

Rethinking abortion laws in Nigeria: The trauma of rape victims of Boko Haram

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Summary: *Abortion is the medical procedure of expelling a fetus from the uterus before it can result in a live birth. Several means are adopted to achieve this, either by taking medication or having a surgical procedure. 'Abortion' in the context of this research differs from 'miscarriage', a situation whereby pregnancy ends naturally without medical intervention, often referred to as spontaneous abortion. Reasons for abortion vary, ranging from health risks to economic factors, personal misadventure, socio-cultural factors and many others. Diverse justifications have been advanced both in favour of and against the liberalisation of abortion laws globally. Nigerian laws allow abortion only to preserve the life of the mother in the case of medical challenges; abortion done for any other contrary reason is proscribed and regarded as a crime. However, the recent experience of the Boko Haram insurgency resulting in humanitarian crises is novel to the existing legal framework. Abducted under-aged girls and women were severely and repeatedly raped and sexually abused, resulting in unwanted pregnancies. Upon being rescued, the traumatised victims' desire for elective abortion unfortunately is not captured in the nation's abortion laws. In this research the issues of rights to the life, sexual and reproductive rights and the economic implications of unwanted pregnancies are critically examined and the well-being of these victims is juxtaposed with the restrictive abortion*

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laws in Nigeria predating the emerging trends. The article recommends an amendment allowing elective abortion in certain circumstances as this will create a new balance and reflect positive social change.

Key words: *abortion; abortion law; sexual and reproductive rights; well-being; victims of Boko Haram*

1 Introduction

The topic 'abortion' is a sensitive one in many jurisdictions and for a long time has elicited heated debates. There are many arguments both for and against it, and such arguments have found their basis in law, human rights, culture, religion and morality. There are extremists on both sides of the debate holding tenaciously onto their views on abortion, with both situating their positions on human rights and the value to be attached to human life. Such extremists can do anything to uphold their views.¹ In the same way, nations are torn between the debates; some have very liberal laws as regards abortion, some are neutral, while others have very stringent laws. Nigeria is one of the nations with strict anti-abortion laws. It permits abortion only in minimal instances, when it borders on the medical ground of preserving a mother's life. Nigeria's jurisprudence may be founded on its cultural, social and religious background and perceptions, although there may be little correlation between the laws and the realities based on available statistics of illegal and unsafe abortion-related deaths in Nigeria.²

This article is neither joining issue with the pro- or anti-abortionist nor is it strictly interrogating the aptness or otherwise of Nigeria's legal position. Rather, it aims at expanding the discussion by bringing into focus emerging trends that can broaden further conversations and extend the examination of Nigerian laws, inquiring into whether the laws ever anticipated exigent issues congruent in expanding the jurisprudence in the laws. The article does not project abortion rights on the broad spectrum, nor does it discuss the historical antecedents of the jurisprudence criminalising abortions. It rather brings into focus emerging national challenges in Nigeria which should set the pace

1 G Falk *Religion and social change: The influence of religion on American culture* (2018) ch 8.

2 FE Okonofua et al 'Attitudes and practices of private medical providers towards family planning and abortion services in Nigeria' (2005) 84 *Acta Obstetrica et Gynecologica Scandinavica* 270-280. See also A Rafiu 'Unsafe abortions causes 20 000 deaths a year in Nigeria' 2002, <https://doi.org/10.1136/bmj.325.7371.988/d> (accessed 15 October 2018).

for further discussion on abortion laws in Nigeria. It aims to discuss these challenges, and to argue for an expanded interpretation of the existing law. The article examines how the present legal framework on abortion fails to cover emerging realities and how it falls short in protecting the victims/survivors of sexual assault by Boko Haram, particularly their sexual and reproductive rights. The article starts by examining the concept of abortion and aligning it in the context under which it will be used in this work and the abortion laws in Nigeria. Subsequently the insurgency of the sect referred to Boko Haram is examined, its evolution, beliefs and activities. The victims/survivors' dilemma and ordeal are exposed in the course of the discussion after which the various issues arising from these are examined. The discussion cumulates into issues of the suitability of the current legislation in Nigeria with respect to the novel incidences and experiences of the victims of insurgency and their rights within the law. The article concludes by making recommendations as to the need for reform of the existing legal framework to reflect and provide for the current socio-political tide.

2 Abortion

Abortion has been described as the abnormal termination of pregnancy,³ the ending of a pregnancy before the fetus can survive outside the womb of the mother.⁴ The word 'abortion' originated from two Latin words, *abortus* and *abortive* meaning miscarriage, premature birth or perishing by an untimely birth.⁵ The widest connotation of abortion includes all cases of fetal expulsion from the womb, whether through miscarriage, otherwise known as spontaneous abortion, or through induced or deliberated expulsion. In medical terms, the two words 'abortion' and 'miscarriage' refer to the termination of pregnancy before the fetus is capable of survival outside the womb.⁶ However, the term 'abortion' in social terms often represents the deliberate and direct termination of pregnancy as opposed to spontaneous loss.

Abortion could either be spontaneous or induced.⁷ Spontaneous abortion, often referred to as miscarriage, occurs when the pregnancy

3 A Faundes & J Barzelatto *The human drama of abortion: A global search for consensus* (2006) 13.

4 D Callaham 'Abortion' in *World book encyclopedia Chicago* (1979) 149.

5 *Roe v Wade* 1973 410 US 113, 93 SCt 705. See also *Webster v Reproductive Health Services* 1989 109 SCt 3040, 106 L Ed 2d 410; see also Callaham (n 4) 149.

6 *Farlex medical dictionary*, <https://medical-dictionary.thefreedictionary.com/abortion> (accessed 30 September 2018).

7 Faundes & Barzelatto (n 3) 13.

is terminated without any intentional external intervention.⁸ This may be caused by the presence of a disease in the body of the pregnant woman or through existential crisis and genetic defect in the fetus.⁹ Induced abortion, on the other hand, known as *abortus provocatus*, is the deliberate termination of pregnancy by external intervention.¹⁰ Niedermeyer states that when abortion is induced by external action, it is unnatural.¹¹ Pregnancy can be terminated through the use of drugs or through surgical intervention after the implantation and before *conceptus*¹² becomes independently viable.¹³ Induced abortion could be direct or indirect. When it is direct, it is intended as an end or a means to an end; it is artificially carried out and the death of the fetus is always the intended result.¹⁴ Indirect induced abortion, on the other hand, occurs when the death of the fetus is never intended as the end result of a medical procedure. The death of the fetus only occurs as a permitted and unavoidable side effect of an action, maybe the treatment of another disease condition in the body of the mother.¹⁵

As stated above, abortion is carried out before the fetus becomes viable. The question then arises as to when the fetus can be termed viable. According to the World Health Organisation (WHO), the viability of a fetus is at 22 completed weeks of gestation or a weight of 500 grams.¹⁶ By implication, therefore, any pregnancy that terminates before this threshold is defined as abortion, whereas any termination when the fetus is above this limit will be considered premature birth.¹⁷

The purpose for which abortion is induced equally varies. It could be induced to save the life of the woman, referred to as therapeutic abortion. Medical indications could give rise to therapeutic abortion, where such conditions may threaten the life of the mother.¹⁸ At other times it is induced at the request of the woman for reasons personal

8 As above.

9 MA Gatzoulis, GD Webb & PEF Daubebery *Diagnosis and management of adult congenital heart disease* (2010).

10 JI Ikechebelu et al 'Should we re-define age of fetal viability in Nigeria? A case report of newborn survival from pre-viable pre-labour rupture of membranes' (2014) *Journal of Women's Health, Issues and Care* 3.

11 A Niedermeyer *Compendium of pastoral medicine* (1960) 211. See also J Schenker & J Cain 'FIGO Committee Report: FIGO committee for the ethical aspects of human reproduction and women's health' (1999) 64 *International Journal of Gynecology and Obstetrics* 317-322. See also SA Mccurdy 'Abortion and public health: Time for another look (2016) 83 *Linacre Quarterly* 20-25.

12 This means the product of conception.

13 Ikechebelu et al (n 10). See also Faundes & Barzelatto (n 3) 21.

14 Callaham (n 4) 149.

15 J Okoye *Abortion and euthanasia the crime of our day* (1987) 17.

16 Ikechebelu et al (n 10).

17 Faundes & Barzelatto (n 3) 21.

18 Okoye (n 15) 18.

to her which centre on her choice and right to reproduction.¹⁹ Essentially, for the purpose of this discussion, abortion is the deliberate expulsion of the living viable fetus from the womb of a woman before it can thrive outside the womb. This is done deliberately with the aim of ending the development of the fetus into a living person.

3 Abortion laws in Nigeria

Abortion is strongly restricted in Nigeria with the use of two main sets of laws: the Criminal Code Act, which is operative in the southern part of the country; and the Penal Code, which operates in the northern part.²⁰ Articles 228-230, 297, 309 and 328 of the Criminal Code are provisions applicable to abortion. Section 228 explicitly provides that anyone who, with the intent to procure miscarriage by unlawfully administering on a woman any noxious substance which incurs miscarriage or uses force of any kind will be guilty of a felony and liable to imprisonment of 14 years. However, section 297 of the Act makes provision for therapeutic abortion by providing that anyone who, in good faith and with reasonable caution and skill, performs surgery on any woman for her benefit or upon the unborn child for the preservation of the mother's life will not be criminally liable in so far as it is done with regard to the state of the patient at the time and the circumstances. The Penal Code, which is applicable in the northern part of the country, contains a similar provision in section 232.

There have been a number of efforts in the past at liberalising these strict laws but such attempts have been unsuccessful. The Nigerian Medical Association (NMA) made an attempt at reforming abortion laws at its conference in 1972, but it suffered a setback. Similarly, the National Population Council advocated women's access to safe and legal abortion on the basis of promoting good health and well-being, but this attempt also suffered the same failure of the past.²¹ In 1981 the Nigerian Society for Gynaecology and Obstetrics sponsored a Termination of Pregnancy Bill. The Bill proposed that abortion should be permitted if, by the certification of two physicians, it is stated that the continuance of a pregnancy would occasion risk to the mother's life or her physical or mental health, or that it will create serious harm to any of the existing children in her family or produce a greater risk than if the pregnancy were terminated. It also proposed that

19 *Farlex medical dictionary* (n 6 above).

20 Criminal Code Act Cap C38 LFN Nigeria 2004. The Penal Code, Laws of Northern Nigeria, Cap 89, Nigeria 1963.

21 LO Ilobinso 'Policy on abortion in the Nigerian society: Ethical considerations' unpublished Master's dissertation, Linkopings Universitet, 2007.

abortion should be allowed if there is a substantial risk that, if born, the child would suffer a mental or physical handicap and that such abortion should be carried out in the first 12 weeks of pregnancy. However, physicians should be permitted to refuse the performance of an abortion on the ground of conscience. Unfortunately, the Bill was rejected and was never passed into law.²² In 1992, under the leadership of the late Prof Ransome Kuti, the Minister of Health, a draft decree was sponsored titled 'The termination of unsafe pregnancy and other related matters', but this attempt also failed. There have been many other initiatives aimed at defending women's sexual and reproductive rights and eliminating unsafe abortion. The campaign against unwanted pregnancy (CAUP) was created in 1991 and, in addition to several of its works, CAUP's focus since 2002 has been abortion bill reform which has suffered repeated revisions and failures.²³ Notwithstanding the various efforts at altering abortion law and jurisprudence in Nigeria, the position remains as strict as it is, and abortion can only be legally performed for remedial and therapeutic purposes, the aim of which is to save or preserve the life of the mother.

4 Boko Haram insurgency in Nigeria

In recent times Nigerians have suffered vicious confrontations and unimaginable serious assaults from terrorist organisations, leaving a trail of blood-letting and destructive implications. There have been demonic brutality, heinous killings, mindless savagery, and flagrant disobedience to the principles of peace and stability by the terrorist groups.²⁴ One of these vicious organisations is the Islamic sect called *Jama'atul Alhul Sunnah Lidda' Wat, Wal Jihad*, commonly known as Boko Haram,²⁵ which literally translates as 'Western education is forbidden'. Many uncertainties exist as to the origin of this sect which is based in the north-eastern part of Nigeria, mainly between Maiduguri and Yobe. It is believed by some scholars that this sect was founded with the trade name *Sahaba* by Lawan Abubakar who

22 R Dixon-Mueller & A Germain 'Population policy and feminist political action in three developing countries' (1994) 20 *Population and Development Review* 197.

23 BA Oye-Adeniran, CM Long & IF Adewole 'Advocacy for reform of the abortion law in Nigeria' (2004) 12 *Reproductive Health Matters* 209.

24 MB Muraina, UD Uyanga & KO Muraina 'Historical antecedents of Boko Haram insurgency and its implications for sustainable and educational development in north Central Nigeria' (2014) 5 *Journal of Education and Practice* 59.

25 House of Representative Committee on Homeland Security Sub-committee on Counter Terrorism and Intelligence 'Boko Haram: Threat to the US' 2011, <https://www.gpo.gov/fdsys/pkg/CPRT-112HPRT71725/.../CPRT-112HPRT71725.pdf> (accessed 7 January 2019). See also T Johnson Council on Foreign Relations 'Boko Haram' 7 November 2011, <http://www.cfr.org/africa/boko-haram/p25739> (accessed 20 November 2018); S Sani 'Boko Haram: History, ideas, and revolt [2]' *The Guardian* 8 July 2011.

later conceded the leadership to Mohammed Yusuf when Lawan Abubakar left Nigeria for studies in Saudi Arabia.²⁶ In other discussions on the evolvement of the group, Shehu Sanni, a civil rights activist based in the northern part of Nigeria, reportedly is the founder of the sect which became militant and deadly in 2009.²⁷ Another report regarding the origin of the group is given by Amnesty International (AI), namely, that the extra-judicial execution in 2010 of its leader, Mohammed Yusuf, by the Nigerian security forces turned the group into a cell of mindless monsters whose focus of attacks are vulnerable targets.²⁸ Others ascribed its origin to 'elite's politics'. According to Mbah et al, the emergence of Boko Haram is not *sui generis* but, rather, a reflection of the zero-sum character for the struggle for the acquisition of political power, especially between the north and south.²⁹ Allegations abound that the sect emerged as a form of political instrument in the hands of the northern elites and politicians which they used to ascend into political offices,³⁰ although one may be tempted to agree with this proposition that the group's onslaught has the colouration of politics and religion because the sophistication of the weaponry employed by the sect is a confirmation of the massive support being enjoyed from the 'big weights', the unseen political forces that to date have remained unmasked.

The group's ideological leaning forbids everything Western or what it regards as man-made laws, Western education, culture and civilisation. It extols Shari'a law as the best form of laws which must be forcibly applied across all 36 states of Nigeria. In carrying out its beliefs, the sect has absolutely no regard for human life, so much so that children, girls, women, persons with disabilities and the aged have ceaselessly fallen victims to them. It uses terror, dread,

26 JA Falode 'The nature of Nigeria's Boko Haram war, 2010-2015: A strategic analysis (2016) 10 *Perspectives on Terrorism* 41.

27 ND Danjibo 'Islamic fundamentalism and sectarian violence: The Maitatsine and Boko Haram crisis in Northern Nigeria' (2009) Peace and Conflict Studies Paper Series Institute of African Studies, University of Ibadan, http://www.ifranigeria.org/IMG/pdf/N_D_DANJIBO_Islamic_Fundamentalism_and_Sectarian_Violence_The_Maitatsine_and_Boko_Haram_Crisis_in_Northern_Nigeria.pdf (accessed 10 January 2019). See also J Langmang 'The upsurge of religion fundamentalism: A critical reflection in the light of the Boko Haram phenomenon in Northern Nigeria' in GS Best (ed) *Religion and post conflict peace building in Northern Nigeria* (2011); UO Uzodike & B Maiangwa 'Boko Haram terrorism in Nigeria: Causal factors and central problematic' (2012) 9 *African Renaissance* 41; J Adibe 'Boko Haram: One sect, conflicting narratives' (2012) 9 *African Renaissance* 27.

28 "'They betrayed us": Women who survived Boko Haram rape starved and detained in Nigeria' 2018, <https://www.amnesty.org/download/Documents/AFR4485292018ENGLISH.pdf> (accessed 22 October 2018).

29 P Mbah, C Nwangwu & HC Edeh 'Elite politics and the emergence of Boko Haram insurgency in Nigeria' (2017) 21 *TRAMES* 173.

30 F Onuoha 'Boko Haram: Nigeria's extremist Islamic sect' (2012) Al Jazeera Centre for Studies, 29 February 2012 1-6, <http://studies.aljazeera.net> (accessed 1 December 2018).

horror and violence as its *modus operandi*, attacking both soft targets and governmental institutions, including schools, markets, villages, social gatherings, motor parks, worship centres, public institutions, international institutions and security outfits such as police stations, prisons, banks and military formations. The deadly attack on the United Nations (UN) Office in Abuja on 26 August 2011 remains indelible. Habitually, the sect does not act defensively but rather operates offensively and repressively, always positioning itself to attack and inflict maximum pain and mayhem.

5 Women and girls as victims of rape and sexual assault

One of the tactics of terror employed by the Boko Haram is kidnapping. The group kidnaps men and boys whom they indoctrinate and enlist into their sect to fight and carry arms, while women and girls are kidnapped either for domestic use, sexual pleasure or as a means of negotiation with the government. Prior to 2014 there have been pockets of kidnappings and raping of women and girls perpetrated by this dreaded group,³¹ but it assumed a gruesome dimension on 14 April 2014 when the group changed tactics and simultaneously abducted 276 girls from a government secondary school in Chibok, Borno State.³² In October 2016, following negotiations brokered by some international organisations, the movement released 21 of the kidnapped Chibok girls and subsequently, in May 2017, another 82 of the girls were freed, leaving 113 girls either still in Boko Haram's captivity or unaccounted for.³³ On 19 February 2018 it again abducted girls from the Government Science and Technical College at Dapchi in Yobe State, in the north-east of Nigeria, where another set of 110 girls were kidnapped.³⁴ Nearly a month after the abduction of the Dapchi girls, 105 of the girls were returned on 21 March 2018. Five of the girls purportedly were dead while one of the girls, a Christian, was not released based on her refusal to embrace Islam.³⁵ These two accounts perhaps are the most pronounced and publicised abductions, but several other women and under-aged girls have been victims of kidnapping and rape. Many of the abducted women

31 VO Ayeni (ed) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 18.

32 'Nigeria Chibok abductions: What we know' *BBC* 8 May 2017, <https://www.bbc.com/news/world-africa-32299943> (accessed 20 November 2018).

33 As above.

34 'Parents of abducted Dapchi schoolgirls protest in NASS, demand rescue' *Punch Newspaper* 8 March 2018.

35 'Kidnapped Dapchi schoolgirls freed in Nigeria' *BBC* 22 March 2018, <https://www.bbc.com/news/world-africa-43484146> (accessed 10 December 2018).

and girls have been taken into captivity in the remote jungle referred to as Sambisa forest.

However, some of the women and girls have been able to regain their freedom, especially with the military rescue operations carried out in the sect's major hide-outs in the dreaded Sambisa forest. Upon release, many of these girls and women were found to be pregnant as a result of severe serial sexual abuse and violation by the Boko Haram fighters. On 3 May 2015, when 234 women, girls and children were rescued from the Sambisa forest in Borno State by the Nigerian army, a sizeable number of the rescued girls were visibly pregnant. Nigeria's military gave information that as at 30 April 2015 nearly 500 women and girls were released that week. However, the girls and women had suffered significant trauma as a result of abduction and incarceration in the den of Boko Haram. One of the indelible traumas is pregnancy which the released girls and women had to endure. While some of the pregnancies are visible, some are still at the early stages while some of the girls and women are even unaware that they are pregnant. The executive director of the United Nations Population Fund (UNFPA), Prof Babatunde Osotimehin, disclosed that in the last year the organisation had taken deliveries of more than 16 000 pregnancies in the troubled north-eastern part of the country. Obviously, the majority of the conceptions were Boko Haram-induced rape-related cases. This is besides several psychological services offered to the affected women and children. According to Osotimehin, UNFPA is providing dignity for women, although the main focus of the government is the provision of food, water, sanitation, tents and housing. However, women and girls have specific needs that are very important and different from the need of the average community. Prof Osotimehin further stated that UNFPA ensures that these women and girls receive antenatal care that will enable them to deliver properly even if and when they require a Caesarean section.³⁶

6 Discussion

One of the aftermaths of the severe rape and sexual assault by Boko Haram is unwanted pregnancy. Ordinarily, pregnancy should be a planned occurrence or at least the consequence of a conscious and consensual choice, but when it occurs as a result of unplanned,

36 T Macfarlan "‘They turned me into a sex machine’: Woman made pregnant by Boko Haram rapist reveals her horror – as UN reveals 214 of 500 rescued in last week are with child' *Daily Mail* May 2015. See also S Ogundipe, C Obinna & G Olawale 'Boko Haram: 214 rescued girls pregnant – UNFPA' *Vanguard Newspaper* 2014.

tragic or even traumatic actions such as rape, the trauma can be both lifelong and inoperable. The concern is, since the initial abduction by Boko Haram is a failure on the part of the Nigerian state government to provide adequate safety and security for the victims, as a result of which they were subjected to such humiliating experiences, whether the trauma should be continued by disallowing the victims to exercise their rights to either keep the pregnancy or have it aborted. As the current legal framework fails to provide for such instances, the question arises as to whether the law should be expanded to accommodate the exercise of sexual and reproductive rights in this direction. In view of the current realities, grounds for expanding the law are very cogent and genuine and are hereunder discussed.

6.1 1999 Constitution

The most explicit provision for the right to health is in section 17(3)(d) of the 1999 Constitution, which guarantees 'adequate medical and health facilities for all persons'. The right to health, which includes sexual and reproductive health,³⁷ is part of the socio-economic rights aimed at securing for citizens a basic quality life; rights that enable people to live meaningful and dignified lives.³⁸ Section 17(3)(d) is part of the Fundamental Objectives and Directive Principles of State Policy, which are made non-justiciable by virtue of section 6 of the Constitution. The Constitution has employed section 6 to oust the jurisdiction of the Nigerian courts from entertaining any of the provisions of chapter II and, by implication, the right to health is unenforceable. The right to health has shifted to the arena of discretion of the government since it is unenforceable by citizens.³⁹

However, the Constitution provides that the welfare and security of Nigeria is of paramount importance and, as such,⁴⁰ the Constitution places a duty and responsibility on all organs of the government to observe, conform to and apply the provisions of chapter II.⁴¹ The

37 United Nation ESCR Committee General Comment 14 'The right to the highest attainable standard of health' (art 12) adopted at the 22nd session of the Committee on Economic, Social and Cultural Rights, 11 August 2000 (contained in Document E/C12/2000/4).

38 A Haruna 'Realisation of the right to health-care in Nigeria: Need for paradigm shift African' (2020) 4 *Journal of Law and Human Rights*. See also G Erasmus 'Socio-economic rights and their implementation: The impact of international law on domestic law' (2004) 32 *International Journal of Legal Information* 243; M Brenman 'To adjudicate and enforce socio-economic rights: South Africa proves that the courts are a viable option' (2009) 9 *Queensland University of Technology Law Journal* 64, <https://doi.org/10.5204/qutlr.v9i1.42> (accessed 20 June 2021).

39 See Justice Ayoola's lead judgment in *Williams v Akintunde* (1995) 3 NLR 101.

40 Sec 14(2)(b) Constitution of the Federal Republic of Nigeria 199 as amended.

41 Nigerian Constitution Nigeria 1999 (n 40) (as set out in sec 13).

welfare of citizens includes enjoyment of all the socio-economic rights such as food, shelter and, of course health, which is critical to the enjoyment of other fundamental rights as provided for in chapter IV of the Constitution, which are civil and political rights. The two words 'duty' and 'responsibility' as provided for in section 13 entail that there is an obligation on the government through its several organs to promote, protect and fulfil the provisions in section 17(3)(d). The Constitution is supreme, and the basis on which other laws, including the Criminal Code and the Penal Code, derive their validity. Any legislation that is inimical to the provision of the rights to health as provided for under the Constitution therefore are unconstitutional. Impliedly, the right to health no longer is discretionary but obligatory on the part of the government, and the sexual and reproductive rights of women is included in the right to health. Commenting on the position of the non-justiciability of the right to health under the Ugandan Constitution, Ngwena states that 'directive principles cannot be dismissed as inconsequential constitutional artefacts. At the very least, they serve to provide a context within which justiciable rights under the Constitution, including the right to life, can be meaningfully understood.'⁴² Ngwena states further that directive principles can be used to support and clarify the normative content of fundamental rights to access safe abortion that derives from justiciable rights.

The Nigerian Constitution, therefore, should follow examples laid by some other jurisdictions such as that of India which has been able to move to the justiciability of the Directives Principles of State Policy.⁴³

6.2 International obligations and provisions

Over the years Nigeria has signed and ratified several international and regional treaties that directly or indirectly protect the right to health, and opened the discussion on the need for expanded discussion on the restrictive abortion laws. On the international scene, there is the International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴⁴ the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of

42 CG Ngwena 'Taking women's rights seriously: Using human rights to require state implementation of domestic abortion laws in African countries with reference to Uganda' (2016) 60 (110) *Journal of African Law* 122-123.

43 *Bharati v State* (1973) 4 SCC 225; see also O Ikpeze 'Non-justiciability of chapter II of the Nigerian Constitution as an impediment to economic rights and development' (2015) 5 *Developing Country Studies* ISSN 2224-607X (Paper) ISSN 2225-0565, www.iiste.org (accessed 10 June 2021).

44 Art 12.

Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the International Convention on the Elimination of all Forms of Discriminations (ICERD). Regional treaties include the African Charter on Human and Peoples' Rights (African Charter) and, most importantly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).⁴⁵ Many interpretations have been given to the various provisions of these treaties which have supported the need for a progressive discussion on restrictive abortion laws or its total criminalisation. For instance, article 7 of ICCPR is a determinant of article 3 (the right to equality).⁴⁶ The CEDAW Committee also implicitly linked restrictive abortion laws to discrimination on the basis of gender and biology.⁴⁷ The Committee on the Rights of the Child has acknowledged the fact that adolescent girls who are in need of safe abortions due to sexual exploitation may be exposed to significant health risks.⁴⁸ Such adolescent girls, therefore, have the right to both physical and psychological therapy and 'social reintegration in an environment that fosters health, self-respect, and dignity'.⁴⁹

Article 14(2)(c) of the African Women's Protocol has been a much-discussed provision that has generated many sentiments between the pro- and anti-abortionists. However, this article takes the position of the literal meaning as stated in the provision, namely, that state parties shall take all appropriate measures to protect the reproductive rights of women and, in so doing, they shall authorise medical abortion in instances of rape, sexual assault, incest and where the continuation of such pregnancy poses a threat to the life or physical and mental health of the mother or the fetus. The implication of this provision is that the state has a duty to ensure that any woman who has suffered any of the listed misfortunes in the article should be provided safe facilities and opportunities to do away with such pregnancy. This provision appears clearly not discretionary or open to options because it has created an obligation

45 Adopted by the 2nd ordinary session of the Assembly on the Union, Maputo, Mozambique, 11 July 2003, entered into force 25 November 2005.

46 CG Ngwena 'Inscribing abortion as a human right: Significance of the Protocol on the Rights of Women in Africa' (2010) 32 *Human Rights Quarterly* 783, 789.

47 UN Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, ch 1, <https://www.refworld.org/docid/453882a73.html> (accessed 29 July 2021).

48 UN Committee on the Rights of the Child (CRC) General Comment 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4, <https://www.refworld.org/docid/4538834f0.html> (accessed 29 July 2021).

49 Ngwena (n 46) 791.

for state parties to fulfil.⁵⁰ Article 14(2)(c) is clearly espousing the position being conversed in this article that pregnancies resulting from rape and trauma as experienced by the victims of Boko Haram should be afforded the rights to do away with the pregnancies and not be forced to continue such pregnancies simply because there is no such specific provision under Nigerian abortion laws.

6.3 Issues of rights

6.3.1 Rape and its effects on 'life'

Rights – including the right to life – are inherent to all human beings regardless of race, nationality, ethnicity, language, religion, status and sex.⁵¹ Several legislations have evolved at the local and international scenes entrenching this in our legal structures. The right to life even on the face of it may be read as a right to liberty and security of the person, as no one shall be in slavery or servitude, that such right shall be protected and that no one shall be arbitrarily deprived of his or her life.⁵² However, the right to life is a parasitic right that cannot be realised without the effective presence of some other kinds of rights because it is generated from other rights.⁵³

The effect of rape on its victim is enormous and affects the 'life' that such a victim will lead afterwards. Although the victim may not literally be deprived of her physical life by being killed, other rights that enable her to enjoy the life she still possesses have already been violated, such as the right to dignity, privacy, family life, and so forth. For a person to truly enjoy his or her right to life, there must be the emotional and psychological balance which makes their life worth living, thus the right to life of the victim is dependent on the content of such life after the trauma of rape. A major obstacle to being free from the trauma is the continuing presence of the 'fruit' of the rape, namely, the unwanted and unplanned pregnancy, while victims have the right to be free from trauma.

To begin with, the assailants were many and the number of times they were raped and assaulted equally were numerous. Combined

50 CG Ngwena 'Protocol to the African Charter on the Rights of Women: Implications for access to abortion at the regional level' (2010) 110 *International Journal of Gynecology and Obstetrics* 163-166.

51 United Nations 'Human rights', <http://www.un.org/en/sections/issues-depth/human-rights/> (accessed 10 February 2019).

52 Art 3 Universal Declaration of Human Rights; art 6 International Covenant on Civil and Political Rights (ICCPR).

53 JO Famakinwa 'Interpreting the right to life' (2011) 29 *Diametros* 30.

with this is the fact that the girls and women had been victims of other forms of horror before the additional trauma of rape and sexual assault: They have been abducted and displaced from their homes in the most gruesome manner; the assailants are unknown and may never be known; and, finally the dastardly act resulting in pregnancy. These several factors simply heighten the ordeal of the victims of rape and sexual assault by Boko Haram. Sexual assault and rape could have diverse effects on victims/survivors ranging from physical to social and psychological/emotional effects. Psychologically, the self-esteem of the victim is affected and battered; the victim loses confidence, and has a belittling outlook of herself and develops poor self-perception. One major aspect of the psychological effect is the nightmares and flashbacks to the act which often occur to the victims, especially whenever they stumble upon items, locations or people that remind them of the abuse. Emotionally, such victims experience fear, anger, isolation, guilt, sadness and confusion all rolled together into one ball of depression.⁵⁴

Sexual violence affects the mental health of the victim, exemplified by the many women with mental disorders who had suffered rape or sexual assault either in childhood or adulthood,⁵⁵ with varying degrees of consequences resulting from the mental ill health, such as suicide or even killing the perpetrator as a means of escape. Therefore, it is safe to conclude that the combination of trauma suffered by victims of Boko Haram, namely, the abduction, the displacement and the rape and sexual assault, challenges their mental well-being and, as such, the permanent imprint from the experience will definitely aggravate their mental ill-health. For victims to enjoy their right to life, therefore, the source of aggravation must be attended to, and if the source of discomfort to their lives is the pregnancy, then there should be a legal remedy which enables the victims to seek succor by doing away with an unwanted and traumatic pregnancy. The efficacy of rape and sexual assault as a ground for abortion lies in the fact that 'the law enforcement aspect of rape is disentangled from abortion service provision'.⁵⁶ The affected woman or girl should be believed first, and the immediate focus should be on providing access to safe abortion.

54 JM Santiago et al 'Long-term psychological effects of rape in 35 rape victims' (1985) 142 11 *American Journal of Psychiatry* 1338-1340.

55 H Khalifeh et al 'Domestic and sexual violence against patients with severe mental illness' (2015) 45 *Psychological Medicine* 875.

56 Ngwena (n 46) 791.

6.3.2 *Sexual and reproductive rights of victims*

Denying victims the options of doing away with an unwanted traumatic pregnancy clearly is a violation of their sexual and reproductive rights, in respect of which Nigeria has obligations to respect, protect and fulfil, derived from several domestic and international laws. Couples as well as individuals have the right to freely and responsibly decide on the number, spacing and timing of their children. This includes the right to be free from discrimination, coercion and violence in making this choice.⁵⁷ Reproductive health rights entail the right to control fertility; to decide whether to have children; the number and spacing of children; to choose a method of contraception; to self-protection against sexually-transmitted infections including HIV; and to family planning education.⁵⁸ Sexual and reproductive rights as enumerated in multiple human rights instruments include the right to life and survival;⁵⁹ the right to be free from inhuman and degrading treatment;⁶⁰ the right to family and private life,⁶¹ to prohibition from discrimination; and the right to education.

CEDAW,⁶² which Nigeria has ratified, enjoins state parties to take all appropriate measures to eliminate discrimination against women in the field of health care, which includes access to healthcare services such as family planning.⁶³ It further provides that women should be accorded the rights to freely and responsibly decide on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights.⁶⁴ Nigeria has the obligation to refrain from interfering with the enjoyment of this right, to protect it by prevention of the violation, and to fulfil by taking appropriate measures towards the full realisation of this right. The victims have the right to reproduction and self-determination, and they have a right to determine whether they should have a child and found a family. They have the right to the number and spacing of children without the control or coercion

57 International Conference on Population and Development (ICPD) Programme of Action, (1995) para 7.3 UN Doc A/CONF.171/13 1994, ch 7.A. repeated in paras 95 and 223 for the Beijing Platform for Action, <https://www.ohchr.org/Documents/Publications/NHRILHandbook.pdf> (accessed 20 November 2018).

58 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (African Women's Protocol).

59 Art 6 ICCPR. See also Constitution of Nigeria 1999 (as set out in sec 33(1)).

60 Nigerian Constitution Nigeria 1999 (as set out in sec 34).

61 Nigerian Constitution Nigeria 1999 (as set out in sec 37).

62 Nigeria Ratified CEDAW in 1985 without reservation and signed the Optional Protocol to the Convention in 2000 and ratified same in 2004.

63 Art 12(1) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

64 Art 16(e) CEDAW.

of the government. According to Cook,⁶⁵ the state should have 'little power to prevent women's choice about whether and when to have a child, or women's full exercise of their right to private and family life'.

6.3.3 *Right to health*

Every human being, including every woman, has the right to health. States have the obligation to support the right to health, and states must prioritise the needs of those who have been left the furthest behind, so as to achieve greater equity.⁶⁶ Women are part of these most vulnerable groups. Health has been defined by the WHO as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. Therefore, the right to health implies the right to the highest attainable standard of health and complete well-being, not merely the absence of disease.⁶⁷ The right to health is central and dependent upon the realisation of other rights such as the right to food, housing, education and other rights that will help in procuring well-being.⁶⁸

Two principles are prominent under this right – the right to control and the right of entitlement. The right to control refers to having a decisive say over what happens to one's body, which is referred to as autonomy. Every competent person has the right to choose what course of treatment should be administered to him or her; to accept or refuse treatment and to generally participate in every decision pertaining to treatment that will be administered to his or her body.⁶⁹ The principle of autonomy is one of the essentials of health care.⁷⁰ Beauchamp referred to it as the legal principle of respect for self-determination.⁷¹ Cardozo J in *Schloendorff v New York Hospital* stated that 'every human being of adult years and sound mind has a right to determine what shall be done to his own body'.⁷² Therefore, women who have been raped and violated have rights to determine what should be done to their bodies and states should

65 RJ Cook 'International protection of women's reproductive rights' (1992) 24 *New York University Journal of International Law and Politics* 645.

66 Transforming our World: The 2030 Agenda for Sustainable Development UN General Assembly 2015 21 October UN Doc. A/RES/70/1.

67 WHO 'Human rights and health' 2017, <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> (accessed 15 March 2021).

68 As above.

69 M Hendry et al 'Why do we want the right to die? A systematic review of the international literature on the views of patients, carers and the public on assisted dying' (2013) 27 *Palliative Medicine* 13.

70 J Herring *Medical law and ethics* (2010) 192.

71 L Beauchamp and LB McCullough *Medical ethics* (1984) 42; see also *McFall v Shrimp* (1978) 10 Pa D & C (3d) 90.

72 (1914) 105 NE 92.

give the freedom for self-determination. The second, the right of entitlement, entails the right to be afforded all necessary care to ensure a person's well-being.

The right to health has indeed become one of the fundamental human rights which can be enforceable, borrowing a leaf from India, where the courts had played a key role and led in legitimising the Constitution by enforcing the socio-economic obligations of the state in the area of the right to basic nutrition.⁷³ The Supreme Court of India expanded this jurisprudence and has been able to develop the right to life to include other rights which may hitherto have been regarded as socio-economic rights that are unenforceable. In fact, the Indian Supreme Court has been able to develop a comprehensive body of judgments that deals with social welfare rights as protected by the unqualified right to life which is enshrined in the Indian Constitution.⁷⁴

6.4 Continuance of unsafe abortion

Nigeria has one of the highest recorded number of maternal deaths with an estimated maternal mortality rate (MMR) of 840/100 000 live births in the world.⁷⁵ A major contributory factor is the high number of unsafe abortions clandestinely done which account for 30 to 40 per cent of maternal deaths.⁷⁶ An estimated 1,25 million induced abortions occurred in 2012 of which the majority were unsafely procured in spite of the restrictive laws.⁷⁷ According to the Guttmacher Institute report, one-fourth of the 9,2 million pregnancies in Nigeria were unintended, translating to 59 unintended pregnancies per 1 000. Out of these unintended pregnancies, 56 per cent ended in induced abortion, 32 per cent in

73 *People's Union for Civil Liberties (PUCL) v Union of India* Writ Petition (Civil) 196 (2001) (India) and subsequent interim orders, <http://www.righttofoodindia.org/case/case.html> (accessed 14 March 2021); see also Interim Order of 2 May 2003, *PUCL v Union of India* Writ Petition (Civil) 196 (2001) (India), <http://www.righttofoodindia.org/orders/may203.html> (ordering distribution of ration cards to vulnerable individuals and families); Supreme Court Order of 28 November 2001; *PUCL v Union of India* Writ Petition (Civil) 196 (2001) (India), <http://www.righttofoodindia.org/orders/nov28.html> (accessed 15 March 2021).

74 M Khosla 'Making social rights conditional: Lessons from India' (2010) 8 *International Journal of Constitutional Law* 741.

75 MC Hogan et al *Maternal mortality for 181 countries, 1980-2008: A systematic analysis of progress towards millennium development goal* (2010) 5. See also WHO 'Trends in maternal mortality: 1990 to 2008'. Geneva: Estimates developed by WHO, UNICEF, UNFPA and World Bank; 2010.

76 Oye-Adeniran et al (n 23).

77 A Guttmacher Institute Factsheet 'Abortion in Nigeria' (2015). The estimated abortion rate was 33 abortions per 1 000 women aged 15 to 49 in 2012, <https://www.guttmacher.org/sites/default/files/factsheet/fb-nigeria.pdf> (accessed 14 March 2021).

unplanned birth and 12 per cent in miscarriage.⁷⁸ Unsafe abortion has many health implications and several forms of complications such as pain, haemorrhage, sepsis, renal failure, uterine perforation, gastro-intestinal tract injuries, pelvic infections and, ultimately, death, particularly where there is no emergency expert care following the unsafe abortion.⁷⁹ A significant number of these unsafe abortions are performed by persons pretending to be medical doctors, traditional birth attendants and untrained medical professionals, while those performed by physicians are done in private hospitals under secretive conditions and/or unhygienic environments.⁸⁰ Notwithstanding the legal restriction of abortion, women continue to resort to unsafe abortion, thereby increasing maternal death and morbidity. This raises the issue of how restrictive laws really can restrict and to what extent it should restrict. The reality is that some of the victims of rape and sexual assault by Boko Haram will resort to unsafe abortion and a large percentage of these unsafe abortions will result into morbidity and mortality.

6.5 Re-construing the meaning of 'preserving the life of the mother'

Nigerian law currently allows abortion only for the 'preservation of the mother's life'. The questions therefore arise as to what constitutes the life of a woman; how one should construe 'saving the life of a mother'; the indices that can be used to measure the life of a woman; and whether such indices are purely medical or whether they go beyond medical aspects. Literally taking the term 'saving a mother's life' or 'preservation of the mother's life' does not include traumatic, social, emotional or psychological issues. How should one define the health indicator used in allowing therapeutic abortion, and are they hinged only on medicals? What are the components of 'life' as provided by the law? Should the right to life be literally interpreted simply as the right not to be physically killed or are there other components to that right? These are the issues that must be resolved in order for the 'real life' of the mother to be preserved or saved.

78 Alan Guttmacher Institute Factsheet (n 77).

79 WHO *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008* (2011).

80 BA Oye-Adeniran, AV Umoh & SNN Nnatu 'Complications of unsafe abortion: A case study and the need for abortion law reform in Nigeria' (2002) 10 *Reproductive Health Matters* 18-21, 10.1016/S0968-8080(02)00024-1 (accessed 14 March 2021).

As stated earlier, the right to life is dependent for its realisation on the presence of other rights.⁸¹ For example, in so far as the right to health promotes life, the right to health supports and advances the right to life. However, the right to health is not exclusive to physical health, but includes physical, mental, emotional and social well-being. Life should correspondingly not be strictly construed to the breath that is emitted from the nostrils, but must include every other variable that makes that breath possible and worth breathing. In the Indian case of *Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Others*⁸² the Indian Supreme Court held that the right to life being the most precious human right, it should be expanded in meaning and reach rather than attenuating its meaning and content. It should 'be interpreted in an expansive spirit that will intensify its significance by enhancing the dignity and worth of the individual and his life'. The Court stated that human life is not merely animal existence or physical survival, but includes living with dignity and fulfilling the barest.⁸³

Nigeria can further draw from the Kenyan public interest case of *Federation of Women Lawyers (FIDA-Kenya) & 3 Others v Attorney-General & 2 Others*,⁸⁴ where the Kenyan High Court made several pronouncements which give good insight into the parasitic nature of the right to life. The victim in this case who fell pregnant as a result of rape was unable to procure a safe abortion since the Kenyan law forbids abortion unless, in the opinion of a trained health professional, there is a need for emergency treatment or where the life or health of the mother is in danger.⁸⁵ The Court had to make pronouncements on the several issues, part of which involved what the right to health and the right to reproductive health entailed, and whether pregnancy resulting from sexual violence fall under the circumstances for abortion allowed by the law. The Court held: 'In our view therefore, women and girls in Kenya who find themselves pregnant as a result of sexual violence have a right ... to have an abortion ... Health, in our view, encompasses both physical and mental health.' According to the Court, when life is endangered, this includes the mental, psychological or physical life of the mother.⁸⁶ The case affirms the position that the right to life encompasses the right to health since both life and health must co-exist on an equal

81 Famakinwa (n 53).

82 (1981) 2 SCR 516.

83 See also para 2.1 of the petitioner writ in *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

84 Petition 266 of 2015; *East Africa Centre for Law and Justice & 6 Others (Interested Party) and Women's Link Worldwide & 2 Others (Amicus Curiae)* [2019] eKLR.

85 Art 26 Kenya Constitution 2010.

86 Para 362 of the Judgment.

footing. Drawing from several international instruments and cases, the Court also held that 'the inter-link and inter-dependence of rights is recognised, and in this regard, the right to health is an underlying determinant of the enjoyment of other rights'.⁸⁷

In the same vein, the rape victims of Boko Haram may have no physical diseases indicative of a therapeutic abortion. However, they are bedeviled with many mental, social, psychological and emotional disorders which have constituted a threatening lump to their lives which should form a pointer for redress. The enjoyment of the highest standard of health is part of the fundamental rights of every human being, including the female victims of Boko Haram who were impregnated through violation, sexual assault and rape. Obviously, these victims lack social, emotional and mental wellness. Preserving their lives, therefore, can be achieved by promoting their well-being which may be accomplished through the termination of the pregnancy that remains traumatic and a threat to their lives. The nation owes them all a duty to preserve and save their lives by promoting their well-being. As such, legal provisions must be widened to accommodate interventions for victims of rape and sexual assault, particularly the Boko Haram victims of rape and sexual assault, which is another dimension of the 'preservation of mother's life'.

6.6 Economic implications

Another consideration supporting this argument are the financial implications of the pregnancies both now and in the future. Since Nigeria is a state with little or no social security and health insurance structure, the question arises as to who bears the financial burden of the unwanted pregnancies and children resulting from the rape and sexual assault. Apparently, the victims who have been displaced from their homes and disconnected from their means of economic livelihood cannot provide even for their own basic needs; most were temporarily resettled in the Internally Displaced Persons (IDP) Centres. Ordinarily, even if they were not pregnant, they deserve every financial support and attention that will assist in reintegrating them back into the society. Consequently, the burden of unwanted pregnancies may be too cumbersome for their social and financial well-being. The reintegration of these victims may not be fully achieved when they are saddled with the responsibilities of catering for unwanted children by unknown fathers, men who have abused

87 Para 337 of the Judgment.

them severely and towards whom they bear the deepest hatred and disdain. The education of some of these teenage mothers already has been disrupted and hanging in the balance of probability. Allowing them to additionally carry to term undesired pregnancies will be an added burden to both the victims and society, thereby increasing the statistics of miscreants and an army of unschooled children in Nigeria.

6.7 Need for reform

Nigeria appears to treasure its socio-cultural and religious heritage and sees it as a mechanism for preserving the morality of society. While the laws and public policies of any nation should reflect its moral and ethical standpoints, and must constantly be employed to safeguard its future, it should create opportunities for new dynamics. The strict anti-abortion law in Nigeria is directed at protecting lives, especially that of the unborn child and equally to preserve public decency. It was enacted as a means of balancing the rights of both the mother and the unborn child who equally has a right to life. However, there are changing dynamics in every society based on emerging trends. Our social existence currently is being challenged by so many factors that were not taken into consideration in the Criminal Code Act of 1916 and the Penal Code of 1959. The current realities of our time have presented the compelling paradigms to us as a nation, and the law should likewise respond and be an instrument of social change. Therefore, it is apposite that the current laws should be expanded to accommodate new discoveries, knowledge swell, and changing paradigms of the present age within the socio-cultural beliefs of the country. Nigeria has never recorded this extent of deadly terrorism and insurgency currently being experienced. The unimaginable dimension and its consequences on humanity need to be addressed both socially and legally.

Medical indices can no longer constitute the legal and sole determinant for allowing legal abortions in the bid to preserve and save the mother's life. There is a need to give the pregnant victims of Boko Haram trauma a choice to do away with such pregnancies if it inhibits the attainment of well-being. Victims must be allowed to exercise their sexual and reproductive rights. Whereas the choice to abort may not be arbitrarily deregulated, an apparatus of law must be in place to continually preserve the sanctity of Nigeria's principles of anti-abortionists' viewpoints. However, the law should be reformed so as to allow deserving mothers with justifiable contingencies to be legally considered for abortion, particularly the survivors of abduction and kidnapping. Giving the option of abortion is a pathway to

healing, and the most important gift that can be offered to any of the victims. It also offers a 'soft landing' that will reintegrate them into society and return their hope for living.

The state should help preserve the family units within the country. Therefore, if the termination of unwanted pregnancies resulting from deadly insurgent activities will help preserve and stabilise homes and societies, such demand should not be viewed as flippant and unlawful by the state. Based on the circumstances of each case, there should rather be medico-legal arrangements. The victims should be presented with the choice of how to handle such pregnancies. Should a victim be unable to achieve a state of health and well-being as a result of the entire experience climaxing in the pregnancy, then psycho-therapeutic abortion should be allowed for the interests of such a victim to be better served.

Nigeria should also abide by article 14(2)(c) of the African Women's Protocol of which it is a state party, which states that 'states parties shall take all appropriate measures to protect reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus'.⁸⁸

7 Conclusion

Abortion is the expulsion of a viable fetus from the womb of a woman before it can survive outside the mother's womb. Abortion is allowed in Nigeria only for the purpose of preserving and saving the life of the mother. However, there are compelling paradigms necessitating that this strict anti-abortion law be relaxed or recalibrated to allow elective abortion in some instances. Part of these instances is the trauma suffered by the victims of the Boko Haram insurgents who kidnap, rape and sexually abuse women and young girls, thereby resulting in pregnancies. It is argued in this article that the 'preservation of the mother's life' based on health should be expanded to include psychological, social and mental well-being and not only physical or medical wellness. Further, individuals as well as couples should be allowed to exercise their sexual and reproductive rights to decide whether or not they wish to have a child, the timing and spacing of such child or children, and the state should respect, protect and fulfil

88 African Women's Protocol (n 58).