journal* 219-299, 219; see also Jean McHale and Marie Fox, *Health Care Law, Text and Materials*, (Sweet and Maxwell, 1997), 317.

been fully recognised as an interest that is legally protectable, it is a by-product of the two interests of bodily integrity and bodily well-being that are protected by law, which the MDCN guideline fails to recognise.

My research shows that consideration for bodily integrity and bodily-well being are respected by Nigerian doctors, since it is the standard hospital management practice in hospitals that patients give their consent to any form of operation in keeping with the NMA guideline, but the consent could be that of a father or husband.<sup>24</sup> For abortion, I believe doctors in emergencies, (as opposed to routinely), could take the decision if in their judgement the abortion is necessary to save the pregnant woman's life in accordance with the law (and NMA guideline), because the treatment will be legitimated by the necessity of the emergency situation. The question of asking a patient, for her consent whether she is an adult or a minor may not arise at that time, because the decision would have been made by the doctor in an emergency situation, and would be justified under the doctrine of necessity.<sup>25</sup> How justifiable is it for a doctor to accede to abortion for foetal defects but under non-emergency situations? I turn my attention to the theoretical and practical findings next.

### **Abortion for foetal defects**

While no doctor was willing to state categorically, that they perform abortions for foetal defects during this research, many did acknowledge that they would advise pregnant women to terminate the pregnancy on that account depending on the severity of the defect and the individual circumstances of the patient. Their action would be covered under the NMA guideline that prohibits public disclosure of patient's information relating to 'criminal abortion, venereal [sic] diseases, attempted suicides, concealed birth and drug dependence' unless required to do so by law.<sup>26</sup> For patients to give informed consent to an abortion for foetal defects they must be given full information about the defects and the complex

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<sup>24</sup> My argument is not restricted to abortion procedures alone but indeed apply to any form of surgical operation on a patient.

<sup>25</sup> As I stated in the preceding chapters, abortion that is not done to save the woman's life, is one whereby the pregnant woman approaches the doctor (illegally as it may be) for the abortion. By going to the hospital, her action presupposes she has given consent for the abortion, whether she is a minor or an adult.

<sup>26</sup> Laws of the Federation of Nigeria, 1990, Medical and Dental Council of Nigeria, Rules of Professional Conduct for Medical and Dental Practitioners in Nigeria (Revised Edition) Sections 21-22; The Center for Reproductive Law and Policy, 'Women's Reproductive Rights in Nigeria: A



administrative procedure the operation would involve. Patient must be fully aware of all the benefits and risks of the operation and allowed to make their choice freely.<sup>27</sup> The information should be seen as an integral part of medical practice to which patients are entitled.<sup>28</sup> McLean observed that the balance of power between doctors and patients could sometimes be tilted toward the doctor, who can, if left unsupervised usurp the patient's autonomy because of his greater knowledge and traditional role he plays.<sup>29</sup> Abortion due to foetal abnormalities would sometimes be advised by the Nigerian doctor; but even in the face of what could be seen as a logical decision that the pregnant woman would consent to abortion in the face of serious foetal defects, the woman must be allowed to give express consent. Her consent must not be assumed and doctors need to take the time to explain to the woman the necessity of the operation and the extent of the defect. Because, a greater percentage of Nigerian women are educated than before and are capable of understanding the implications of the foetal defects on the baby and the implications for its life. Despite the almost infinite opportunities to correct abnormalities at even earlier stages of foetal development, women bear the consequences and the ultimate choice must be theirs.<sup>30</sup> Shultz points out that:

Medical choice increasingly depends upon  
factors that transcend professional  
training and knowledge. As medicine has  
become able to extend life, delay and  
redefine death, harvest and transplant  
organs, correct abnormality within the womb,  
enable artificial reproduction, and trace  
genetic defect, questions about values have  
come to the fore in medical decision making.  
Health care choices involve profound  
questions that are not finally referable to

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Shadow Report' [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November 2002), 2.

<sup>27</sup> Christyne L. Neff, 'Woman, Womb, and Bodily Integrity' *Yale Journal of Law and Feminism* Volume 3, 1991 340; S McLean, *A Patient's Right to Know: information Disclosure, the Doctor and the Law*, (Aldershot: Dartmouth, 1989).

<sup>28</sup> British Medical Association Ethics Department, *Medical Ethics Today The BMA's handbook of ethics and law* (2<sup>nd</sup> Edition), (BMJ Publishing Groups, 2004), 73.

<sup>29</sup> Sheila McLean, *A Patient's Right to Know: Information, Disclosure, the Doctor and the Law* (Aldershot: Dartmouth, 1989), 221.

<sup>30</sup> As at 2003 about 68 percent of Nigerian population can read and write, out of which an estimate of 60.6 percent are females and 75.7 percent are males: CIA 'The World Factbook-Nigeria' <http://www.odci.gov/cia/publications/factbook/print/ni.html> (accessed 27 May 2005).

It is in order to prevent the usurpation of the patient's right to consent to medical treatment that the NMA has guidelines for sanctioning its members for acts or commissions by any of their members "which has been adjudged by the NMA, based on acceptable professional ethics, to have brought the profession into disrepute".<sup>32</sup> In Nigeria, advice by a doctor for termination of a pregnancy due to foetal disability or congenital malformation poses legal problems, because there is no provision for abortion on this ground. Doctors would only be able to justify the abortion on the basis that the advice is given to save the health of the mother.<sup>33</sup> The views I have made are some of the issues that have to be taken into consideration in the reform of the abortion law.

### **Respondents still show a paternalistic attitude to signing consent form for abortion**

When any surgical operation is to be performed, the usual hospital procedure is to ensure that the consent form is signed first. An adult patient should be able to sign the consent form, but we find that the attitude of the respondents to who should sign the consent form for abortion shows a very paternalistic approach to women and their competence to give consent by both male and female respondents is still apparent in the society. The respondents were asked to state who they feel should be authorised to '*sign the consent form for abortion*'.<sup>34</sup> Table 8.1 shows a percentage of 51.94 out of 695 respondents believed that '*the pregnant woman should be the one to sign the consent for abortion form*', as opposed to 43.88 percent who do not. However, the small percentage approval margin of only 8.06 percent shows that quite a large number of the respondents hold a paternalistic attitude to women and the fact that a man should sign the consent form for abortion for an adult female.<sup>35</sup>

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<sup>31</sup> Marjorie Maguire Shultz 'From Informed Consent to Patient Choice: A New Protected Interest' (1985) Volume 95 Number 2 *Yale Law Journal* 219 at 222.

<sup>32</sup> The Nigerian Medical Association Constitution, 1990, Article 5 (1).

<sup>33</sup> I had discussed in Chapter seven that there are no Nigerian decided cases on the issue of whether the health of the mother includes her mental health; it is for this reason that I advocate for a reform of the law to include abortion for foetal abnormality as a result of serious congenital or other justifiable medical defects.

<sup>34</sup> The question is in relation to legal abortion under the present laws as well as what the respondents would want the legislation to state in a reformed abortion law.

<sup>35</sup> In chapter seven I showed that married women would want a man to have a say in their abortion decision but not the ultimate decision which they insist on retaining for themselves.



I have shown throughout this research that patriarchy is the culturally and government endorsed social system in Nigeria which traditionally give power to men as the 'owner' of children.<sup>36</sup> I believe it is with this background knowledge that we should view the results of respondents' response to the question '*should the putative father sign the consent form for abortion*' in Table 8.1. 59.86 percent of respondents believe the putative father should be the one to sign the consent form for abortion as opposed to 34.68 percent who disapproved. The net percentage approval of 25.18 shows there is still a substantial majority of Nigerians in the research area who still adhere to the traditional concept of the putative father's right over 'his' child which is contrary to the constitutional guarantee of equality and self-determination.<sup>37</sup> Sir Baker in *Paton's*<sup>38</sup> case states that the putative father must have a right that is enforceable in law or in equity. The fact is, the foetus does not have a separate existence from its mother. Even if the putative father was to consider himself as being the one legitimately able to exercise his right over the child under the traditional right of a father over his child; this 'right' does not materialise until the child has an independent existence from its mother. As it is clearly stated in both Nigerian and English law, the unborn child does not have a legal personality. Until then, the decision of what to do with the foetus remains with the mother and only she can give consent and sign the consent form for abortion.<sup>39</sup>

The attitude of the respondents to '*the pregnant under-age girl's father signing the consent form for abortion*' is contentious in that, only a net percentage margin of 1.01 of the respondents approved of this. 48.06 percent approved and 47.05

<sup>36</sup> Patriarchy and male leadership is traditionally endorsed through the linkage of women's biology with their leadership capabilities. The belief is that women's physiological process such as pregnancy and menstruation place restrictions on women's availability for rituals and religious ceremonies that are associated with traditional leadership: I. Bola Udegbe 'Gender and Leadership in Communities' in I. Bola Udegbe (editor), *Dynamics of Leadership in Contemporary Nigerian Communities* (Nigeria: The Social Sciences and Reproductive Health Research Network, 2001), 76.

<sup>37</sup> The Constitution of the Federal Republic of Nigeria of Nigeria: Chapter four. 1999

<sup>38</sup> *Paton v The British Pregnancy and Advisory Service and another* [1978] 2 All ER 987.

<sup>39</sup> Note that in *Paton v UK* (1980) EHRR 408 (ECOMHR) that under English law the European Commission for human Rights dealt with the application of Paton to challenge his wife's abortion on appeal under article 8 of the Convention. The court held that the husband does not have a right to be consulted or a right to make an application about an abortion which his wife intended. In the same vein the South African 'Termination of Pregnancy Choice' does not require the woman to consult or seek consent from anyone to have an abortion: see Guttmacher, Sally; Kapadia, Farazana; Naude, Jim Te Water and de Pinho, Helen 'Abortion Reform in South Africa: A Case Study of the 1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 191-194.

percent disapproved. The social construction of pregnant minors as lacking the capacity to make their own decisions, and being capable of authorising doctors to perform surgical operations on them, stems from the traditional paternalistic attitude that minors belong to their father. Oputa observed, 'Children before the age of maturity... had no legal rights. They were completely under the "potestas" of their father'.<sup>40</sup> Arguably, however, everybody has a right to bodily integrity and to exercise independent choice to consent to what should happen to his or her body. Even under traditional practice, the right of a father over his child diminishes with the maturity of the child,<sup>41</sup> and I believe many mentally competent minors, having reached puberty and capable of conception are matured enough to understand the concept of abortion and should be able to exercise the right to determine medical treatment on their body. Traditionally puberty is the dividing line between childhood and adulthood in all Nigerian cultures.<sup>42</sup> Modern medical practice in Nigeria and social attitude tend to withhold this recognition from pregnant female minors in the case of abortions. The ambivalence about the right of pregnant minors to control their body against those of their parents is expressed in the quotation below:

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<sup>40</sup> Chukwudifu Oputa (Justice of the Supreme Court), 'Women and Children as Disempowered Groups', in Federal Ministry of Justice, *Women and Children Under Nigerian Law* (Nigeria: Federal Ministry of Justice, 1989), 11.

<sup>41</sup> Itse Sagay, *Nigerian Family Law, Principles, Cases, Statutes & Commentaries* (Nigeria: Malthouse Press Ltd, 1999), 822 states, that attainment of puberty traditionally in most cultures is often the determinant that a child has crossed over from childhood to adulthood. When this stage is attained, I argue that the pregnant minor, even under traditional law has some measure of control over her bodily integrity. Unfortunately, while husbands take over the control of women from her father to himself in some parts of the Northern States, more and more women are challenging this traditional practice and insisting on exercising control over their body.

**Text Box 8.1**

I think we are medically equipped to handle abortions in Nigeria. If a young girl wants to terminate a pregnancy due to: incest, lack of finance, education, marriage, not being sure who the father of the baby is, and health purposes, she should be granted abortion. It is her body. It is her life. Nobody should deny her, her right to happiness. There are so many abused children in Nigeria that if some had aborted such pregnancies, we wouldn't be crying child abuse, that is, children hawking, teenage prostitutes, teenage armed robbers, malnutrition etc today.

Every child has a right to sound mind, education and the basic needs of life. Such rights could be determined by the mother and to some extent, the father. Nigeria is part of it (the world). Let's rid our society of miscreants. Long live a reformed abortion law in Nigeria.

**22-year-old female undergraduate, single**

*Source: Field Data Analysis*

The quotation in Text Box 8.1 also gives an insight into the socio-economic deprivations pregnant minors and their children usually face in society. Leaving capacity of minors to sign the consent form for abortion, I focus next on who ought to give consent for their abortions under a reformed abortion law.

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<sup>42</sup> While some pregnant minors may not fully comprehend the significance of conception and pregnancy the doctor has a duty of care to assist her and give full information to help her do so.

Table 8.1

Signing of consent form for abortion				
	Number of Respondents' Responses	Percentage of responses	Total Percentage Approve/ Disapprove	Net Approve +/- Percentage
<b>Pregnant woman sign consent form</b>				
Strongly Approve	173.00	24.89	} +51.94	+8.06
Approve	115.00	16.55		
Mildly Approve	73.00	10.50		
Strongly Disapprove	112.00	16.12	} +43.88	
Disapprove	185.00	26.62		
Mildly Disapprove	8.00	1.15		
I Don't Know	29.00	4.17		
Total	695.00	100.00		
<b>Putative father sign consent form</b>				
Strongly Approve	208.00	29.93	} +59.86	+25.18
Approve	137.00	19.71		
Mildly Approve	71.00	10.22		
Strongly Disapprove	78.00	11.22	} +34.68	
Disapprove	150.00	21.58		
Mildly Disapprove	13.00	1.87		
I Don't Know	38.00	5.47		
Total	695.00	100.00		
<b>Pregnant girl's father sign consent form if girl is under-aged</b>				
Strongly Approve	124.00	17.84	} +48.06	+1.01
Approve	127.00	18.27		
Mildly Approve	83.00	11.94		
Strongly Disapprove	134.00	19.28	} +47.05	
Disapprove	177.00	25.47		
Mildly Disapprove	16.00	2.30		
I Don't Know	34.00	4.89		
Total	695.00	100.00		

Source: Field Data Analysis



## Giving Consent for Abortion for Pregnant Minors

For competent and mentally able adult women there is theoretically the Constitutional guarantee in Nigeria that they can give consent for any medical treatment, including abortion.<sup>43</sup> There is a legal problem however, as to the definition of a female 'minor' customarily and constitutionally. The Marriage Act requires parties to a marriage to dispense with parental consent when they reach the age of 21 years,<sup>44</sup> but the Constitution states a person reaches "full age" at eighteen years;<sup>45</sup> and goes further to state that "any woman who is married shall be deemed to be of full age".<sup>46</sup> However, under Customary law girls reach maturity once they attain puberty, (which can be any age between ten and sixteen years) and can be given away in marriage.<sup>47</sup> The discrepancies in the various laws and customs poses the problem in Nigeria of how to determine the age when minors can give consent to treatment; or when they are legally regarded as competent to consent to treatment. Even under English law, the issue of whether a minor *under the age of 16 years*<sup>48</sup> could be regarded as competent to give consent to treatment

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<sup>43</sup> But note that the NMA guideline seems to suggest that another 'competent relative' can take the decision on her behalf: see footnote 18. The voting age is 18 because the Constitution of Nigeria states that "'full age" means the age of eighteen years and above", (Section 29 (1) but there is no specified marriageable age; I will therefore be referring to a pregnant minor to be any female under the age of 19 years in conformity with my earlier classification.

<sup>44</sup> Laws of the Federation of Nigeria, 1990: Marriage Act; E. I. Nwogugu, *Family Law in Nigeria* (Nigeria, Ibadan: Heinemann Educational Books Ltd., 1974), 25 and 27.

<sup>45</sup> Constitution of Nigeria of the Federation of Nigeria, 1990 (Section 29 (4) (a) states that "'full age" means the age of eighteen years and above",

<sup>46</sup> Constitution of Nigeria of the Federation of Nigeria, 1990 (Section 29 (4) (b). The issue of women's sexuality and the patriarchal control by men is the focus of my discussion in chapter 3. There are instances of children as young as 12 who have been given out in marriage under Islamic and customary law in parts of Northern states of Nigeria, but the practice is fast dying out. According to Sagay: Itse Sagay *Nigerian Family Law, principles, Cases, Statutes & Commentaries* (Nigeria Malthouse Press Ltd, 1999), 822; among the Yoruba who are the predominant ethnic groups in the study area, the age of puberty is usually fourteen for girls and seventeen for boys. All over Nigeria, however, neither gender marries before they attain puberty. From the wordings of the Constitution I opine that these married female minors are to be regarded as adults of "full age". If this is the case, it means the pregnant female minor should be able to give her consent to medical treatment independently of her parents or husband. However, my research shows that in such cases, it is the husband of the pregnant girl who gives consent even for her to attend ante-natal clinic. In some parts of Nigeria some men have to give their consent before their wives can even attend workshops and enlightenment talks about reproductive health in some rural areas of some states in Nigeria-Titilayo O. Aderibigbe and Adebayo O. Ajala 'Leadership and Reproductive Health' in I. Bola Udegbe (editor), *Dynamics of Leadership in Contemporary Nigerian Communities*, (Nigeria: The Reproductive Health Research Network, 2001), 121. The quagmire is further compounded by Section 221(1) of the Criminal Code which states "Any person who has or attempts to have unlawful carnal knowledge of a girl being of or above thirteen years and under sixteen years...is guilty of a misdemeanour, and is liable to imprisonment for two years with or without canning". This section I believe, suggest that any girl below the age of sixteen years is to be considered a minor.

<sup>47</sup> Titilayo Aderibigbe 'Women's Rights: Law and Practice in Nigeria' in Layi Erinosho, Babatunde Osotimehin and Janice E. Olawoye (editors) *Women's Health Empowerment and Reproductive Health* (Nigeria: Social Sciences and Reproductive Health Research Network, 1996), 52.

<sup>48</sup> The Family Law Reform Act 1969 Section 8 (1) provides that a minor who has attained the age of 16 years can give a valid consent to surgical, medical or dental treatment in Britain.

is still under debate.<sup>49</sup> My proposition in the light of the diametrically conflicting statutory and customary legislations and practice in Nigeria is for the law to be amended to state that minors, who are mentally competent, should be treated as adults and given the full right to give consent for their operation irrespective of what any other member of their family says. Provided the procedure is explained to them in a language equal to their level of understanding.<sup>50</sup> In the light of the increasing level of maturity and early sexual activities of Nigerian girls, I am of the opinion that the age of consent should be fixed at 16 years in line with Section 221 of the Criminal Code.

I believe that on the principle of confidentiality between doctors and patients; it is the duty of doctors in this circumstance whatever her age, to ensure that they give female minors detailed and full information about the extent of the foetal defect of the pregnancy they carry, in a language that is commensurate to their level of understanding.<sup>51</sup> English law clearly establishes that competent minors can consent to medical treatment, even abortion.<sup>52</sup> Though this has been highly controversial and the subject of frequent case law and public debate.

My research shows however, that the practice in many hospitals is to have parental consent for operations rather than that of the child.<sup>53</sup> The practice could be because of the patriarchal nature of the society, and the fact that children are believed to belong to parents, whatever happens to them will be their responsibility. However, because the law is recondite on this issue, it is further complicated in as much as if parents can consent to surgical procedures on their children even in the absence of a competent minor's refusal. My belief is that when a competent minor refuses a surgical procedure, their wishes should be respected, unless for the minor's sake a court order is obtained before the

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<sup>49</sup> J. K. Mason and R. A. McCall-Smith *Butterworths Medico-Legal Encyclopaedia* (Butterworths & Co. Publishers) Ltd, 1987), 118.

<sup>50</sup> I also suggest that there should be compulsory counselling, information and all necessary psychological and medical support for the adolescent in the guidelines to medical personnel. Note however that Section 238 of the Penal Code refers to a child as "a child under the age of fifteen years..."

<sup>51</sup> Note however that Jonathan Herring holds a different view to mine in that he believes the Family Law Reform Act 1969 Section 8(1) permits doctors to carry out an abortion on someone under the age of 18 years if she is competent and consents. If she refuses or is incompetent then one of the parents can consent to the operation. Jonathan Herring, 'Children's Abortion Rights' 5 *Medical Law Review* (1997) 257-268 at 257-258.

<sup>52</sup> See *Gillick v West Norfolk and Wisbech Area Health Authority and Another* [1985] 3 All ER 402 and subsequent cases.

<sup>53</sup> The Nigerian doctors I spoke with did however state that it depended on the age and level of understanding of the child to adequately make the independent choice in their judgement.

procedure can be performed. Legality is at variance with social perceptions on this issue as the data below shows.

**Responses to pregnant minors’ capacity to consent to abortion**

Table 8.2 shows that the hegemonic Nigerian traditional perception of parental right and control over their children and impliedly parental right to give consent for abortion for their pregnant minor. Notice however, that of the 695 respondents, 55.11 percent disagreed that *‘the father alone should give consent for an abortion for a pregnant minor’* as opposed to 41.38 percent who approved. The result is a negative net percentage margin of 13.53, which shows that respondents believe both parents should give consent. On the other hand, 56.12 percent of the respondents believed that *‘both mother and father of the pregnant minor should give consent for abortion’*. Interestingly, 72.95 percent of the respondents did not believe *‘consent for an abortion should be made by the pregnant minor’*, showing the cultural perception that both parents (not just the father), ought to have control over the decision-making process of their children for medical procedures is still prevalent. In the same vein, the respondents rejected *‘the doctor being the one to have an ultimate say for consent for an abortion for the pregnant minor’* by a margin of 62.45 percent. The results illustrates that law and culture are connected and neither exists in a vacuum. Law must follow the cultural perception of the people, and Nigeria cannot adopt laws that are made for a different socio-cultural environment as their own without modifications. Therefore, in reforming the abortion law, we should consider all these socio-cultural differences. However, I believe that the ultimate decision to consent for abortion should still lie with the minor. Because, a mentally competent minor who has gone through copulation and understands conception, likely understands the concept of pregnancy. It is the duty of the doctor to inform her of the procedure for abortion, its risks, and consequences and how it might affect her personally in ways commensurate with her maturity and level of understanding. Counselling should be mandatory for such minors and should be so stated in the regulation procedures for medical personnel, thereafter she should be allowed to make her own choice. This requires that the doctor give adequate medical (not moral) information to enable her make an informed but independent choice. The parents’ participation should be only advisory but not compulsory.



Table 8.2

Who should Give Consent for Abortion				
	Number of Respondents' Responses	Percentage of responses	*Total Percentage Approve/ Disapprove	*Net Approve +/- Percentage
<b>Father of pregnant under-aged girl to give consent for her abortion</b>				
Strongly Approve	101.00	14.53	} 41.58	-13.53
Approve	92.00	13.24		
Mildly Approve	96.00	13.81		
Strongly Disapprove	152.00	21.87	} 55.11	
Disapprove	210.00	30.22		
Mildly Disapprove	21.00	3.02		
I Don't Know	23.00	3.31		
Total	695.00	100.00		
<b>Father and mother of pregnant under-aged girl to give consent for abortion</b>				
Strongly Approve	193.00	27.77	} 56.12	+15.54
Approve	119.00	17.12		
Mildly Approve	78.00	11.22		
Strongly Disapprove	135.00	19.42	} 40.58	
Disapprove	137.00	19.71		
Mildly Disapprove	10.00	1.44		
I Don't Know	23.00	3.31		
Total	695.00	100.00		
<b>Abortion for an under-aged girl to be decided by the pregnant girl alone</b>				
Strongly Approve	48.00	6.91	} 23.60	-49.35
Approve	58.00	8.35		
Mildly Approve	58.00	8.35		
Strongly Disapprove	219.00	31.51	} 72.95	
Disapprove	259.00	37.27		
Mildly Disapprove	29.00	4.17		
I Don't Know	24.00	3.45		
Total	695.00	100.00		
<b>Abortion for under-aged girl to be decided by doctor alone</b>				
Strongly Approve	124.00	17.84	} 34.53	-27.91
Approve	58.00	8.35		
Mildly Approve	58.00	8.35		
Strongly Disapprove	209.00	30.07	} 62.45	
Disapprove	199.00	28.63		
Mildly Disapprove	26.00	3.74		
I Don't Know	21.00	3.02		
Total	695.00	100.00		

Source: Field Data Analysis<sup>54</sup>

<sup>54</sup>\*The Total Percentage Approve is got by adding together all the Strongly/Approve/Disapprove while the total Percentage Disapproval is got by adding together all the Strongly Disapprove/Disapprove/Mildly Disapprove.



## 8.2 Basics of the Reformed Abortion Law

The respondents' responses from the preceding chapters have shown that the major objection to abortion is not mainly on moral grounds alone, but with the perceived *consequences* of abortion. Abortion is inimical to the health of pregnant women because it is mostly done outside clinically safe hospital environment. Bleek<sup>55</sup> also observed this in an earlier research where he said that objection to abortion is not with objection to abortion so much, but on the manner abortion is usually practiced. This is because people identify abortion with quacks, herbs and female morbidity and not that there is a fundamental objection to abortion itself.<sup>56</sup> This research has also shown that many of the women who are actually affected by abortion (that is, women of childbearing age and young people), see abortion as a social necessity, accepted (or should be) as part of fertility control. The denial of this makes them resort to the use of herbs and unqualified personnel because of its restrictions.<sup>57</sup> What I can deduce from this is that there would be fewer objections to abortion if qualified doctors within wider acceptable medico-social limits would do it legally.<sup>58</sup> I will examine some acceptable social and medical limits that are acceptable for the majority of Nigerians in the study area below. First, I propose an outline of the basics of a reformed abortion law for Nigeria.

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The Net Approve +/- Percentage is got by subtracting the total of all the Disapprove from the total of all the Approve.

<sup>55</sup> Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 106 & 109.

<sup>56</sup> Ibid at 118; see also Isabella Okagbue, 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 202. This is also debatable as I discuss in chapter 3.4 that there are Pro-life advocates who object to abortion under all circumstances (except when the mother's life is in danger).

<sup>57</sup> Isabella Okagbue, 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 202 also observed that medical personnel she interviewed in her research in Nigeria favoured revision of the law on abortion. Also that most of the women who favoured greater access to abortion were women aged between 18 and 30 and the unmarried.

<sup>58</sup> Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, in a hospital-based research in Ghana observed that many of the respondents he interviewed 'showed a great confidence in doctors which possibly points to the fact that legalisation of abortion will meet with little moral opposition'; see also D. A. Ampofo 'Abortion in the Korle Bu Hospital: Demographic, Social and Medical Perspectives', in N. O. Addo et al (editors) *Symposium on Implication of Population Trends for Policy Measures in West Africa* (Ghana Population Studies Series: University of Ghana, 1971), 79-105, 101.

## Abortion law reform as part of Government policy on population and development

In 1988, the Federal Government of Nigeria introduced its National Policy on Population for Development, Unity, Progress and Self-Reliance,<sup>59</sup> as a response to balance Nigeria's growing population with her available resources.<sup>60</sup> In recognition of the fact that the nation's 'population is its most valuable asset',<sup>61</sup> government set specific targets that they hope to achieve which revolved round the safeguarding of the health of women and children, the education of families and providing available services for women to give birth to only the number of children they can adequately maintain. Among the targets set by government is the reduction of the population;<sup>62</sup> sustaining a decrease in the number of children born to each woman (which stood at six to seven children per woman at that time);<sup>63</sup> seek a decrease in infant mortality rate;<sup>64</sup> and to seek a reduction in incidences of women who get pregnant between age 18 and 35 years and reduce pregnancies less than two years apart and after the fourth birth.<sup>65</sup> While the focus of my thesis is not on population control, it can be seen that the NPP hinges the success of its programme on fertility control and access to facilities that makes 'family planning means and services to all couples and individuals easily accessible at affordable cost, at the earliest possible time, to enable them regulate their fertility'.<sup>66</sup> Significantly there is recognition that 'to achieve lower population growth rate, [there has to be] a reduction of birth rates by *voluntary fertility regulation methods* that are compatible with the attainment of economic and social goals of the nation'.<sup>67</sup> The NPP set as its targets:

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<sup>59</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988, hereafter referred to as the NPP.

<sup>60</sup> Ibid Section 1.3

<sup>61</sup> Ibid Section 1.1.

<sup>62</sup> In 1988 the estimated population of Nigeria stood at 98 million persons: Ibid Section 2.1, today the estimated population stands at about 127 million:

<sup>63</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988 hereafter referred to as the National Policy, Section 2.2, the fertility rate stands at 5.2 children born/woman in 2005: United Nation Population Fund (UNFPA):

<http://www.unfpa.org/profile/nigeria.cfm> (accessed 21 September 2005). A research conducted in 2001 among Nigerian public servants shows that the highest percentage had an average of 4-5 children: Aderibigbe, Titilayo, *Will and Will Making Among Public Servants: A Case Study of the Nigerian Institute of Social and Economic Research*, (Nigeria: NISER 2002), 21.

<sup>64</sup> Infant mortality rate stood at 90 per 1000 live births in 1988: Federal Republic of Nigeria: National Policy on Population Section 2.3, but it stands at 78.8 per 1000 live births today: UNFPA (ibid)

<sup>65</sup> Federal Republic of Nigeria: National Policy on Population; Sections 3.2 and 4.3.1.2 and 4.3.1.3.

<sup>66</sup> Ibid Section 4.2.4.

<sup>67</sup> Federal Republic of Nigeria: National Policy on Population; 4.1.3. I have inserted the italics for emphasis.

- a reduction in the proportion of women who get married before the age of 18 years by 50 percent by 1995 and by 80 percent by the year 2000;<sup>68</sup>
- a reduction in pregnancy to mothers below 18 years and above 35 years of age by 50 percent by 1995 and by 90 percent by the year 2000;<sup>69</sup>
- reduction in the proportion of women bearing more than four children by 50 percent by 1995 and by 80 percent by the year 2000;<sup>70</sup>
- to make available suitable family life education, family *planning information and services* to all adolescents by 2000 to enable them to assume responsible parenthood;<sup>71</sup>
- The NPP further states: 'Family planning services *shall be made available to all persons voluntarily wishing to use them*. Priority attention shall be given to reaching high risk clients, for example, women under 18 or over 35, those with four or more children, those with previous complicated pregnancies of childbirth, or those with chronic illness which increase the health risk of pregnancy'.<sup>72</sup>

I liken the incongruence of the NPP objectives to the abortion law to a Nigerian proverb, which mocks a farmer who gives his workers hoes, cutlasses and all farming equipments without giving them land to till. The NPP will remain unreachable while the abortion law that will enable most of the ideals to be achieved gather dust on the shelf of nationhood, forcing women to achieve the goals it sets through illegal means. While I observe that the targets and ideals expressed in the policy are compatible with the needs of contemporary Nigerian women to control their fertility, government falls short of providing the enabling law to achieve the expressed aspirations. The discrepancy between government policy and the reality of non-availability of legal means to achieve the aspiration by women is another example of patriarchal control of women, and a denial of social

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<sup>68</sup> Ibid Section 4.3.1.1.

<sup>69</sup> Ibid Section 4.3.1.2.

<sup>70</sup> Ibid Section 4.3.1.3.

<sup>71</sup> Ibid Section 4.3.1.6, I placed the italics for emphasis.

<sup>72</sup> Ibid Section 4.3.1.8. I placed the italics for emphasis



reality, which I show in this research.<sup>73</sup> The incongruence between family planning provisions and attitude of policy makers and legislature is expressed by Figa-Talamanca when she wrote that 'abortion is another example of human inconsistency in the limitation of fertility control'.<sup>74</sup>

The NPP was launched in 1988. I may then ask how far the targets have been reached in 2006. The United Nations gave a report in 2005 which stated that though the birth-rate among Nigerian women aged 15-19 declined by 27 percent between 1980 and 2003, the country's population more than tripled between 1960 and 2000 and is expected to double by 2025.<sup>75</sup> In 2005, the fertility rate (per woman) is 5.85.<sup>76</sup> My assessment is that while there is a reduction in birth and fertility rate the projected targets are unlikely to be met if the enabling law to achieve it is not reformed.

It is significant that the NPP does not base fertility control on the marital status of women because it does not make a distinction between single and married women's access to fertility control services.<sup>77</sup> In fact, it focuses on women within childbearing age. In order that the abortion law might meet the needs of women and to some extent meet the aspirations of government as expressed in the policy, I will outline a proposal for reform of the abortion law. I will follow by considering what issues respondents have stated the reformed abortion law should consider.

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<sup>73</sup> The social reality is that many women (regardless of socio-economic variables), do have abortions and have expressed by it their need to control their fertility, and they must be given the means to achieve it through the law in order to safeguard their health.

<sup>74</sup> Irene Figa-Talamanca, 'Inconsistencies of Attitudes and Behaviour in Family-Planning Studies' (1972) 34 *Journal of Marriage and the Family*, 336-344

<sup>75</sup> United Nations: Department of Economic and Social Affairs, Population Development, *World Population Prospects: The 2002 Revision* <http://esa.un.org/unpp> (accessed 27 May 2005).

<sup>76</sup> <sup>76</sup> United Nations: Department of Economic and Social Affairs, Population Development, *World Population Prospects: The 2002 Revision* <http://esa.un.org/unpp/p2k0data.asp> (accessed 27 May 2005).

<sup>77</sup> Ibid Section 4.2.4 makes reference to the fact that fertility control services should be available to 'all couples and individuals'.



### 8.3 Proposal for Abortion Law Reform

#### *Widening the statutory ground for lawful abortion*

From the data analysis collected in this research it can be seen that both men and women accept abortion as another form of fertility control method and is being used as such by a majority of women who have unwanted pregnancies.<sup>78</sup> In fact, earlier researches have shown that adolescents prefer abortion than contraceptives,<sup>79</sup> and married women choose abortion when they deem it appropriate.<sup>80</sup> The restrictive abortion law has tied the hands of Nigerian courts for several years. In Nigeria, shortly after *Bourne's* case was decided in England, the Nigerian court had the unique opportunity to make a pronouncement on the statutory interpretation on the ambit of the word 'illegal' in Section 297 in the case of *Rex v Edgal*.<sup>81</sup> The judges there could not however arrive at the same interpretation of the law as *Macnaughten J* did in England. The court in *Edgal* gave its reason that:

It would indeed have made the interpretation of these sections<sup>82</sup> easier if the Code had included a specific declaration of when it is lawful and when unlawful to procure a miscarriage...The omission of a definition or a declaration merely throws the enquirer back to ascertain what is the law of the land in regard to when it is lawful and when unlawful to procure a miscarriage.<sup>83</sup>

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<sup>78</sup> I discussed this issue in Chapter 5.2 and 5.3.

<sup>79</sup> Otoide, V. O; Oransaye, Frank and Okonofua, Friday E, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81, 78 ; Stanley K. Henshaw; Susheela Singh; Boniface A. Oye-Adeniran; Isaac F. Adewole; Ngozi Iwere and Yvette P. Cuca 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164, 157; D. Nichols; O. A. Ladipo; J. M. Paxman and E. O. Otolorin 'Sexual behaviour, contraceptive practice and reproductive health among Nigerian adolescents' (1986) 17(2) *Studies in Family Planning*, 100-106, 102; A. A. Olukoya 'Pregnancy termination: Results of a community-based study in Lagos, Nigeria' (1987) 25(1) *International Journal of Gynaecology and Obstetrics* 41-46, 42;

<sup>80</sup> Coeytaux, Francine M., 'Induced Abortion in Sub-Saharan Africa: What We Do and Do Not Know', (1988) 19 (3) *Studies in Family Planning* 186-190,187.

<sup>81</sup> *Rex v David Edgal, Okainma Idike and David Ojogwu* [1938] 10 WACA 133.

<sup>82</sup> Referring to section 297 of the Criminal Code that absolves a person of criminal responsibility for the performance of a miscarriage if it is to save the mother's life.

<sup>83</sup> Per Kingdom (Chief Justice, Nigeria), *Rex v David Edgal & Others* [1938] 10 WACA 133 at 137

This research has shown that abortion is often chosen for social reasons, based on this research (and buttressed by earlier findings), I propose that the statutory ground for abortion should be widened to include harm to the physical and mental health of the pregnant woman. This will bring it in line with the decision in *R v Bourne*.<sup>84</sup> It will also conform to other African jurisdictions like Kenya, Sierra Leone, Uganda<sup>85</sup> and South Africa.<sup>86</sup> The inclusion of physical and mental health of pregnant women in the interpretation of legal abortion would limit clandestine and unsafe abortion methods and give doctors the assurance that they will be safe from prosecution. This will no doubt reduce the mortality rate of women who die from unsafe abortion. It will also assist in achieving government targets as enumerated under the NPP.

### *Determination of gestational limit for abortion*

Recent advancement in bio-medical technology has made it possible for fetuses to be viable at earlier gestational stages than even the Abortion Act 1967 (that puts viability at 24 weeks)<sup>87</sup> envisaged. Determining an appropriate gestational age to limit abortion becomes difficult because according to Steinbock 'the later the gestational age of the foetus the more it looks like a newborn baby and the more it seems to deserve our protection'.<sup>88</sup> I believe the longer the gestational age of the foetus the more morally repugnant it becomes to terminate it. In South Africa, which has the first abortion law in Sub-Saharan Africa,<sup>89</sup> abortion can be given on request within the first twelve weeks of pregnancy. From the thirteenth to twentieth week abortion is allowed if the continuation of the pregnancy will

<sup>84</sup> *R v Bourne* [1938] 3 All ER 615.

<sup>85</sup> This has also been suggested by Isabella Okagbue 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 202. See also Rebecca Cooke and Bernard Dickens (1981) 'Abortion Laws in African Commonwealth Countries' 25 *Journal of African Law* 67-79.

<sup>86</sup> South Africa also widened the statutory interpretation of her abortion law on gaining independence in 1994 in the 'Choice of Termination of Pregnancy Act 1996 and modified it to conform to the social and cultural peculiarities of South Africa: Sanjani Varkey 'Abortion Services in South Africa: Available Yet Not Accessible to All' (June 2002) 26(2) *International Family Planning Perspectives* 87-88, 87. These countries all have the same colonial (and consequently legal) antecedents under British rule and have their legal system patterned closely along the British one.

<sup>87</sup> Abortion Act 1967 Section 1(1) (a).

<sup>88</sup> Bonnie Steinbock, Newsweek: 'When Can It Feel Pain?'

<http://www.msnbc.com/news/920618.asp?0bl=-0> (accessed 6 June, 2003).

<sup>89</sup> Francis A. Althaus, 'Work in Progress: The Expansion of Access to Abortion Services in South Africa Following Legalisation' (June 2002) 26(2) *International Family Planning Perspectives* 84-86, 84.

constitute a risk to the mental or physical health of women; if it would end in the birth of an infant with severe mental or physical abnormality; if the pregnancy resulted from rape or incest; or if carrying it to term would significantly affect the woman's social and economic status. After the twentieth week, terminations are allowed only if the continuing pregnancy would result in severe fetal malformation or a risk of fetal injury.<sup>90</sup> Bio-medical and social considerations made the South African Parliament to limit the gestational age at twenty weeks,<sup>91</sup> but I agree with Okagbue that 'viability is not absolute; it is a function of medical technology'.<sup>92</sup> Other jurisdictions that have liberal abortion laws<sup>93</sup> have limited gestational age at different weeks based on their particular parliamentary decisions.

The different gestational limit for abortion in different countries shows that it is difficult to determine the appropriate gestational stage for abortion. It is the duty of each country's legislation to assess their medical infrastructure and its availability to meet the demand of women for abortion. I propose that Nigeria limits abortion on demand at twelve weeks under the same terms as the English Act as contained in sections 1(1)(a) to 1(1)(d) without the consent of the husband or parent (in the case of a minor).<sup>94</sup> My reasons are that the level of education and socio-economic background often reflect on how early women are able to have access to abortion.<sup>95</sup> Early abortions are safer than late ones and viability cannot be determined with certitude because it is dependent on medical technology.<sup>96</sup>

<sup>90</sup> Republic of South Africa: 'Choice of Termination of Pregnancy Bill' Section 2 *Gazette* 45 (1997), in Francis A. Althaus, 'Work in Progress: The Expansion of Access to Abortion Services in South Africa Following Legalisation' (June 2002) 26(2) *International Family Planning Perspectives* 84-86, 84.

<sup>91</sup> Other countries have various gestational limits with the exception of when termination is to save the life of the pregnant woman or to prevent grave permanent injury for example New Zealand and India limits it at 20 weeks, Hong Kong and Singapore at 24 weeks: Okagbue, Isabella, 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 204.

<sup>92</sup> Okagbue, Isabella, 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 204.

<sup>93</sup> New Zealand, 1997; India, 1971; Hong Kong, 1981 and Singapore, 1974.

<sup>94</sup> As amended in 1990 which is the same as the South African law with the exception of the limitation being at twenty-four weeks. Both jurisdictions require that the minor is counselled to inform her parents but not compelled to seek their consent.

<sup>95</sup> Women in rural areas may not be able to access the services early enough, and the young inexperienced women may not be aware of the signs of pregnancy before it is at an advanced stage.

<sup>96</sup> N. K. Rhoden 'The New Neonatal Dilemma: Live births from late abortion' 72(5) *Georgetown University Law Journal* 1451-1509, 1453.

*Access to abortion widened to include medical, medico-social and socioeconomic factors*

In chapter six, I show that 70 percent of women who choose abortion do so for economic reasons. Women also use abortion to limit the size of their family in order to have only the number children they can adequately maintain. Among married couples, this research shows that their husbands often support the choice. Abortion is also used as a method of child spacing,<sup>97</sup> however even though this research shows that many of the respondents would oppose abortion on flimsy excuses like the undesirability of the gender of the foetus; they would nevertheless choose abortion for other social, medical and economic reasons.<sup>98</sup> This research has shown that majority of the respondents would want abortion done in cases of serious foetal deformity,<sup>99</sup> and should be a ground for abortion. It would be impossible for me to outline all the probable social and economic reasons, but it is the duty of Legislature to couch the language of the law in such a way that all the likely reasons are taken care of as is the case under the English Abortion Act 1967.<sup>100</sup> Service providers can be given detailed guidelines on the social and economic reasons for abortion, which can be, reviewed when social circumstance and medical advancement makes it necessary. I will however mention the effect of the pregnancy on other existing children of the family and the inability of couples to feed the child when it is born, as these are two major considerations more than 60 percent of respondents in this research gave for abortion. The effect on other children of women is allowed in England, Taiwan and Zambia;<sup>101</sup> while in Finland, India and Japan<sup>102</sup> socio-economic considerations are placed within the framework of protecting women's health.<sup>103</sup> By widening the medico-social and

<sup>97</sup> Okagbue, Isabella, 'Pregnancy Termination and the Law in Nigeria', (July-August 1990), 21(4) *Studies in Family Planning* 197-208, 203; Bleek, Wolf, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 119.

<sup>98</sup> Discussed in Chapter six.

<sup>99</sup> See Chapter 7.3.

<sup>100</sup> This is also true of South Africa: Republic of South Africa: 'Choice of Termination of Pregnancy Bill' Section 2 *Gazette* 45 (1997).

<sup>101</sup> England: Abortion Act 1967 amended by the Human Fertilisation and Embryology Act 1990, Section 1(1) (a); Taiwan: 'Eugenic Protection Law', 1984 Chapter III Article 9, (translated in *Annual Review of Population Law*, Volume 2 page 345; Zambia: 'Termination of Pregnancy Act', Act Number 26 of 1972 Article 3(1) (a) (iii) (reprinted in (1973) 24 *International Digest of Health Legislation*, 448-449.

<sup>102</sup> Finland: Law Number 239 of 1970 on the 'Interruption of Pregnancy' Article 1(2), (translated in (1970) 21(4) *International Digest of Health Legislation*, 699-700; India: 'Medical Termination of Pregnancy Act, 1971 Section 3(2) Explanation 1 (reprinted in (1971) 22 *International Digest of Health Legislation* 965; Japan: 'Protection of Mothers' Bodies Act, Law Number 105 of June 1996 chapter III Article 14(1) in Anika Rahman; Laura Katziva and Stanley K., Henshaw, 'A Global Review on Laws on Induced Abortion, 1985-1997' (1998) 24(2) *International Family Planning Perspectives*, 56-64, 61

<sup>103</sup> Anika Rahman; Laura Katziva and Stanley K., Henshaw, 'A Global Review on Laws on Induced Abortion, 1985-1997' (1998) 24(2) *International Family Planning Perspectives*, 56-64, 61.



socioeconomic reasons for abortion, women will be able to bear only the children they can maintain and the aims of government can be achieved.

### *Termination on the ground of rape or incest*

Rape is a criminal offence under the Criminal and Penal Codes.<sup>104</sup> The offence of incest comes under the sections that punish the offender for indecent assaults on women.<sup>105</sup> My first objection to the laws on abortion and indecent assault as stated in the Codes is that they fail to specify what is to happen to the pregnancy if conception occurs. My second objection is that it is a defence for the accused to state that he reasonably believed the girl to be above sixteen.<sup>106</sup> The issues can only be decided in court. To subject pregnant women who are victims of rape or incest to the ignominy of court proceedings would further aggravate their physical and psychological assault.<sup>107</sup> On this basis, complaint of rape or incest by women should be treated as an issue that would cause injury to women's mental or physical state so that access to abortion can be obtained as suggested under my proposal for gestational age limit above.

### *Reformed law should allow information and access to abortion and contraceptives from sixteen years*

This research has shown that the need to complete their education is one of the major reasons why adolescent women choose abortion through illegal means.<sup>108</sup> Other research has shown that Nigerian adolescents are sexually active before marriage and that one third of women who obtained abortion in Nigeria were adolescents.<sup>109</sup> Bleek<sup>110</sup> also observed that the young and unmarried feel the greatest need for birth control. School pregnancy is unwelcome because it portrays the end of education, ambition and means of a better future.<sup>111</sup> During the

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<sup>104</sup> Laws of the Federation of Nigeria 1990: Criminal Code Act Caption 77 Sections 358 & 359.

<sup>105</sup> Ibid Sections 218 & 219 relates to defilement of girls under the age of 13.

<sup>106</sup> Ibid Section 222, however, this aspect of the law is outside the purview of this research, but is stated here in order to make the proposal for law reform comprehensive.

<sup>107</sup> The use of DNA can determine the paternity of the foetus, but the psychological trauma and social stigma the girl will undergo will add to her physical assault.

<sup>108</sup> The use of the word adolescent refers to women aged 14 and above because the youngest respondent in this study is 14 years-old. See reasons for my classification in chapter 5.1 on page 182 and footnote 4 on the same page.

<sup>109</sup> Otoide, V. O; Oransaye, Frank and Okonofua, Friday E, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81, 77.

<sup>110</sup> Bleek, Wolf, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 103-120, 119.

<sup>111</sup> Ibid at 113.

data survey, many of the unmarried female complained that they could not get access to contraceptive facilities from government hospitals and health care providers because of their unmarried status. Earlier research has also acknowledged that 'family planning services for the unmarried and adolescents are non-existent or seriously inadequate in Nigeria even though sexual activity among the unmarried is increasing'.<sup>112</sup> To achieve the aims of the NPP I believe the law should allow information and access to contraceptives and abortion for adolescents.<sup>113</sup> Government should ensure that the information forms part of adolescent education in their educational or vocational institutions.

This research has also shown that illegitimacy or rejection of the pregnancy by the putative father is one reason why women, especially the unmarried choose abortion.<sup>114</sup> Nigerian society frowns at children born out of wedlock,<sup>115</sup> despite the fact that the Constitution does not recognise illegitimacy; this research has shown that women would choose abortion in order to avoid the stigma surrounding illegitimacy for both mother and baby. By allowing access to and information on abortion, the reproductive health of women will be protected as targeted by the NPP.

### *Conscientious objection to abortion*

Nigeria is a very religious country and there would be opposition to abortion law reform because of religion. This research shows that women do not make abortion choices based on morality, but on individual prevailing socio-economic circumstances surrounding their pregnancy.<sup>116</sup> There are bound to be medical

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<sup>112</sup> Henshaw, Stanley K.; Singh, Susheela; Oye-Adeniran, Boniface A.; Adewole, Isaac F.; Iwere, Ngozi and Cuca, Yvette P. 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164, 163.

<sup>113</sup> Even though the age of majority is 18 in Nigeria, because some girls get pregnant as early as age 12 (especially in the Northern states where the onset of menstruation signifies the end of child and girls are given out in marriage and do get pregnant at an early age: J. A. Effeh (1992) 'Child marriages, Traditional Birth Practices and Female Sexuality in Northern Nigeria': course paper presented for M. A. degree at the Institute of Social Studies at The Hague), there should be no age limitation for abortion, but minors seeking abortion should be counselled by the medical personnel to inform their parents but not compelled to or required to seek approval from them.

<sup>114</sup> Discussed in Chapter 5.

<sup>115</sup> The Center for Reproductive law and Policy (CRLP), 'Women's Reproductive Rights in Nigeria: A Shadow Report' [http://www.reproductiverights.org/pdf/sr\\_ng0698\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_ng0698_eng.pdf) (accessed 24 November, 2002).

<sup>116</sup> Objection to abortion in other African countries has been largely on religious grounds also, and Nigeria is no different: Sally Guttmacher; Farazana Kapadia; Jim Te Water Naude and Helen de Pinho, 'Abortion Reform in South Africa: A Case Study of the 1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 191-194, 191;

doctors who have a conscientious opposition to abortion and this category of doctors should not be compelled to take part in abortion procedures. Their objection should be considered under the law as it is done in the abortion laws of Britain and South Africa.<sup>117</sup> This will prevent doctors or health care providers imposing their moral view on the pregnant women's choice.

I turn to review the data on the respondents' responses to some of the proposed grounds I have suggested.

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Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21(1) *African Studies Review* 103-120, 111.

<sup>117</sup> In South Africa some health care providers were turning pregnant women away, giving them moral lessons or not attending to them in time before it was too late to terminate, in order to dissuade them from terminating the pregnancy: Sanjani Jane, Varkey, 'Abortion services in South Africa: Available Yet Not Accessible to All' (June 2000) 26(2) *International Family Planning Perspectives* 87-88. This I believe should not be allowed to repeat itself in Nigeria under the reformed law, any medical personnel who has a conscientious objection to abortion should not work within the health care environment providing abortion services. They would be going beyond their boundaries to assist and give information to the pregnant woman but not impose their religious doctrines on the pregnant woman.

## 8.4 Respondents' Responses to Issues a Reformed Abortion Law Should Consider

### Law to take cognisance of reasons for abortion

Respondents were given possible issues that would want included in a reformed abortion law and asked to respond in varying degrees of “strongly approve”, “approve”, “mildly approve”, “strongly disapprove”, “disapprove”, “mildly disapprove” and “I don’t know”. Table 8.3 shows the results. 695 respondents responded and the breakdown of their responses is analysed as a percentage and by showing it as a net percentage of their total approval against their total disapproval.<sup>118</sup> 81.29 percent respondents approved as against 15.25 percent who disapproved that a reformed abortion law should ‘*consider the reason why the woman is seeking abortion*’. The figures give 66.04 percent net approval by respondents. What I believe these figures show is that respondents consider the socio-economic reasons for abortion to be an important ground for consideration for abortion.<sup>119</sup> However, how do we determine the ‘right’ reasons or situations when abortion is considered desirable for pregnant women? What criteria are we to use? Should it be based on societal perception of what is the right thing for pregnant women to do and by whose standards? These are subjective reasons that cannot be determined by any one else but women themselves. Doctor cannot make these assessments because it would mean that they are allowed to evaluate the totality of women’s life styles, their mental, psychological as well as economic competence to maintain the child before they can decide on whether women should be allowed to have abortions or not. Because of the difficulty in arriving at an effective evaluation and determination of the circumstances when abortion should be allowed, I propose that the language of the law should be wide enough to cover socio-economic reasons,<sup>120</sup> while health service providers can be given regulations to follow which can be reviewed whenever necessary.

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<sup>118</sup> The ‘net approval, plus or minus percentage’ is arrived at by adding together all the negative responses of ‘strongly disapprove, approve and mildly disapprove’ and subtracting this total from the total of all the positive responses of ‘strongly approve, approve and mildly disapprove. The ‘I don’t know’ responses are not included because this is neither a positive or negative response.

<sup>119</sup> As I discussed under paragraph 8.1.

<sup>120</sup> The South African ‘Choice on Termination of Pregnancy Act, 1996 is said to have one of the most liberal abortion laws in the world: Althaus, Francis A. ‘Work in Progress: The Expansion of Access to Abortion Services in South Africa Following Legalisation’ (June 2002) 26(2) *International Family Planning Perspectives* 84-86, 84; this is because the language of the law is wide enough to cover socio-economic reasons that may likely make the woman seek abortion: Sally Guttmacher; Farazana Kapadia; Jim Te Water Naude and Helen de Pinho ‘Abortion Reform in South Africa: A



## **The pregnant woman must have the final say on abortion, not the doctor**

The present abortion legislation as stated in the Codes, the unsuccessful Abortion Bill, as well as the British Abortion Act 1967, all give medical doctors the final decision on whether pregnant women can be granted abortion or not. This research shows that the majority of respondents do not want doctors to have the final say in women's abortion choice. In Table 8.2, 55.25 percent of respondents disapprove that the reformed abortion law should state '*that the doctor alone should decide abortion choice for the pregnant woman*' as against 40.71 who approved. This gives a negative net percentage average of minus 14.71. This research also shows that respondents believe doctors should only guide women when they are making their choice but not impose their view on them, with 60.58 percent stating that '*the law states that the pregnant woman and her doctor should decide abortion*' as against 35.40 percent who disapprove. The net percentage difference is 25.18. The small percentage differences in both proposals is due I believe, to the low level of literacy among the Nigerian population and the fact that doctors are seen as having special skills necessary for maintaining the reproductive health of women in their abortion choices.<sup>121</sup> Sheldon states, 'Medicine enjoys a privileged position within modern society with particularly strong claim of access to "truth",<sup>122</sup> even in developed societies like England, therefore it is no surprise that many respondents hold deep deference to medical opinion, which I believe explains the small margin of approval. Even under the English Abortion Act 1967 tremendous discretion is given to doctors so that it is difficult for women to predict how their request will be received,<sup>123</sup> therefore doctors' cooperation and assistance of their medical expertise is necessary for women to arrive at a decision. Nevertheless, the fact remains that, many Nigerians (especially the educated and young) feel women's autonomous choice of abortion should be respected. This is expressed in the comment of a female student that, "It is her body and no one else can know the way she feels about the pregnancy

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Case Study of the 1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 190-194.

<sup>121</sup> The literacy level has improved in Nigeria over the years with an average of 68 percent of the total population over the age of 15 years who can read and write. An estimate of 60.6 percent of females and 75.7 percent of males are literate. Reference: The CIA World Factbook, Nigeria-<http://www.odci.gov/cia/publications/factbook/print/ni.html> (accessed 27 May 2005).

<sup>122</sup> Sally Sheldon, *Beyond Control Medical Power and Abortion Law* (London & Chicago: Pluto Press, 1997), 50.

<sup>123</sup> *Ibid* 59.

better than herself".<sup>124</sup> Women should therefore have the final say in the abortion choice.

This study clearly demonstrates that Nigerian women generally would want to keep their choice to have an abortion made by them and not the doctor only; a total of 60.57 percent of respondents state that the reformed law should include that '*abortion be decided by the pregnant woman and the doctor*' jointly (Table 8.3). 33.39 percent were against the inclusion of this clause however. This gives a percentage average of 25.18 in favour of the inclusion of this clause in the law.

### **Abortion when there is a substantial risk to the pregnant woman's life**

In Table 8.3, 62.73 percent of the respondents still want the clear provision that '*abortion should be done if there is a substantial risk to the woman's life*', retained, while 20.72 percent are against its inclusion. In all, a net percentage 54.96 respondents are in favour of the retention of the clause. We should not form the impression (from the preceding discussions and the responses to the question 'whether the law should consider the reason why the woman is seeking abortion') that the respondents believe that this clause should be the only ground for women being allowed to access abortion as I have already explained.

### **Abortion due to undesired foetal gender**

For cultural reasons male children are often preferred to female ones<sup>125</sup> in most parts of Nigeria. However, the intensity of preference for male children over female ones differs within different ethnic groups. In the western part of Nigeria among the Yoruba people, female children have equal rights of inheritance as male children,<sup>126</sup> and in families where there are no suitable males, female daughters attain headship of the family.<sup>127</sup> This study shows that the attitude towards the

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<sup>124</sup> Field Data Analysis: 22 year old female undergraduate.

<sup>125</sup> Emily Jackson, *Regulating Reproduction law, technology and Autonomy*, (Oxford: Portland Oregon, 2001), 106-110. Preference for male children cuts across all cultures for various reasons. Sadly an estimated 50 percent the annual shortfall of female babies are as a result of abortion, female infanticide, abandonment and selective neglect. The practice is most prevalent in China where about 1.5 female foetuses were selectively aborted between the mid 1980s and 1990. This practice of selective female abortion I believe is not rampant in Nigeria yet because of the illegality of abortion and also because the Nigerian Medical Association has a policy that stops doctors informing the pregnant woman the gender of their baby even when it is known through ultrasound.

<sup>126</sup> *Salami v Salami* [1957] WRNLR 10; *Lopez v Lopez* (1924) 5 NLR 43.

<sup>127</sup> Among the Ekiti people of Ekiti State in Western Nigeria the oldest daughter of a deceased king is always the Regent pending the selection of a male king. In the Eastern part of Nigeria among the

gender of the child in Nigeria is changing and respondents do not wish that a distinction were made on the gender of the child. In Table 8.3, 74.68 percent of the respondents would not want abortion to be allowed solely on the ground that *the foetus' gender is not the one desired by the couple* as opposed to only 12.81 who do. The opposition towards abortion based on foetal gender I believe is also because it is against the constitution of Nigeria. In addition, the education of females has shown that female children are just as useful as male children.<sup>128</sup>

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Igbo people where females were denied inheritance culturally, based on their gender; the Supreme Court of Nigeria has stated in a number of cases that the practice referred to as "Oli-ekpe" is unconstitutional and repugnant to natural justice and good conscience. In *Mojekwu v Mojekwu* (1997) 7 NWLR (Part 512), 283, 305-305 Justice Niki Tobi said "Day after day, month after month and year after year, we hear of and read about customs which discriminate against the womenfolk in this country. They are regarded as inferior to the menfolk. Why should it be so? All human beings-male and female- are born into a free world and are expected to participate freely, without any inhibition on grounds of sex, and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people....On my own part, I have no difficulty in holding that the 'Oli-ekpe' custom of Nnewi, (among the Igbo of many Eastern Nigerian states) is repugnant to natural justice, equity and good conscience"; *Ukeje v Ukeje* (2001) WRN, 142.

<sup>128</sup> Okediran, Wale 'MTN and the Girl-Child', *The Nigerian Guardian*, Tuesday December 21 2004.



Table 8.3

Issues A Reformed Abortion Law Should Contain				
	Number of Respondent Responses	Percentage of responses	Total Percentage Approve/ Disapprove	Net Approve +/- Percentage
<i>Law consider reason for demand for abortion</i>				
Strongly Approve	331.00	47.63	} 81.29	66.04
Approve	162.00	23.31		
Mildly Approve	72.00	10.36		
Strongly Disapprove	70.00	10.07	} 15.25	
Disapprove	30.00	4.32		
Mildly Disapprove	6.00	0.86		
I Don't Know	24.00	3.45		
Total	695.00	100.00		
<i>Law to state that the doctor alone should decide abortion</i>				
Strongly Approve	122.00	17.55	} 40.72	-14.53
Approve	91.00	13.09		
Mildly Approve	70.00	10.07		
Strongly Disapprove	219.00	31.51	} 56.26	
Disapprove	144.00	20.72		
Mildly Disapprove	21.00	3.02		
I Don't Know	28.00	4.03		
Total	695.00	100.00		
<i>Law to state that the pregnant woman and her doctor should decide abortion</i>				
Strongly Approve	159.00	22.88	} 60.58	25.18
Approve	158.00	22.73		
Mildly Approve	104.00	14.96		
Strongly Disapprove	137.00	19.71	} 35.40	
Disapprove	90.00	12.95		
Mildly Disapprove	19.00	2.73		
I Don't Know	28.00	4.03		
Total	695.00	100.00		



*Law to state that abortion should be done only if there is risk to pregnant woman's life*

Strongly Approve	249.00	35.83	}	62.73	54.96
Approve	187.00	26.91			
Mildly Approve	90.00	12.95			
Strongly Disapprove	76.00	10.94	}	20.72	
Disapprove	51.00	7.34			
Mildly Disapprove	17.00	2.45			
I Don't Know	25.00	3.60			
Total	695.00	100.00			

*Law to state that abortion should not be allowed solely on the ground that the foetus' gender is not desired by the couple*

Strongly Approve	395.00	56.83	}	74.68	70.79
Approve	124.00	17.84			
Mildly Approve	62.00	8.92			
Strongly Disapprove	50.00	7.19	}	12.81	
Disapprove	39.00	5.61			
Mildly Disapprove	0.00	0.00			
I Don't Know	25.00	3.60			
Total	695.00	100.00			

*Law to state that embryo experiment should be prevented or regulated*

Strongly Approve	204.00	29.35	}	63.17	39.14
Approve	147.00	21.15			
Mildly Approve	88.00	12.66			
Strongly Disapprove	100.00	14.39	}	24.03	
Disapprove	45.00	6.47			
Mildly Disapprove	22.00	3.17			
I Don't Know	89.00	12.81			
Total	695.00	100.00			

Source: Field Data Analysis

## Gestation Period When Abortion is Acceptable

Neither the Criminal nor Penal Codes give any specific time limit when abortion can be performed,<sup>129</sup> nor do they provide for therapeutic abortion. The absence of an upper time limit means that legally, abortion can be performed any time before the actual birth of the foetus, since both Codes stipulate that the child does not become a person until it has proceeded from the body of its mother alive.<sup>130</sup> Both the Criminal and Penal Codes make a distinction between 'causing miscarriage' and 'child destruction'.<sup>131</sup> The distinction lies in that killing a viable child amounts to causing miscarriage, while killing a child in the process of being born is regarded as child destruction.<sup>132</sup> I emphasise this distinction because my discussion relates to fetuses that are not sufficiently developed to be regarded as a child, to which the offence of 'causing miscarriage under sections 228 and 232 of the Criminal and Penal Codes (respectively) refer. Taking a cue from other jurisdictions with

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<sup>129</sup> This is simply because the only justification for abortion is to save the life of the pregnant woman.

<sup>130</sup> Section 307 Criminal Code, and Section 5(2) Penal Code Caption 77 and 99 (respectively) Laws of the Federation of Nigeria, 1990. But the Penal Code is slightly better than the Criminal Code in that it makes a reference to the gestation age of the foetus when causing the death of the foetus would amount to culpable homicide in its reference to 'quick unborn child' in Section 236 Penal Code Act. The section states:

Whoever does any act in such circumstances that, if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

I am however, of the opinion that the reference to 'quick unborn child' is important for the determination of sentencing and not necessarily the time when abortion becomes lawful.

<sup>131</sup> It is interesting to note that abortion is categorised in the Criminal Code under the heading of 'Offences Against Morality' while child destruction is categorised under 'Offences Against the Person'. See also M. A. Owoade, 'The Legal Implication of Contraception in Contemporary Nigeria' (1988) Nigeria: 1(3) *Calabar Law Journal* 3-18, 16.

<sup>132</sup> Section 328 and 235 of the Criminal and Penal Codes respectively provides for the offence of child destruction. Section 328 Criminal Code is as follows:

'Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life'.

Section 235 Penal Code is as follows:

'Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or cause it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both'.

Notice the differences between the sentencing; while the Criminal Code provides a sentence of life, the Penal Code provides for a term of fourteen years or less coupled with a fine. The Criminal Code seems to make the life sentence mandatory. The sentencing for the same offence should be uniform for the whole of Nigeria. Also, the Penal Code provides for the 'good faith' clause as does Section 1 of the English Infant Life Preservation Act.



reformed abortion laws, the time limit stated for abortion on demand is twelve weeks but between twenty to twenty-four weeks if it is to save the mother's life.<sup>133</sup>

I have shown from the preceding chapters that majority of the respondents in the study area accept that a reformed abortion law should make therapeutic abortion available. Respondents were asked the time limit they would want stipulated in the law for therapeutic abortion under different circumstances. Table 8.4 shows their responses. Briefly, it illustrates that more than 60 percent of the respondents would prefer abortion performed within the first 12 weeks for the various socio-economic and therapeutic reasons.

It should be noted that Table 8.4 does not portray a blanket endorsement of abortion for the various reasons shown, (this was not the underlying intention of the question). The respondents were specifically made to understand that, if abortion were to be included in a reformed abortion law for the different reasons stated, they were required to state the appropriate gestational age of the foetus when abortion should be allowed.<sup>134</sup> I will highlight a few of the reasons and responses as shown in Table 8.4.

### Late abortions

A percentage of 65.14 of the respondents would want abortion to be available for 'foetal abnormality at 12 weeks', followed by 15.06 percent at 12-16 weeks, with approval gradually reducing in percentage numbers with the increase in the gestation age of the foetus. Finally, only a tiny percentage of 3.35 would approve of abortion at 24 weeks and above.<sup>135</sup> What the figures show is that, while most respondents accept foetal abnormality as justification for abortion, they would oppose it at a point when the foetus is viable or capable of being born alive.<sup>136</sup>

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<sup>133</sup> My reasons have been discussed under my proposal for reform of the abortion law in to paragraph 8.1.

<sup>134</sup> A total of 694 respondents responded to the variable 'when the pregnant woman is not ready to be a mother yet' while 697 responded to all the other variables.

<sup>135</sup> Bonnie Steinbock says that "Viability matters ... depending on the context. The reason that viability seems morally important is that the more developed the fetus get, the later in gestation it is, the more it's like a newborn baby-and the more it seems to deserve our protection. Which is why the Supreme Court said that states could prohibit abortion after viability [about 24 weeks]". 'When can it feel pain' Newsweek Technology and Science:

<http://www.msnbc.com/news/920618.asp?0b1=-0> (accessed 6 June 2003).

<sup>136</sup> The codes do not state the stage at which the foetus will become 'viable' and capable of independent existence of its mother. Viability was predicted at 28 weeks (though some courts have argued that it could be earlier at 24 weeks): Bonnie Steinbock *Life Before Birth, The Moral and Legal Status of Embryos and Fetuses* (Oxford University Press 1992), 83. I do believe that most

This is dependent upon the type of abnormality of the foetus and the stage at which diagnosis is possible.<sup>137</sup> I argue that support for abortion for foetal disability in Nigeria is a means of meeting the health needs of individual women and offer protection for foetuses from an existence where it may be a social burden and a family embarrassment. My endorsement is not to be viewed as meaning that the right of mothers is to be more protected than their unborn child; but that the unborn child is being protected from a likely degenerative existence, the mother and her family may be incapable of sustaining and maintaining.<sup>138</sup>

### **Pregnancy resulting from rape**

Knowing what to do with unwanted pregnancies resulting from rape is a question the Codes fail to address.<sup>139</sup> Both the cases of *R v Bourne*<sup>140</sup> and *Attorney General v X*<sup>141</sup> involved cases of rape committed against teenage girls. In the X's case the court held that X had a right to abortion because her life was at 'real and substantial risk', while in *Bourne* the court held that abortion was justified because 'the continuance of the pregnancy will make the woman a physical or mental wreck'. I believe that the duty of the legislature is not only to stipulate what constitutes a crime, but they also have a duty to address the needs of the victim in their definition of what constitutes a crime, especially in cases of rape. It is also of importance in absolving the doctor who terminates a pregnancy resulting from rape from criminal liability. The Nigerian legislature must also be definitive on

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respondents would want abortion for foetal abnormality done within the first trimester of the pregnancy, when it is at a lesser risk to the pregnant woman and less traumatic emotionally. Also, the seriousness of the disability would also dictate the gestational age when abortion can be performed, the gestational age increasing with the level of the disability and the risk to the mother's health.

<sup>137</sup> For example one of the procedures for identifying genetic defects is amniocentesis which cannot be performed until 14-16 weeks after pregnancy and it may take between four to six weeks before the result is made known, Tietze, C. and Henshaw, S. K., *Induced Abortion: A World Review*, (sixth edition), (New York: AGI, 1986), 82, which means abortion can reasonably take place at 18-22 weeks of gestation.

<sup>138</sup> This is however, not to justify that the disabled do not have a right to exist, it is that, within the socio-cultural environment the disabled child will be born in, will make its life difficult. Especially since the health-care facilities available to make them lead as near-normal a life as possible are absent within the Nigerian society as is provided in most developed Western countries. But a foetus left to develop to a late gestation age of 24 weeks and above should not be aborted (unless it will endanger its mother's life) despite the extent of its disability.

<sup>139</sup> Criminal Code Act Caption 77 Section 359 Laws of the Federation of Nigeria, 1990. None of the Nigerian cases on abortion has rape as a defence for the unlawful act.

<sup>140</sup> *R v Bourne* [1938] 3 ER 615.

<sup>141</sup> *Attorney General v X and others* [1992] 1 IR 1.



what to do with the pregnancies that result from rape.<sup>142</sup> The situation in Nigeria now is as it was in England under Common law prior to the Abortion Act 1967 to which Glanville Williams remarked:

The decision in *Bourne* has ameliorated the law, but has not yet taken full practical effect. The medical practitioner is said to be still chary to act, except in the clearest cases, partly because he fears that public opinion may not be in his favour and partly because he is not certain how far the *Bourne* decision protect him.<sup>143</sup>

Inserting in a reformed law, the requirement for abortion to be available as a result of rape is not only an expression of the indignation of the defilement of women in this way; but I believe an expression of a cultural protection of Nigerian value system that places premium on everyone having an identifiable lineage and frowns at illegitimacy. Most women would be unwilling to give birth to a child that results from rape; therefore, the endorsement by 74.03 percent of the respondents in Table 8.4 buttresses my assertion.

### **Teenage Pregnancy<sup>144</sup>**

In contemporary Nigeria, education is believed to be the most important avenue for creating better standards of living. More women are being educated and many would prefer to be self-sufficient by acquiring a good education or learning some vocation before having children. Education means teenagers are exposed to the possibility of pre-marital sex because they spend longer periods acquiring an education before marriage.<sup>145</sup> However, teenage pregnancy brings with it social stigma which could affect the mental health of pregnant teenagers.<sup>146</sup> Nigerian

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<sup>142</sup> While we may argue that the term 'to save the life of the pregnant woman' under the Codes include therapeutic abortion, it is difficult to determine its limits under the Codes just as it was under the Common law (until the Abortion Act of 1967).

<sup>143</sup> Glanville Williams, 'The Law of Abortion' (1952) *Current Legal Problems* 128, 136.

<sup>144</sup> See my discussion in 8.1 under the heading 'Giving Consent for Abortion for the Pregnant Minors' for the definition and use of teenager.

<sup>145</sup> Bleek observed in a study in Ghana that pregnancy signifies the end of educational attainment and a stagnant life in the village which is outside the sphere of the type of life they want for themselves: Wolf Bleek, 'Induced Abortion in a Ghanaian Family', (April 1978) 21 (1) *African Studies Review* 113 & 119; The Alan Guttmacher Institute, 'Early Childbearing in Nigeria: A Continuing Challenge, (2004) *Research in Brief Series* (Series Number 2) 1-8, 2.

<sup>146</sup> See footnote 143 on teenager.

law makes no provision for these girls to terminate an unwanted pregnancy; this is the reason why 74.31 percent of the 694 respondents say they would endorse therapeutic abortion in the case of teenage pregnancy. But, note that only 1.8 percent of the respondents would endorse abortion beyond 20-24 week.<sup>147</sup>

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<sup>147</sup> I am of the opinion that teenage pregnancy is like other pregnancies and the woman whatever her age should have autonomous choice on what to do with the pregnancy.

**\*Table 8.4**

<b>Gestation Period When Abortion is Acceptable</b>				
<b>Reason for Abortion</b>	<b>Before 12 Weeks</b>		<b>Between 12-16 Weeks</b>	
	Number	Percentage	Number	Percentage
Foetal Abnormality	454	65.14	105	15.06
To save mother's life	487	69.87	75	10.76
Rape cases	516	74.03	74	10.62
Incest	472	67.72	54	7.75
Teenage Pregnancy	497	71.31	62	8.90
Stigma from society	449	64.42	53	7.60
Economic reasons	450	64.56	61	8.75
Pressure from the putative father to abort the pregnancy	449	64.42	63	9.04
Pregnant woman not ready to be a mother yet	482	69.45	49	7.06

<b>Reason for Abortion</b>	<b>Between 2 0-24 Weeks</b>		<b>24 Weeks and Above</b>	
	Number	Percentage	Number	Percentage
Foetal Abnormality	15	2.15	23	3.35
To save mother's life	11	1.58	27	3.93
Rape cases	8	1.15	11	1.60
Incest	16	2.30	18	2.62
Teenage Pregnancy	13	1.87	14	2.04
Stigma from society	17	2.44	18	2.62
Economic reasons	20	2.87	29	4.22
Pressure from the putative father to abort the pregnancy	11	1.58	23	3.35
Pregnant woman not ready to be a mother yet	13	1.87	19	2.74

Reason for Abortion	No Abortion		I Don't Know		Total
	Number	%	Number	Percentage	
<b>Foetal Abnormality</b>	38	5.45	24	3.44	697
<b>To save mother's life</b>	28	4.02	13	1.87	697
<b>Rape cases</b>	36	5.16	15	2.15	697
<b>Incest</b>	66	9.47	49	7.03	697
<b>Teenage Pregnancy</b>	69	9.90	18	2.58	697
<b>Stigma from society</b>	94	13.49	36	5.16	697
<b>Economic reasons</b>	81	11.62	19	2.73	697
<b>Pressure from the putative father to abort the pregnancy</b>	83	11.91	28	4.02	697
<b>Pregnant woman not ready to be a mother yet</b>	86	12.39	18	2.59	694

\*Table 8.5 is continuous, but it is broken into three parts to be able to contain all the data and category headings on the table.

Source: *Field Data Analysis*



## SUMMARY

The present abortion law endorses cultural and patriarchal values that erode the autonomous choice of women to give independent consent for abortion. The medical guidelines of the NMA further the erosion. Nigeria is lagging behind other jurisdictions in Sub-Saharan Africa with similar inherited colonial and legal systems from England, which includes the restrictive abortion law. These countries have seen the benefit of expanding the grounds for abortion to improve the health needs of their women.

This research demonstrates a social need for permissive reform of abortion law in Nigeria in order to avoid the loss of female lives through illegal abortion.

In addition, the survey reveals that social attitudes generally are in favour of reform in many of the circumstances addressed. It is however also important for the law of consent to reflect the practical needs of the abortion situation if such reform is likely to be effective.

# CONCLUSIONS

## CONCLUSIONS

The philosopher, Mill said 'No great improvements in the lot of mankind are possible, until a great change takes place in the fundamental constitution of their modes of thought'.<sup>1</sup> This research analyses the reproductive rights of Nigerian women and focuses particularly on the abortion law as it affects women. It argues for a reform of the law because it no longer meets the needs of contemporary women. For law reform to be possible Nigeria needs a paradigm shift away from the present attitudes and perceptions of women as solely receptacles of babies. So far, the number of children women provide for society evaluates their contribution to society. Women who choose to control their reproduction through abortion are characterised as lacking in the essence of Nigerian womanhood, which this research has shown to be a fallacy since abortion is practiced by women irrespective of their social, economic, marital, or religious beliefs. This research shows that the most compelling reason for abortion choices by women in Nigeria is socio-economic.

This research raises a number of issues about the reproductive rights of women and their rights to abortion under the present law. It examines why the law has remained unchanged despite the fact that abortion is prevalent in contemporary Nigeria and affects the health of women adversely. It shows that the definition of women's sexuality and domestic life as essentially for child bearing is alien to traditional Nigerian women who had control of their sexuality prior to colonisation. The present attitude to women's reproductive rights 'is a reflection of nineteenth century attitude to women's role in society as essentially for child-bearing'<sup>2</sup> that is reflected in the abortion law that was applicable to English women of that era. The abortion law has remained unchanged since its introduction into Nigeria in the nineteenth century<sup>3</sup> essentially because the Colonial leaders redefined the meaning of patriarchy to reflect that traditional Nigerian women's sexuality is determined by their procreative ability. Morris and Nott states that 'Woman's ability

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<sup>1</sup> John Stuart Mill, (1806-1873) in John A. Loraine, *Sex and the Population Crises: An Endocrinologist's View of the 20<sup>th</sup> Century* (William Heinemann Medical Books Ltd., 1970), inside cover page.

<sup>2</sup> Carroll Smith-Rosenberg and Charles Rosenberg, 'The Female Animal: Medical and Biological Views of Women and her Role in Nineteenth-Century America' (1973) 60 *Journal of American History*, 331-256, 336.

<sup>3</sup> See chapter one pages 13-14 and footnote 13 for the historical antecedence of the introduction of the abortion law into Nigeria.

to bear children is at once her privilege and her burden'.<sup>4</sup> The patriarchal nature of society is represented in the abortion law which has been used to subjugate and control women by making them believe that it is only through their wombs that they can make meaningful contribution to society and through it become worthy of humanity and respect. For the Nigerian woman therefore it is rightly said that 'The Almighty, in creating the female sex, [took] the uterus and built up a woman around it'.<sup>5</sup> However, this research shows that many of these assumptions about traditional women's lack of control of their sexuality are debateable.<sup>6</sup> While there is paucity of documentation on the practice of abortion in Nigeria,<sup>7</sup> the existence of abortifacient recipes mentioned in this research,<sup>8</sup> and by other writers<sup>9</sup> suggests that abortion practice always existed in Nigeria. Abortion is as old as civilisation, it is more than 4,000 years old, and is practised by all known cultures.<sup>10</sup> Just as Harney declared "Abortion is part of the Irish experience, it is part of what we are",<sup>11</sup> this research shows that abortion is part of contemporary Nigerian women's reproductive choices and is necessary for them to assert their rights as individuals capable of controlling their fertility. Whatever the traditional attitude to women's sexuality and abortion may be, this research shows that respondents accept that there is a need to reform the abortion law because it no longer conforms to the needs of contemporary Nigerian women. This is the reason why women resort to illegality to access abortion.<sup>12</sup>

The inability of the law to meet contemporary Nigerian women's needs is sometimes explained along moral grounds, that life is God-given and therefore sacrosanct.<sup>13</sup> While this is true, depending on whether the debate takes on a pro-

<sup>4</sup> Ann Morris and Susan Nott, 'Laws Engagement With Pregnancy' in Jo Bridgeman, & Susan Millns, (editors), *Feminist Perspectives on Law, Law's Engagement with the Female Body* (London: Sweet & Maxwell, 1995), 53.

<sup>5</sup> Statement by an 1870 medical doctor, quoted in Carroll Smith-Rosenberg and Charles Rosenberg, (1973) (*Footnote 2*), 335.

<sup>6</sup> Refer to my discussion in chapter 3.1.

<sup>7</sup> See my analyses under the headings 'Gaps in the Knowledge' and 'Paucity of legal materials' pages 8-11, and Francis M. Coeytaux, 'Induced Abortion in Sub-Saharan Africa: What We Do and Do not Know' (1988) 19(3) *Studies in Family Planning* 186-190.

<sup>8</sup> See Text box 5.6 and *R v Edgal* (1938) 4 WACA 133.

<sup>9</sup> Glanville Williams, 'The Law of Abortion' (1942) 5 *Current Legal Problems* 128-147, 138; Greer, Germain, *Sex and Destiny: The Politics of Human Fertility* (London: Secker and Warburg, 1984).

<sup>10</sup> *Ibid*, 138, Williams further states that there is nothing in the Bible on the subject of abortion, and Plato and Aristotle approved abortion as a form of population control, *ibid*.

<sup>11</sup> Mary Harney, Dáil [Parliamentary House of Representatives] deputy, Progressive Democrat, during Dáil debate (Dáil Éireann, March 2, 1995, P. 60, in Laury Oaks, "'Abortion is part of the Irish Experience, It is part of what we are": The Transformation of Public Discourses on Irish Abortion Policy' (2002) 25(3) *Women's Studies International Forum* 315-333, 315.

<sup>12</sup> Stanley K. Henshaw; Susheela Singh; Boniface A Oye-Adeniran; Isaac F. Adewole; Ngozi Iwere and Yvette P. Cuca 'The Incidence of Induced Abortion in Nigeria' (1998) 24(4) *International Family Planning Perspective* 156-164.

<sup>13</sup> Glanville Williams, (1942) (*Footnote 9*), 128-147.



life or pro-choice approach,<sup>14</sup> abortion is about individual attitudes to when life begins. But this research shows that irrespective of this debate, the focus is on a woman's right to attain the highest standard of health through her ability to control her fertility. Jackson states that, 'in working out how to regulate abortion, pursuit of a compromise that reaches even a minimal level of universal acceptability is almost futile'.<sup>15</sup> While I acknowledge that the abortion issue brings into focus moral and ethical issues of abortion, the aim of this research is not to resolve these issues because it is impossible to resolve to everyone's satisfaction. This research therefore makes Nigerian women the central focus and considers the fact that the law has failed to address their reproductive needs. It proposes a legal framework which protects and empowers women as individuals as part of their rights as individuals. In this research, respondents insist that women must be the ones to have the ultimate say in abortion decisions. This response exposes the shortcomings of the governments, policy statement, (the NPP) that arrogate to *men* and not women '...decisions including the family size', and spacing of children.<sup>16</sup>

Women's reproductive needs are about the autonomous rights of individuals. This is enunciated by Lock that 'Though the earth and all inferior creatures be common to all men, yet man has a property in his own person; this nobody has any right to but himself. The labour of his body and the works of his hands we may say are properly his'.<sup>17</sup> The autonomous rights of women and equality with men are constitutionally guaranteed but their reproductive rights are absent in any definite reproductive law.<sup>18</sup> The right to abortion has to do with a woman's right to privacy, her choice, and autonomy as a Nigerian citizen, her bodily integrity, the control and the use her body can be put to. The rights of women to control their body conflicts with those of the foetus for life. The control of women's abortion choice by doctors; the role of the putative father in women's abortion choice; the acceptable gestational age for legal abortion on demand; the limits of late abortion and abortion for foetal disability; are fundamental issues that should be clearly defined

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<sup>14</sup> I discuss pro-life and pro-choice issues in chapter 3.4 Women's Sexuality in Present Day Nigeria

<sup>15</sup> Emily Jackson, *Regulating Reproduction, Law, Technology and Autonomy* (Oxford and Portland Oregon: Hart Publishing Ltd, 2001), 1; see also Margaret Brazier, *Medicine, Patients and the Law* (3<sup>rd</sup> edition), (London: Penguin, 2003), 311-312.

<sup>16</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988, (NPP), Section 5.3; see my discussions on the NPP in chapter 2 especially *footnotes 112, and 141*.

<sup>17</sup> Locke, John 'An essay concerning the true origin and extent and end of civil government' (1690) in Laslett, P., (editor) *Two Treatises of Government* (Cambridge University Press, 1960), 16-17.

<sup>18</sup> Refer to my discussions in chapter 1.2 'Asserting Reproductive Autonomy within Existing Legislation'.

by law but are not reflected in the abortion law or in any law in Nigeria. This thesis argues that there is a need for a law that succinctly addresses these issues. Jackson says that 'when human beings could do little to control their fertility or infertility, law was of comparatively little importance'.<sup>19</sup> The Nigerian government has found it necessary to enact a law to regulate reproduction, but that law is inadequate to meet the prevailing needs of society. Advancement in reproductive technology has reached a level where the present abortion law fails to meet even the minimal regulatory framework necessary for a modern reproductive legal framework.<sup>20</sup> With the use of empirical data, this research has analysed these issues and put forward suggestion for the enforcement of a reproductive legal framework.

Morality is often used to justify or negate abortion depending on an individual's religious beliefs. However, this research shows that it is possible for women to compartmentalise and separate their religious beliefs from their social obligations to procreate if the socio-economic environment is not conducive for them to bring another child into the world. For many women choosing abortion because of socio-economic reasons does not make them any worse an adherent of their faith. Many respondents suggest that choosing abortion is a responsible action for it would be worse if they are compelled to bring a child to the world to suffer. For example, Doctor Taussig said 'Every physician will testify that it is without any feeling of guilt that most women speak of induced abortion in the consultation room'.<sup>21</sup> This research shows that abortion is not simply a moral problem for Nigerian women, but a socio-economic necessity made within the prevailing difficult social and economic environment women face.<sup>22</sup> Women, whatever their socio-economic status will continue to choose abortion despite the 'restrictive law' if the environment surrounding their pregnancy makes it necessary for them to make the choice,<sup>23</sup> therefore it is necessary to enact a law that safeguards the

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<sup>19</sup> Emily Jackson, (2001), (*Footnote 15*), 1.

<sup>20</sup> The English government since 1861 when the OAPA was enacted in Britain have frequently amended the law to meet with prevailing social needs of women and technological advancements in medical science by enacting the Abortion Act 1967, The Human Fertilisation and Embryology Act, 1999 (HFEA) and the current proposal to further amend the HFEA, there can be no justification therefore for Nigeria to still retain the Nigerian version of the OAPA 1861, in the Criminal and Penal Codes in 2006.

<sup>21</sup> F. J. Taussig, *Abortion*, (1936), 406 in Glanville Williams (*Footnote 9*), 139.

<sup>22</sup> These are issues I discuss in chapter 5.

<sup>23</sup> In chapters 5.2 'Social Issues Influencing Married Women's Abortion Choices' and 5.3 'Social Factors Influencing Unmarried Girls' Abortion Decisions' I show that the reasons women of different ages and marital status make abortion choices are often economic and social and their access to abortion is dependent on their socio-economic status. See also Archibong, E. I., 'Illegal induced

health of women by making it possible to legally access abortion in a medically safe environment.

This research also shows that socio-economic status cannot be used as yardstick for evaluating the characteristics of good motherhood.<sup>24</sup> The law evaluates motherhood along the basis that it represents a necessity for women to procreate whatever the environment surrounding their pregnancy. Therefore, the restrictive law tries to prevent the bad women from accessing abortion. However, this research shows that women who choose abortion are not confined to a specific social class. Women choose abortion irrespective of social class depending on what is best for them, their family and ultimately the foetus. While abortion may be more prevalent among a specific group, the reasons for this are again economic and social.<sup>25</sup> Therefore, the characterisation of women who would choose abortion as selfish and emotionally weak as imputed by the law is at variance with social reality and practice.<sup>26</sup> The abortion law conflicts with social reality and does not address prevailing reproductive needs because it has remained static despite social and economic development. It therefore needs to be reformed to meet these needs.

Fegan and Rebouche state that 'Since the nineteenth century, feminists have explored the possibility of using law to achieve social change from a variety of political, practical and philosophical perspectives.'<sup>27</sup> This research advocates for an abortion law reform from the socio-legal perspective, because while law may prescribe and proscribe certain activities of citizens that the state tries to change, if the law does not conform to citizen's needs they will breach it despite state sanctions. This study shows that women's social reality dictates their abortion choices, this ought to be reflected in a law that controls their reproductive needs in the best socio-culturally acceptable way. Foucault says that the law of prohibition is often the apparatus by which Power (representing the State) uses to

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abortion-a continuing problem in Nigeria', (1991) Volume 34(3), *International Journal of Gynaecology and Obstetrics*, 261-265, Donatus O. Owuamanam,, 'Sexual Networking Among Youth in Southwestern Nigeria' (1995) (Supplement to Volume 5), *Health Transition Review* 57-66.

<sup>24</sup> This is the findings from the empirical study discussed in chapter 6.

<sup>25</sup> See (Footnote 12), also Valentine O. Otoide; Frank Oransaye, and Friday E. Okonofua, 'Why Nigerian Adolescents Seek Abortion Rather than Contraception: Evidence from Focus-Group Discussions' (June 2001) Volume 27 Number 2 *International Family Planning Perspectives* 77-81.

<sup>26</sup> The characterisation of women who would choose abortion is depicted as those who are loose, lacking in filial love expected of motherhood and selflessness which is incorrect as I show in chapter 6.

<sup>27</sup> Eileen V. Fegan and Rachel Rebouche, 'Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency' (2003) 11 *Feminist Legal Studies* 221-254, 223.

achieve its objectives;<sup>28</sup> The State enforces sanctions by juridical means.<sup>29</sup> This research shows that it is however difficult for the State to compel the judiciary to impose sanctions on citizens through a law does not reflect their needs.<sup>30</sup> It is the duty of government to put in place relevant laws that meet the reproductive needs of society, which this research shows is not the case with Nigerian abortion law. Moreover the language used in the law itself does not reflect the rights of those concerned. It is vague in stating explicitly the rights and duties of parties to abortion, which is analysed in this research.<sup>31</sup> Respondents state that the rights of the mother to make abortion decisions should take precedence over all others.

This research shows that even where abortion is legal, the language is ambiguous. The use of the word 'miscarriage' in both the Criminal and Penal Codes as opposed to the technical term 'abortion' is in itself ambiguous. It poses legal problems in the light of technological advancements and different contraceptive methods such as Mifepristone (RU-486)<sup>32</sup> that can produce miscarriages and which the Codes fail to legislate. The law fails to state specifically the ambits of the law, when abortion can take place, who can carry out the operation and under what circumstances and the social reasons, that justifies abortion. The ambiguous language reflects a failure of the State to guide the actions of health care professionals in the performance of abortion. Because of this, there is little room for judicial discretion in the light of individual cases, which may or may not be the aim of the law, but results in injustice to women and is at variance with constitutional provisions. This research shows that social reasons for abortion choices are issues respondents want a reformed abortion law to consider. The ambiguous language makes it possible for a situation whereby 'Doctors are frequently imposing their own religious and moral judgement under the guise of complying with the law'.<sup>33</sup> When this happens, women suffer. It is the duty of the State to protect its female citizens from such situations through a clear

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<sup>28</sup> Foucault, Michel *The Will To Knowledge: The History of Sexuality: Volume 1* (Penguin Books, 1998), 84.

<sup>29</sup> Ibid, 85-86.

<sup>30</sup> This is the focus of my discussion in chapter 8.

<sup>31</sup> See the analyses of the empirical data in chapter 7.

<sup>32</sup> Mifepistone (RU 486) (the 'abortion pill') is a drug which is administered orally within the first 12 weeks of pregnancy and will induce a miscarriage in most cases within forty-eight hours or so. Only a small percentage of women will need to undergo a surgical abortion to complete the evacuation of the embryo according to Brazier: Margaret Brazier (*footnote 15*), 293-294.

<sup>33</sup> Eileen V. Fegan and Rachel Rebouche (*Footnote 26*), 228, this is reflected in Abdullahi's statement in the Preface to this thesis.



unambiguous law in a language that is easily understood by pregnant women, health-care professionals and judges.

Ambiguity in the language of the law also sometimes results in failures to punish health-care professionals by the judiciary even in clear cases of infraction of the law. This is reflected in the fact that no case in Nigeria has punished any doctor or pregnant woman since the introduction in 1958 of abortion law in Nigeria.<sup>34</sup>

Following from data gathered in this research I have proposed that ethical considerations of the reproductive autonomy of women and choice of abortion have to be viewed against the background of the prevailing circumstances of women's needs within society. In doing so I propose that it is often better to have a pragmatic attitude to what is beneficial to women and the society in general. South Africa (another developing country in Sub-Saharan Africa with similar economic and cultural diversity as Nigeria), found it expedient to reform its abortion law shortly after independence in 1994 in conformity with the needs of women in their society. Since then South Africa has been able to reduce deaths and complications from illegally procured abortions by about 90 percent.<sup>35</sup> Nigeria needs to do the same with her abortion law.<sup>36</sup> Putting in place a reproductive legal framework as this study suggests will easily achieve the objectives of the NPP which states:

*In recent times, the incidence of unwanted pregnancies, abortions, abandoned babies and child abuse has greatly increased and now constitutes a national social problem. Voluntary fertility regulation and organized family planning have proved to be effective, preventive and low cost measures to control such social problems. Also, family planning reduces maternal and infant*

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<sup>34</sup> Refer to chapter 1 *Footnote 13* for the historical antecedence of Nigerian abortion law in the Criminal and Penal Codes.

<sup>35</sup> This information was given by the South African Minister for Health in the BBC radio programme 'Focus on Africa' aired on Tuesday, 7 February 2006 at 8.45 AM on frequency MW 648. This information is confirmed by the statistical report on by Robert Johnson, 'South Africa: Abortion Rates by Province, 1998-2001', <http://www.johnsonarchives.net/policy/abortion/southafrica/ab-sap2.html> (accessed February 7, 2006).

<sup>36</sup> Despite the initial problems faced by service providers trying to impose their moral attitudes on women seeking abortion the government of South Africa have persisted in trying to make abortion services accessible to women who demands it: Francis A Althaus, 'Work in Progress: The Expansion of Access to Abortion Services in South Africa Following Legalisation' (June 2002) 26(2) *International Family Planning Perspectives* 84-86; see also Sally Guttmacher, Farazana Kapadia, Jim Te Water Naude, and Helen de Pinho, 'Abortion Reform in South Africa: A Case Study of the

*morbidity and mortality as well as stems rapid population growth in the shortest possible time. Accelerated fertility regulation and family planning programmes should be formulated and implemented within the context of our health care and related systems. It is necessary to adopt fertility regulation as a code of ethics.*<sup>37</sup>

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1996 Choice on Termination of pregnancy Act', (December 1998) 24(4) *International Family Planning Perspectives*, 191-194. See my further discussion on this point in Chapter 8.3.

<sup>37</sup> Federal Republic of Nigeria: National Policy on Population for Development, Unity, Progress and Self-Reliance, 1988, Section 5.1; (italics as in text).

# APPENDICES



**Nigerian  
Institute of  
Social and  
Economic  
Research**



***Research on the Socio-cultural and Legal Attitudes to  
Abortion in Nigeria***

This research is being carried out under the auspices of the Nigerian Institute of Social and Economic Research (NISER) Ibadan. The aim of the research is to gain a better understanding of the social, cultural and legal attitudes of Nigerians to abortion. Abortion is a social issue that affects a number of Nigerian women of all ages, especially the young ones. Presently abortion is illegal in Nigeria except when it is performed to save the life of the pregnant woman. We would like to find out if a socially and culturally acceptable legal reform of the abortion law can be arrived at in Nigeria or whether the law on abortion as it stands is adequate considering the changes in the Nigerian society.

You are kindly requested to read and fill in the following questionnaire. It will take you about twenty five minutes to do so.

*Participation in the research is strictly confidential and the responses are anonymous. The responses will be used purely for research purposes without identifying the respondents nor will the result be presented in a form that will reveal your identity.*

Please answer the questions as honestly as possible. You are however under no obligation to participate in this research. If you do not wish to participate (though it will be appreciated if you do) kindly return the unfilled questionnaire to the researcher.

**Thank you very much for your time.**

Titilayo Aderibigbe (Research Co-ordinator).  
Director,  
Legal and Special Duties Department,  
NISER



Participant Number: \_\_\_\_\_

**Volunteer’s Voluntary Consent**

**Instruction**

Please read (or listen to the interpretation by the researcher) (of) the following consent statements carefully and sign (or thumb print) at the bottom of the page. By doing this it indicates that you fully consent to participate in this study.

Thank you.

**CONSENT STATEMENT TO PARTICIPATE IN THE STUDY**

*I have been adequately informed about the nature of this study.*

*I have received full information about my ethical rights in the previous page as a participant.*

*I have been given opportunity to ask questions and given adequate information to make contacts to the researcher and her supervisors should I deem it necessary to do so.*

*I fully understand that the decision to participate is up to me and that I can change my mind and withdraw from the study at any time without it affecting how I am treated in the future.*

*I also understand that I am not obliged to answer any question in this questionnaire that makes me uncomfortable, in which case I can leave the particular question blank.*

*I have been guaranteed that all the information collected in this study is strictly confidential and will not bear any personal details that may identify me.*

*I have read this 'Consent Statement to Participate' in the Study' and agree to take part.*

Signed (right thumb print) \_\_\_\_\_

Date \_\_\_\_\_

**Thank you for deciding to participate in this study. Your assistance is greatly appreciated.**

Titilayo Aderibigbe



- a) Married her off to the man who made her pregnant
- b) Married her to an affluent polygamist who could take care of the girl and the baby
- c) Sought the help of traditional doctors to terminate the pregnancy
- d) The girl had the baby and stayed in her father's house
- e) The girl was thrown out of her father's house
- f) I don't know                      g)
- Others \_\_\_\_\_

6 ii) In question (6.i) above who normally takes the decision?

- a) The father                      b) The mother                      c) Members of the girl's family      d) The pregnant girl
- d) I don't know                      e) Others \_\_\_\_\_

7.i) In **present day** Nigeria what is the family likely to do if a young **unmarried girl** became pregnant unexpectedly?

- a) Make her marry the man who made her pregnant if he is willing to,
- b) Make her marry a man who would accept her and the baby,
- c) Seek to terminate the pregnancy
- d) The girl had the baby and stayed in her father's house
- e) The girl was thrown out of her father's house
- f) I don't know
- g) Others \_\_\_\_\_

7. ii) In question (7.i) above who is likely to take this decision

- a) The father                      b) The mother                      c) Members of the girl's family      d) The pregnant girl
- d) I don't know                      e) Others \_\_\_\_\_

8.i) If a **married woman** in **traditional** Nigeria society becomes pregnant and she decided to terminate the pregnancy would her decision be influenced by:

- a) The number of children she has already
- b) What the society thinks of her
- c) Her economic status (she cannot afford to maintain the new baby if born)
- d) Her health and mental state at the time of pregnancy
- e) Her religious belief
- f) The lack of support from the man responsible for making her pregnant
- g) I don't know
- h) Others \_\_\_\_\_

8. ii) In **traditional** Nigerian society if a young **unmarried girl** becomes pregnant and she decided to seek a way to terminate the pregnancy, would her decision be influenced by:

- a) The man responsible for the pregnancy not accepting responsibility for the pregnancy
- b) What the society thinks of her
- c) Her economic status (she cannot afford to maintain the new baby if born)
- d) Her health and mental state at the time of pregnancy
- e) Her religious belief
- f) Lack of support from her family
- g) I don't know
- h) Others \_\_\_\_\_

9.i) If a **married woman** in **present day** Nigeria society becomes pregnant and she decides to terminate the pregnancy would her decision be influenced by:

- a) The number of children she has already
- b) What the society thinks of her
- c) Her economic status (she cannot afford to maintain the new baby if born)
- d) Her health and mental state at the time of pregnancy
- e) Her religious belief
- f) The lack of support from the man who made her pregnant
- g) I don't know
- h) Others \_\_\_\_\_

9. ii) In **present day** Nigerian society if an **unmarried girl** becomes pregnant and she decides to terminate the pregnancy would her decision be influenced by:

- a) If the man who made her pregnant does not accept responsibility for the pregnancy
- b) What the society thinks of her
- c) Her economic status (she cannot afford to maintain the new baby if born)
- d) Her health and mental state at the time of pregnancy
- e) Her religious belief
- f) Pressure from her parents
- g) I don't know
- h) Others \_\_\_\_\_

10.i) "In Nigeria's *traditional* society/culture it is unacceptable for a **married woman** to seek to terminate her pregnancy"

- a) I agree      b) I disagree      c) I agree in some circumstances \_\_\_\_\_
- d) I don't know      e) \_\_\_\_\_
- Others \_\_\_\_\_

10.ii) In question 10.i above kindly state briefly your reasons for your response

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10.iii) "In Nigeria's *traditional* society/culture it is unacceptable for an **unmarried girl** to seek to terminate her pregnancy"

- a) I agree      b) I disagree      c) I agree in some circumstances \_\_\_\_\_
- d) I don't know      e) \_\_\_\_\_
- Others \_\_\_\_\_

10 iv) In question 10 iii above kindly state briefly your reasons for your response

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11.i) "In **present day** Nigeria it is unacceptable for a **married woman** to seek to terminate her pregnancy"

- a) I agree      b) I disagree      c) I agree in some circumstances \_\_\_\_\_
- d) I don't know      e) \_\_\_\_\_
- Others \_\_\_\_\_

11 ii) In question (11.i) above kindly state briefly your reasons for your response

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12.i) "In **present day** Nigeria it is unacceptable for an **unmarried girl** to seek to terminate her pregnancy"

- a) I agree      b) I disagree      c) I agree in some circumstances \_\_\_\_\_
- d) I don't know      e) \_\_\_\_\_
- Others \_\_\_\_\_

12 ii) In question (12.i) above kindly state briefly your reasons for your response



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13.i) "In **present day** Nigeria having many children increases a woman's social standing within her family and community"

- a) I Agree      b) I disagree      c) I agree in some circumstances  
d) I don't know

13 ii) Kindly give your reasons for your response in (14i) above

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14 i) "In **present day** Nigeria it is necessary for a woman (apart from the clergy) to bear children before she can be considered an accomplished/fulfilled man in the eyes of society"

- a) Yes      b) No      c) Sometimes      d) I don't know

14 ii) "In **present day** Nigeria it is necessary for a man (apart from the clergy) to have children before he can be considered an accomplished/fulfilled man in the eyes of society"

- a) Yes      b) No      c) Sometimes      d) I don't know

15 i) If you were a *man* would you approve of your son or other close male relation marrying a single woman with child(ren)? a) I will      b) I will not  
d) I don't know

15 ii) Kindly state briefly the reason for your response in 15 i above

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16 i) If you were a *woman* would you approve of your son or other close male relation marrying a single woman with a child(ren)? a) I would      b) I would not  
d) I don't know

16 ii) Kindly state briefly the reasons for your response in 16.i above.

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17 i) Would you approve of a marriage between a man and a woman who is unable to bear children for medical reasons?

- a) I will approve      b) I will disapprove      c) Approve in some circumstance      d) I don't know

17 ii) Kindly state briefly the reasons for your response in 17 i above.

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9.) Where the girl is young and physiologically not developed enough to carry the pregnancy through	<i>Strongly Approve</i>	<i>Approve</i>	<i>Mildly Approve</i>	<i>Strongly Disapprove</i>	<i>Disapprove</i>	<i>Mildly Disapprove</i>	<i>I Don't Know</i>
10.)Where the man who made the woman pregnant has rejected responsibility							
11) Where the woman's life is at risk if she continues with the pregnancy							
12.)Where it is detected that the baby will be born mentally handicapped/disabled							
13.)Where the man has asked her to terminate the pregnancy							
14.)Where the woman does not want to have the child for whatever reason							
15.)Where through scanning it has been shown that the foetus is not the right sex the woman and her husband wants							
16.) Where the woman/girl became pregnant is as a result of incest							

**Table 2 Ethical Issues In Abortion**

<i>Question</i>	<i>Strongly Approve</i>	<i>Approve</i>	<i>Mildly Approve</i>	<i>Strongly Disapprove</i>	<i>Disapprove</i>	<i>Mildly Disapprove</i>	<i>I Don't Know</i>
1.) A foetus in the womb should be given the same consideration as a living child							
2.) The mother's life is more important than that of the foetus							
3.) An unborn child has a right to life once conception is complete							
4.) It is better to abort a pregnancy at an early stage than to give birth to the baby and throw it away on delivery							
5.) A decision to							

abort should be based on the social and economic status of the woman and not on her religious convictions							
6.) Decision to abort should be influenced by a woman's religious convictions							
7.) A putative father should have as much say as the pregnant woman in her decision to abort or not.							
8.) A putative father should have the right to prevent the woman carrying his pregnancy from terminating the pregnancy							
9.) A woman's decision to terminate a pregnancy is a denial of a child's right to life							
10.) A pregnant woman's decision to terminate a pregnancy is more important than a man's opinion							
11.) The issue of abortion has come up as a result of western influence and development							

12) When is it reasonable to terminate a pregnancy?

- a) Before the first three months of pregnancy
- b) Within the first 24 weeks
- c) After 24 weeks
- d) Others \_\_\_\_\_

13.i) Has any female member of your family terminated a pregnancy before?

- a) Yes
- b) No
- c) I Don't Know

13 ii) In question (13.i) above when the decision was made did you consider it to be the best decision under the circumstances at the time?

- a) Yes
- b) No
- c) I Don't Know

13 iii) Was the decision made in (13.i) above influenced by:

- a) Lack of support from the man who made the woman/girl pregnant
- b) What the society thought of the girl and her family
- c) Concern for the mental and physical health of the woman/girl





7) The doctor alone should decide when to terminate a pregnancy with no impute from the pregnant woman/girl							
8) The decision to terminate the pregnancy of an under-aged girl should be made by:							
i)the father of the pregnant girl							
ii) the mother and father of the pregnant girl							
iii)the pregnant girl alone							
iv)the doctor alone							
9) When the consent form to terminate a pregnancy is to be signed in the hospital the person who should sign is the :							
i)pregnant woman							
ii)the putative father of the foetus							
iii) the father of the pregnant girl							
10) An abortion law should not allow termination solely on account that the unborn child is not the desired sex.							
11) A law should be passed making it mandatory for sex education to be included in the curriculum of Senior Secondary School children of both sexes							
12) Family planning advice/facilities should be freely available to girl aged 18 and above.							
13) The present law on abortion making it a criminal offence unless the pregnant woman's life is at risk is not compatible with the present society's needs and development							
14) An appropriate abortion law should prevent experiments with embryos.							

Please tick only one answer for each question below.

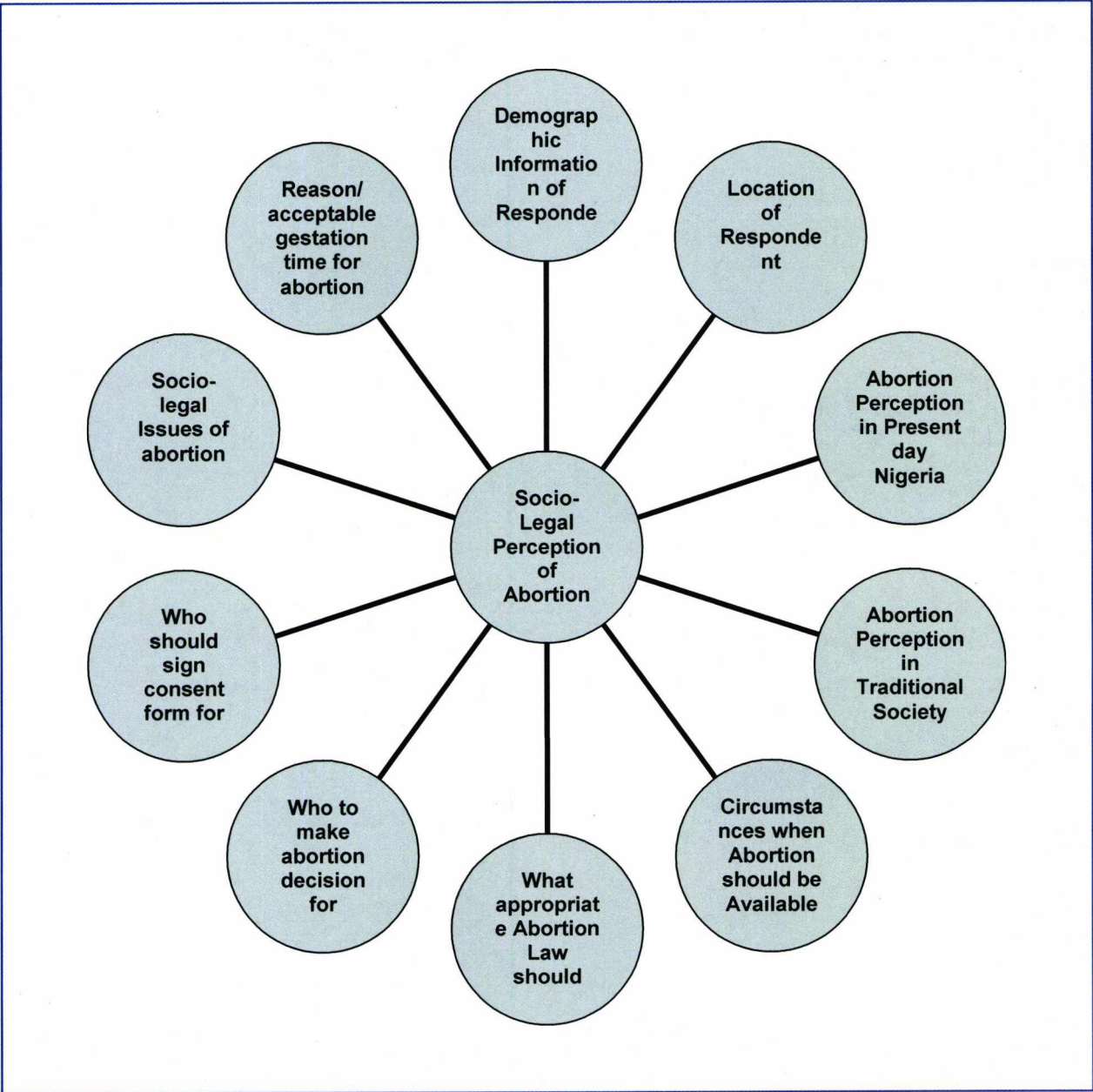
**Table 4 Gestation Period When Abortion is Acceptable**

<i>Reason for Abortion</i>	<i>Before 12 weeks</i>	<i>Between 12-16 weeks</i>	<i>Between 16-20 weeks</i>	<i>20-24 weeks</i>	<i>24 weeks and above</i>	<i>I Don't Know</i>
1) Foetal abnormality (baby will be born deformed)						
2) To save the mother's life						
3) Rape cases						
4) Teenage pregnancy						
5) Incest						
6) Stigma from society						
7) Economic reasons (cannot feed the baby when born)						
8) Pressure from putative father to abort the pregnancy						
9) Woman not ready to be a mother yet.						

***If you have any additional comments to make on the issue of abortion generally, kindly write them on the reverse of this page.***

**THANK YOU VERY MUCH FOR YOUR TIME AND CO-OPERATION**

**Appendix 2**  
**Chart showing the conceptual framework for the study, May 2003 to October 2005**



*Source: Field Data Analysis*



### Appendix 3

#### Local Government Areas and their Headquarters Used as Study Site

Name of Local Government	Name of Headquarter
Akinyele	Moniya
Egbeda	Egbeda
Ibadan North	Agodi-Gate
Ibadan North East	Army Barracks/Iwo Road
Ibadan North West	Onireke
Ibadan South East	Mapo
Ibadan South West	Oluyole Estate
Iddo	Omi-Adio
Lagelu	Iyana-Ofa
Oluyole	Idi-Ayunre
Ono-Ara	Ring Road

*Source: Nigerian Federal Office of Statistics*

**Appendix 4**

**List of Field Survey Team**

Titilayo Aderibigbe  
Professor 'Kunle Adeniji (assisted with the training of the Field Assistants),  
Aderonke Adebayo: Field Assistant.  
Fisayo Aderemi: Field Assistant.  
Kikelomo Aroyehun: Field Assistant.  
Abideen Oladejo: Field Assistant.  
Chukwudi Onachukwu: Field Assistant.

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