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Liberalisation of Nigeria's abortion laws with a focus on pregnancies resulting from rape: An empirical analysis

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Summary: *One of the reasons why women seek abortion in Nigeria is to get rid of unwanted pregnancies resulting from rape. However, due to the prohibition of the procedure, in such circumstances many women resort to secret and mostly unsafe abortions. These abortions contribute to the soaring rates of maternal deaths and morbidity in the country. It is against this background that this article examines the Nigerian laws on abortion and elicits peoples' attitudes to the call for liberalisation thereof, with a focus on pregnancies resulting from rape. The study employs both the doctrinal and the non-doctrinal methods of research. The doctrinal method comprises a contents analysis of literature and the law. The non-doctrinal method consists of field research to obtain information via interviews, which is imperative because of the dearth of primary data to work on. The field research involves representative participants that are selected using a purposive sampling technique. Findings are presented on thematic bases. It is established that the current law is dysfunctional and counter-productive, and that people support its liberalisation.*

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Consequently, the study concludes that an effective strategy to combat unsafe abortion and enhance women's reproductive health in Nigeria is to liberalise the law to conform to the nation's treaty obligations, while deriving insights from the South African experience.

Key words: *rape; unsafe abortion; reproductive autonomy; right to choose; Nigeria*

1 Introduction

Nigerian law prohibits abortion[1] except for the purpose of 'saving the life' of a woman.[2] The offence is punishable with imprisonment for a term of up to 14 years, or with a fine, or both.[3] Ultimately, the law limits access to abortion without envisaging other situations that may warrant the procedure such as in the case of women that fall pregnant as a result of rape. In effect, such women are required to bring their foist pregnancies to term, and thus are denied the right to choose as to whether to bring the pregnancy to term. Although researches in Nigeria so far are not able to empirically obtain data on rape-related pregnancies and the abortion thereof as the phenomenon usually is not reported to avoid being stigmatised, among other reasons, it is a notorious fact in the country that, to avoid humiliation and mockery, most pregnant rape victims, rather than yielding to the legal restriction, would resort to secret and, more often than not, unsafe abortions.[4]

The menace of unsafe abortions is exposed by the soaring rate of avoidable maternal deaths and morbidity arising therefrom.[5] The maternal death ratio in Nigeria was projected to be 814 out of every 100 000 births.[6] This makes Nigeria a country with one of the highest

1 Sec 232 of the Penal Code Act, Northern States Federal Provisions Act Cap P3 Laws of the Federation of Nigeria 2010 (Penal Code), applicable to the 19 northern states and the Federal Capital Territory; sec 228 of the Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2010 (Criminal Code), applicable to the 17 southern states.

2 As above; see also *Rex v Edga* [1938] 4 WACA 133 following *Rex v Bourne* [1938] 2 All ER 615.

3 Penal Code and Criminal Code (n 1).

4 CO Muoghalu 'Rape and women's sexual health in Nigeria: The stark realities of being female in a patriarchy world' (2012) 19 *The African Anthropologist* 39; O Olopade *Law of abortion in Nigeria* (2008) 111.

5 AP Aboyeji *Pregnancy: The burden of womanhood* (2014) 14 33; OO Fakeye *That our women die not without gains* (2011) 11.

6 JP Vogel et al 'The burden of severe maternal outcomes and indicators of quality of maternal care in Nigerian hospitals: A secondary analysis comparing two large facility-based surveys' (2019) 126 *British Journal of Obstetrics and Gynaecology* 49-50; AI Adanikin et al 'Maternal near-miss and deaths associated with abortive pregnancy outcome: A secondary analysis of the Nigeria near-miss and maternal

maternal death rates in the world.[7] Even worse, complications resulting from unsafe abortions account for approximately 40 per cent of the maternal deaths in Nigeria.[8] It is difficult to validate these figures, or otherwise obtain precise data on the prevalence of unsafe abortions, partly because of the lack of measures to track the trends, the stigma attached, and the secrecy surrounding the performance of abortion, resulting in a dearth of official data. Despite the lack of reliable statistics, it is unarguable that unsafe abortions are common, and that thousands of women die or suffer from post-abortion complications.[9] It is not inconceivable that the figures are even understated.

Depite the aforementioned, remarkably sparse consideration is given to the need for liberalisation of the law, to allow for safe legal abortions as a means of countering the epidemic of unsafe abortion. This is also regardless of the exploits relating to women's reproductive health rights at the international and regional levels to the effect that countries should liberalise aspects of their laws that provide penalties for abortion, most of which Nigeria has ratified. It is for this reason that this study, exploring women's autonomy and the right to choose frameworks, delves into the extent to which the Nigerian law impacts on safe abortion and the extent to which the law conforms to international human rights standards.

The article is divided into seven parts including this introduction. The second part elucidates the research design and methodology, and the sources of and the way in which data is obtained in the course of the study. It is in this part that I justify the need to embark on field research; how and why participants therein are selected and who they are. In the third part entitled 'literature and theoretical framework' I review relevant literature and shed light on the theoretical underpinning of the study. The fourth part, designated 'Legal frameworks on abortion in Nigeria: A critique' examines the Nigerian law on abortion. I delve into the extent to which the extant laws have impacted on access to safe abortion. In addition, I discuss some of the international treaties relating to the right to safe

death survey' (2019) 126 *British Journal of Obstetrics and Gynecology* 34. Cf UNICEF 'Situation of women and child in Nigeria', www.unicef.org/nigeria/situation-women-and-children-Nigeria (accessed 16 June 2020).

7 As above.

8 A Bankole et al 'The incidence of abortion in Nigeria (2015) 41 *International Perspectives on Sexual and Reproductive Health* 170-181; EI Akpanekpo, DE Umoessien & EI Frank 'Unsafe abortion and maternal mortality in Nigeria: A review' (2017) 1 *Pan-African Journal of Medicine* 2.

9 R Oghu 'Illegal abortion in Nigeria: The cringing reality' *Daily Times* 11 April 2013; J Benson et al 'Public hospital costs of treatment of abortion complications in Nigeria' (2012) 118 *International Journal of Gynaecology and Obstetrics* 34.

abortion which Nigeria has ratified, and the extent to which Nigeria's law conforms to the nation's obligations under those treaties. The next part entitled 'South Africa's legal framework and safe abortion' underscores aspects of that country's law that can work for Nigeria in its quest for safe abortion. The sixth part probes into the perceptions of people about the law and their attitude with regard to whether it should be liberalised in favour of pregnant rape victims. This part contrasts the literature with the outcome of the field research, then reviews and presents issues arising therefrom on thematic bases. The last part concludes the article.

2 Methodology and data

The study adopts both doctrinal and the non-doctrinal methods of research. The doctrinal method comprises contents analysis of literature, statutes and case law. The non-doctrinal method involves field research with a view to obtaining first-hand information from representative participants that are selected through a purposive sampling technique. Data is elicited from the participants through semi-structured interviews.

It is imperative to engage in field research for this study because, due to the secrecy surrounding rape, unwanted pregnancy and unsafe abortion, there is remarkably scant primary data in the public domain available for analysis. Also, since the study proceeds on the assumption that abortion, especially by rape victims, is mostly carried out clandestinely, obtaining quality primary data regarding the need to liberalise the law in that respect can best be undertaken by direct interaction with frontline actors and victims. It is by engaging in field research that it is possible to elicit not only opinion but also the demeanour and underlying reasons for the attitude of respondents in this study. It is also by engaging in the field research that the correctness of some of the data from literature review for this study was corroborated.

Furthermore, the study adopted purposive sampling as a technique in the selection of the respondents for the interviews. This is because the study required carefully-selected respondents that can provide informed responses to questions that are specific to them. The interview questions were aimed at eliciting information on the personal experiences of frontline actors and women, on the nexus between the current law, rape-related pregnancies, unsafe abortions and morbidity. Such questions are best put to informed, not indiscriminately-selected respondents.

The 22 participants interviewed for this study were chosen from five main groups. The first group consists of medical doctors, academics, and other healthcare providers: two professors that are also senior consultant gynaecologists and obstetricians (IRs 13-14) and a professor of reproductive and family health (IR12). These were selected as they engage with rape victims and women with unwanted pregnancies. Most of them were selected also because they have qualifications that could draw those in need of abortion services to them. The second group consists of lawyers: legal scholars that have carried out extensive research on the focus of the present study (IRs 1, 3 and 7); a private legal practitioner (IR2); and a Muslim Shari'a jurist (IR8). The third group consists of a policy and law maker: a public servant in the health sector (IR16) and a lawmaker (IR18). They were chosen because of their impact on law and policy making. The fourth group comprises religious clerics or leaders of the Islamic faith (IRs 4-6) and of the Christian faith (IRs 9-11). These were selected, considering the religious perspectives on the focus of this study, and influence of religion on public sentiments on the issues in Nigeria. The fifth group comprises women who are believed to have been or suspected of having been victims of rape or had cause to seek or undergo abortion (IRs 19-21). Their inclusion in the study is indispensable as the study concerns them.

The interviews were conducted with respondents across nine locations covering the six geo-political zones of Nigeria, namely, in the North-Central (Ilorin and Offa, Kwara-State); South-West (Osogbo, Osun-State, Abeokuta, Ogun-State, Ojo, Lagos-State); South-South (Okrikah Rivers-State); South-East (Owerri, Imo-State); North-West (Kano, Kano-State); and in the North-East (Jimeta, Adamawa-State). The interviews took place between 23 May 2017 and 12 February 2018. Twenty-two individual interviews were carried out. Ethical clearance for the purpose of this study was sought and obtained from the Ethical Review Committee of the University of Ilorin, Nigeria.

The qualitative content analysis of literature was blended with the thematic analysis of data obtained from the interviews. I studied the entire data from the transcript of the interviews so as to be familiarised with the content. The transcript subsequently was summarised. The summary was reviewed to distil the initial ideas that could be used to generate code names for the data. Codes were then assigned to the datasets. After generating codes, those codes and the related extracts of the transcript were examined to identify patterns to generate potential themes. The codes were then given broader themes that more clearly expressed the data. Some of the codes were merged to have more concrete themes. The themes were

compared with the dataset to ensure that they correctly represented the data from the interviews and answered the research question. Thereafter, I determined the scope and focus of each of the themes and gave them informative titles. After this I wrote my report on the analysis of the data. The audio-recorded and long-hand notes of the interviews which were earlier transcribed were subsequently saved electronically. The printouts of the transcript were produced and marked. These are available with the author.

Table showing details of the respondents to the interviews

	Study area	**Occupation**	**Academic and professional qualifications**	**Sex**	**Unit of analysis**
IR1	Oshogbo	University scholar	PhD BL professor	M	Legal scholar
IR2	Lagos	Legal practitioner	LLM BL	F	Legal practitioner
IR3	Ilorin	University scholar	PhD BL	F	Legal scholar
IR4	Ilorin	University scholar	PhD professor	M	Muslim leader and cleric
IR5	Abeokuta	Legal practitioner	LLM BL	M	Muslim leader
IR6	Ibadan	Islamic cleric	BA	M	Muslim cleric
IR7	Ilorin	University scholar	PhD professor	M	Islamic/Shari'a scholar
IR8	Ilorin	Judicial officer	LLB BL	M	Muslim jurist
IR9	Ilorin	University scholar	PhD professor	M	Christian leader
IR10	Ibadan	Pastor	B Sci	M	Christian clergy
IR11	Kano	Pastor	B Theology	M	Christian clergy
IR12	Ilorin	University scholar	PhD Professor	M	Reproductive & family health expert
IR13	Ilorin	University scholar	MBBS FWACS professor	M	Obstetrician & gynaecologist
IR14	Ilorin	University	MB BS FWACS professor	M	Obstetrician & gynaecologist
IR15	Jimeta	Medical practitioner	MB BS	F	Healthcare provider
IR16	Concealed	Public servant	MBBS	M	Policy maker
IR17	Okrika	Nurse	M Sci	F	Healthcare provider
IR18	Owerri	Politician	BA	M	Law maker
IR19	Offa	Business woman	HND	F	Woman: pregnant date rape victim
IR20	Ilorin	Teacher	NCE	F	Woman: a non-pregnant rape victim
IR21	Ilorin	Nursing student	SSCE	F	Woman: survivor of an unsafe abortion
IR22	Oshogbo	Journalist	MA	F	Women's welfare

- Source: Field research 2017/2018
- IR: Interview respondent

3 Literature and theoretical framework

This part assesses the literature that is germane to the study. Although most of the works are written in broader contexts, they have been used without losing sight of the theme of the present study. In discussions on abortion there are two core groups holding completely competing standpoints. These are the pro-choice group, which posits that abortion should be legalised; and the pro-life group, which argues that abortion should be outlawed. The literature on the questions of abortion may likewise be broadly classified by virtue of the two groups.

The first writings were by Malthus,[10] Darwin[11] and Galton.[12] Malthus hypothesises that when unchecked the population will increase in geometrical proportion while the resources to cater for it increase in arithmetical progression.[13] To Malthus, therefore, population should be checked[14] and his solution to the foreseen problem included delayed marriage, birth control and elective abortions.[15] Darwin postulates that the way in which plants and animals struggle for existence reveals a propensity to preserve the good variations and destroy the bad ones in order to form new species.[16] According to Darwin 'one general law, leading to the advancement of all organic beings … [is to] let the strongest live and the weakest die'.[17] To Darwin, man originates not by being 'independently created' but as a self-creating species or 'through inheritance and the complex action'[18] of what he called the laws of variations and natural selection.[19] In simple terms, Darwin attributes conception to hormones and genes rather than to God, thus promoting reproductive autonomy. This presents support to the debate over legalisation of abortion in that it encouraged those who had been prevented from talking about it owing to religious beliefs to be able to do so. For his part, Galton suggests bringing to term only healthy foetuses,[20] selective breeding and abortion of foetuses that are of no or less preferred traits[21]as

10 TR Malthus *An essay on the principle of population as it affects the future improvement of society* (1798).
11 C Darwin *On the origin of species by means of natural selection, or the preservation of favoured races in the struggle for life* (1859).
12 F Galton *Essays in eugenics* (1909).
13 Malthus (n 10) 4 6.
14 Malthus (n 10).
15 Malthus 17-22.
16 Darwin (n 11) 79.
17 Darwin 244.
18 Darwin 129.
19 Darwin 127.
20 Galton (n 12) 27.
21 Galton 24-25.

a way of increasing output[22] and enhancing the makeup of later generations.

The gist of the foregoing is the danger of over-population and the need to abort foetuses likely to be born with deformities, or otherwise unable to contribute to the growth of the economy so as to create an avenue for those that are healthy and are able to contribute meaningfully. To do otherwise is to sacrifice other important things to take care of defective babies since they would become burden. These theories, though flawed by economists and demographic studies,[23] have influenced the demand for abortion.

Feminist writers such as Scales[24] and Kay[25] posit that women cannot claim to have been liberated or free moral agents, let alone considered as equals with men unless they are able to protect their bodily and reproductive autonomy.[26] It is argued that the unique physical experience of pregnancy justifies that the right to choose on abortion, particularly in a case of rape or when a woman otherwise finds herself pregnant against her wishes, must be left to the woman, free from interference.[27] Scales insists that if the law must take 'a sufficiently broad view of equality … a woman [should] not be forced to choose between children and career, just as a man need not make that choice'.[28] She contends that a woman must be availed the 'opportunity to live a continuous life, integrated with respect to career and procreation just as are the lives of men'.[29] Also, West[30] argues that a forced pregnancy not only is an attack on woman's reproductive autonomy but also an assault on her physical integrity,[31] and that it is a harm that may be abated by an abortion.[32] Feminists' literature thus has offered women reproductive autonomy and the right to choose as a theoretical foundation for liberalising abortion law in favour of pregnant rape victims.

22 Galton postulates that 'if we desire to increase the output of V-Class offspring, by far the most profitable parents to work upon would be those of the V-Class, and in a threefold less degree those of the U-Class'. See Galton (n 12) 18.
23 K Marx *Capital volume1* trans B Fowkes (1990); RB Emmett *Malthus reconsidered: Population, natural recourses and markets* (2006).
24 AC Scales 'The emergence of feminist jurisprudence: An essay (1986) 95 *Yale Law Journal* 1373.
25 HH Kay 'Equality and difference: The case of pregnancy' (1985) 1 *Berkeley Women's Law Journal* 38.
26 Scales (n 24) 1398; Kay (n 25) 23 fn 125.
27 Kay (n 25) 23 fn 125.
28 Scales (n 24) 1381 fn 46.
29 Scales 1398 fn 129; see also AC Scales 'Towards a feminist jurisprudence' (1981) 56 *Indiana Law Journal* 435 fn 9.
30 R West 'Jurisprudence and gender' (1988) 55 *The University of Chicago Law Review* 29-30.
31 West (n 30) 29.
32 West (n 30).

The notion of autonomy became renowned through the works of Kant[33] and Mill.[34] Kant reflects on the concept of autonomy from the point of view of man's capacity to reasonably choose and take action without extraneous control.[35] According to Kant a regard for an individual's autonomy emanates from the knowledge that everybody has the ability to decide his fate. For his part, Mill postulates that the basis of a person's value is his 'choices', hence, to all intents and purposes values should not be forced on an individual except where his activities may hurt others.[36] To Mill, therefore, a person's autonomy is a limitation on the state's powers to determine what he should do or abstain from doing. As the concept of autonomy is relevant in most spheres, so it is in respect of the exercise of women's right to choose a safe abortion. In view of this, Slowther[37]contends that the recognition of women's reproductive autonomy should imply that women are regarded as competent to decide, and that the choices made thereon should be recognised.

Adebimpe[38] assesses the concept of foetal personhood with respect to the debate over women's rights to an abortion. He also examines the laws of selected jurisdictions and international instruments on the legal status of the foetus. It is contended that neither the domestic law nor international law confer an inherent legal personality a fortiori a prevailing right to life on the foetus as to reject women's right to a safe abortion.[39] Thus, it is posited that a woman ought to be entitled to abort an enforced pregnancy.[40] To Adebimpe the fact that the foetus is a potential person[41] is a basis to confer on it some measure of protection but that alone cannot match a woman's right to self-determination[42] unless such provision is unequivocally imputed in domestic law.[43]

On the contrary, Elegido[44] discusses the jurisprudential problem posed by legal personality in relation to abortion. Debunking the argument that a foetus is not a person as it is unable to reason or choose, Elegido contends that characteristics such as the ability to

33 AW Wood (ed) *Groundwork for the metaphysics of morals* trans I Kant (2002).
34 JS Mill *On liberty and other essays* (1991) 14.
35 Wood (n 33) 16-17 29.
36 Mill (n 34) 14.
37 A Slowther 'The concept of autonomy and its interpretation in health care' (2007) 2 *Clinical Ethics* 173.
38 RJ Adebimpe 'Foetal personhood in the jurisprudence of abortion in international and comparative law' (2020) 10 *Bahir Dar University Journal of Law* 146.
39 Adebimpe (n 38) 168.
40 Adebimpe 150-151.
41 Adebimpe 148-149.
42 Adebimpe 150.
43 Adebimpe 168.
44 JM Elegido *Jurisprudence* (1994) 231-233.

think or choose is irrelevant as a basis for inferiority as, after all, a six months-old child is also unable to choose. Similarly, Izunwa and Ifemeje[45] posit that the life of a pregnant woman and that of the foetus are on an equal footing. Hence, it is argued that a woman should not be legally excused to abort her pregnancy even with the aim of saving her life.[46] Izunwa and Ifemeje postulate that the lone tolerable ground for abortion should be when it is for an unintended or inevitable – though foreseeable – consequence of a medical remedy for a life-threatening ailment.[47] The present study differs with Elegido, and with Izunwa and Ifemeje, to the extent that they see no difference between the foetus and the pregnant woman, thereby liking abortion in all circumstances to homicide, which should be outlawed without exception.

Conclusively, it is evident that neither of the diametrical opposing positions of the two groups with respect to abortion debate is appropriate to the circumstances of Nigeria. Nigeria's situation requires that there should be a mid-point to the discourse, and this should to be reflected in the law. Indeed, a third sort of literature, which is in support of neither of the pro-life nor the pro-choice, seems to be emerging, for as Ogiamien[48] rightly posits, 'the right to abortion is not absolute nor can its prohibition be absolute'.[49] Thus, abortion should be allowed – though not absolutely – on broader grounds such as in the case of pregnancies resulting from rape.[50]

4 Legal frameworks on abortion in Nigeria: A critique

The law on abortion in Nigeria is embodied in the provisions of the two principal penal statutes. These are the Penal Code[51] and the Criminal Code.[52] In order to appreciate the law, the provisions of the

45 MO Izunwa & S Ifemeje 'Right to life and abortion debate in Nigeria: A case for the legislation of the principle of double-effects' (2011) 2 *Nnamdi Azikiwe University Journal of Jurisprudence and International Law* 111.
46 Izunwa & Ifemeje (n 45) 122.
47 Izunwa & Ifemeje 125-126.
48 TBE Ogiamien *Abortion law in Nigeria: The way forward* (2000).
49 Ogiamien (n 48) 23.
50 See Olopade (n 4) 109 111 who, while not supporting a 'too liberal abortion law', suggests that the law should take a more tolerant stance than it presently takes to the issue of abortion.
51 Penal Code and Criminal Code (n 1). For a fuller discussion on the Nigerian law on abortion, see WO Chukudebelu & PC Nweke 'Abortion and the law' in BC Umerah (ed) *Medical practice and the law in Nigeria* (1989) 60-67; Olopade (n 4); O Odunsi 'Abortion and the law' in IO Irehobhude & RN Nwabueze (eds) *Comparative health law and policy: Critical perspectives on Nigerian and global health law* (2016) 197.
52 As above.

Codes deserve to be quoted. Section 232 of the Penal Code provides as follows:

> 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 both'.

Section 228 of the Criminal Code provides:

> 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 whatever is guilty of a felony, and is liable to imprisonment for fourteen years.

It is to be noted that while the Penal Code explicitly states that abortion is allowed 'for the purpose of saving the life of the woman' the Criminal Code is silent on when abortion is lawful. Thus, but for the decision in *Rex v Edgal*,[53] which followed the English decision in *Rex v Bourne*,[54] that the word 'lawful' has the same connotation which it has in common law, that is, 'to preserve the mother's life', the provision of section 228 of the Criminal Code may have been without an exception. The two cases underscore the vital role of the court in the quest to libralise the Nigerian law on abortion.[55] However, the law continues to restrict abortion without envisaging any other situation that may warrant the procedure such as in cases of gruesome rape resulting in pregnancy, and an established case of monstrous birth and foetal indication of severe impairments.

However, in spite of the prohibition, those in desperate need of the procedure resort to it secretly in the hand of quacks or otherwise self-induce it, as skilled practitioners are more likely to refuse to do it for fear of the legal consequences. It follows that the extant legal prohibition of abortion has failed to lower the prevalence of abortion. It has merely pushed women to clandestine abortion with the associated maternal deaths or morbidity[56] and a high degree of negative impact on public health.[57] This study now turns to

53 *Rex v Edga* (n 2).
54 *Rex v Edga* (n 2) where it was held that although there may not be an instant threat to the life of the girl who became pregnant following a gang-rape, but because she could be mentally wrecked if forced to continue with the pregnancy, an abortion may be allowed. Thus, preserving the woman's life was held to include efforts to save mental health.
55 Odunsi (n 51) 214; see *Roe v Wade* (1973) 410 US 113 which is the most famous case on liberalisation of prohibitive abortion law by the court in the US. The Supreme Court upturned the restrictive legislation on abortion, thus making access to safe abortion in the early months of gestation a constitutional right in the US.
56 Odunsi (n 51) 197.
57 Aboyeji (n 5); Fakeye (n 5); Akpanekpo et al (n 8) 2.

assessing the extent to which Nigeria's laws on abortion conform to her international treaty obligations relating to safeguarding women's reproductive autonomy and right to choose.

First, Nigeria ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR)[58] in July 1993. The human rights provided in ICESCR include the right to health[59] in terms of which Nigeria is obliged to take step towards reducing maternal deaths.[60] Health in the context of ICESCR is taken as including the rights to exercise autonomy over an individual's health, and it is understood as including reproductive health services.[61] Nigeria is also enjoined under the treaty to give prospects for its youths to be counselled on behavioural choices made by them on health, and to provide the youths with appropriate health care in a way that shows consideration for their privacy.[62]

Furthermore, the United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[63] and its Optional Protocol were also ratified by Nigeria in 1985 and 2004, respectively, without reservations. By ratifying CEDAW, Nigeria is obliged, in the context of non-discrimination,[64] to focus on the reproductive rights of women by guaranteeing women the same privileges as men in decision making involving self-determination, particularly as to the 'number and spacing of children'[65] and to grant women access to information on reproductive healthcare services, facilities, family planning[66] as well as resources to be able do so.[67] Notably, CEDAW obligates governments to take actions to change socio-cultural practices that are founded on the notion of inferiority, especially of women,[68] by affording women freedom from men-on-women aggression such as rape and forced pregnancy.

While the right of access to family planning services by women features prominently in CEDAW, the context in which it is used is not explicitly stated. This gives room for uncertainties as to whether family planning can be tied to safe abortion in situations such as in rape cases. It is in order to fill the identified gap, and consistent with

58 GA Res 2200A (xxi) UN Doc A/6316 (1966) 993 UNTS 3.
59 Art 12 CESCR.
60 As above.
61 UN Committee on Economic, Social and Cultural Rights (ESCR Committee) General Comment 14 para 9.
62 Arts 12(1)-(2) CESCR.
63 UN GA Res 34/180 (1979) UN Doc A/34/46 1981.
64 Art 16(1) CEDAW.
65 Art 16(1)(e) CEDAW.
66 Arts 10(h) & 14(b) CEDAW.
67 Art 16(1)(e) CEDAW.
68 Art 5(a) CEDAW.

articles 12 and 16 of the Convention that Recommendation 24 of the CEDAW Committee has construed articles 10(h), 12 and 14(2)(b) of CEDAW to the effect that abortion is part of states' treaty obligations, and has called on state parties to liberalise aspects of their laws that proscribe and penalise women for abortion.[69] To this extent Nigeria ought to have liberalised its restrictive law on abortion – in situations such as in pregnancies resulting from rape – by resorting to the right to choose under article 12 of the Convention.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)[70] was also ratified by Nigeria, in 2004. The Protocol supplements the African Charter on Human and Peoples' Rights (African Charter)[71] by containing more detailed provisions on women's reproductive rights.[72] The Protocol enunciates women's reproductive rights as fundamental rights[73] and requires states to promote these, particularly the right to choose with respect to child bearing, child spacing, family planning, and so forth, devoid of coercion[74] and to seek to eradicate every form of violence and prejudice against women.[75]

The African Women's Protocol is a foremost human rights treaty to safeguard women's reproductive autonomy and right to choose, particularly by its explicit provision for the right to abortion to terminate pregnancy resulting from rape, among others.[76] Article 14 of the Protocol articulates two main points, namely, that therapeutic abortion to get rid of unwanted pregnancies resulting from rape is a human rights concern, and that the issue has serious adverse effects on women in Africa.[77] This aspect of the Protocol has been expounded by the African Commission on Human and Peoples' Rights (African Commission) in its General Comment 2 when it declared that the unique situation of women on the continent pertaining to the increasing incidences of unsafe abortions, the soaring rate of abortion-related maternal deaths and other effects of enforced pregnancies justifies the case for the reform of abortion laws at national levels.[78] Therefore, compelling a victim of rape to

69 General Recommendation 24 on Women and Health A/54/38/Rev1 (1999).
70 OAU Doc CAB/LEG/66.6 11 July 2003, ratified in December 2004, entered into force on 25 November 2005.
71 OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982) ratified in1983, entered into force 21 October 1986.
72 Art 16 of the Protocol.
73 Arts 1-26.
74 Arts 14(1)(a)-(b).
75 Arts 2 & 4.
76 Art 14(2)(c).
77 See generally art 14.
78 *SERAC & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2000) para 68.

bring pregnancy resulting from rape to term is in contravention of the Protocol.

Regrettably, this Protocol which imposes a duty on states to allow law reform towards liberalisation of the law on abortion, as a means of eradicating deaths and associated morbidity caused by unsafe abortion,[79] has not been incorporated into Nigerian law. While Nigeria is under an obligation in international law to abide by all treaties it has ratified, in the Nigerian legal system ratification of a treaty without more does not make it part of the corpus of the national laws.[80] As rightly pointed out by Ngwena,[81] 'the human right efficacy of the Protocol is best assured when it is given tangible domestic enforcement ... through the adoption of domestic legislation'.[82] Nonetheless, the African Charter,[83] which the Protocol augments, has been domesticated by the enactment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[84] The human rights guaranteed in the Act include the right to health[85] which, in the context of the Charter, requires state parties to take action to reduce maternal mortality and morbidity that invariably encompasses access to safe abortion. Therefore, non-domestication of the Protocol should not affect its effectiveness.

5 The South African legal framework and safe abortion

The South African legal system is reputed for its safeguard of the 'right to bodily integrity' and the right to choose 'concerning reproduction' in its Constitution[86] and for its reformist's law on abortion, with the

79 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 Gynaecology and Obstetrics* 163-164.

80 Sec 12 of the Constitution of the Federal Republic of Nigeria 1999. For discussions on the rationale for the requirement of domestication, see AO Enabulele 'Implementation of treaties in Nigeria and the status question: Whither Nigerian courts?' (2009) 17 *African Journal of International and Comparative Law* 328. The rationale for the requirement of domestication notwithstanding, the Nigeria's foreign policy objective *inter alia* 'shall be respect for international law and treaty obligations'; sec 19(d) of the Constitution.

81 C Ngwena 'Inscribing abortion as a human right: Significance of the Protocol on the Rights of Women in Africa' (2010) 32 *Human Rights Quarterly* 786.

82 Ngwena (n 81) 786.

83 African Women's Protocol (n 71).

84 See ch A9 of the Laws of the Federation of Nigeria 2010.

85 Art 16 Laws of the Federation of Nigeria (n 84).

86 Sec12(2)(a) of the Constitution of the Republic of South Africa, 1996 which provides that 'everyone has the right to bodily and psychological integrity which include … the right to make decisions concerning reproduction'; and sec 27(1)(a) which states among others that 'everyone has the right to have access to … heath care services, including reproductive health care'.

passage of the Choice on Termination of Pregnancy Act (Choice Act)[87] which changed the law on abortion from being that of restrictive access depending on race and status towards that which recognised the procedure as a constitutionally-guaranteed right for all women in the country.[88]

Under the Choice Act, the circumstances in which abortion can be done are widened while the period of pregnancy is split into three for the purpose of an abortion. Abortion is permitted on demand until the end of the twelfth week of gestation.[89] A medical practitioner or a 'registered midwife' who has, in addition, undergone prescribed training can perform abortion[90] and neither spousal nor parental consent is needed to have it in the circumstances.[91] After the twelfth week until the end of the twentieth week the law allows abortion, in specific situations, namely, if a medical practitioner is of the opinion that the pregnancy endangers the woman's health, or there is a considerable danger that the foetus would suffer a serious deformity, or where the pregnancy is the result of rape or incest, or if the pregnancy would seriously 'affect the social or economic circumstances of the woman'.[92] Afterwards, an abortion may be done in rare cases, only if two medical practitioners are of the view that 'the continued pregnancy would endanger the woman's life; would result in a severe malformation of the foetus; or would pose a risk of injury to the foetus.[93] In these circumstances the procedure 'may only be carried out by a medical practitioner'.[94]

The enactment of the Choice Act has portrayed South Africa as the leading country in Africa, in terms of the safeguard of reproductive rights. Although there are still hindrances to procuring a legal abortion, as a result of which some women continue to procure the procedure illegally,[95] the enactment of the Act and its subsequent amendment to allow for more devolution of power over licensing of

87 Act 92 of 1996 (Act).
88 C Ngwena 'Access to legal abortion: Developments in Africa from a reproductive and sexual health rights perspective' (2004) 19 *South African Public Law* 330; C Albertyn 'Claiming and defending abortion rights in South Africa' (2015) 11 *Revista Direito GV* 430; LB Pizzarossa & E Durojaye 'International human rights norms and the South African Choice on Termination of Pregnancy Act: An argument for vigilance and modernisation' (2019) 35 *South African Journal on Human Rights* 50.
89 Sec 2(1)(a) of the Act.
90 Sec 2(2).
91 Sec 5(1).
92 Sec 2(1)(b).
93 Sec 2(1)(c).
94 Sec 2.
95 For a fuller discussion on the barriers to access abortion in South Africa, see RK Jewkes et al 'Why are women still aborting outside designated facilities in metropolitan South Africa?' (2005)112 *International Obstetrics and Gynaecology* 1236-1242; Pizzarossa & Durojaye (n 88).

facility to the provinces, and for the inclusion of trained providers[96] has beyond a doubt and to a great extent enhanced access to safe abortion in state-owned hospitals and other healthcare facilities.[97] Also, it has to a very large extent lowered the incidence of maternal deaths and morbidity linked to abortion.[98] These manifest in the reduction in the number of women reporting for medical treatment over complications arising from abortion, even shortly after the commencement of the Choice Act.[99]

6 The debates on liberalisation of abortion law in Nigeria: Empirical findings and discussions

In this part a thematic analysis is carried out of the main insights derived from the interviews. This analysis is to support the assumptions contained in the reviewed literature that there is a need to liberalise the Nigerian laws on abortion. On the whole, the responses from the interviews seem to show criss-crossing themes in support of liberalisation of the law with respect to rape-related pregnancies. An analysis of the responses by interviewees reveals that the debate revolves around public health concerns, constitutional and human rights, and professional ethics. These are discussed in turn.

6.1 Public health concerns

The available literature reveals that in Nigeria there exists a nexus between the restrictive abortion law and unsafe abortion. Olopade[100] argues that the extant blanket prohibition on abortion has not achieved its aim of discouraging abortion; rather that it has pushed most women into clandestine and unsafe abortions. Okonofua[101]

96 Secs 1(b) & (c)-(d) of the Choice on Termination of Pregnancy Amendment Act 1 2008.

97 J Benson, K Andersen & G Samandari 'Reductions in abortion-related mortality following policy reform: Evidence following Romania, South Africa and Bangladesh' (2011) 8 *Reproductive Health* 5; M Favier, JMS Greenberg & M Steven 'Safe abortion in South Africa: "We have wonderful laws but we don't have people to implement those laws"' (2018) 143 *International Journal of Gynecology and Obstetrics* 39.

98 Favier et al (n 97); Benson et al (n 97) 6.

99 R Jewkes et al 'Prevalence of morbidity with abortion before and after legalisation in South Africa' (2000) 324 *British Medical Journal* 1252-1253; RE Mhlanga 'Abortion: Developments and impact in South Africa' (2003) 67 *British Medical Bulletin* 123; R Jewkes & H Rees 'Dramatic decline in abortion-related mortality due to the Choice on Termination of Pregnancy Act' (2005) 95 *South African Medical Journal* 250.

100 Olopade (n 4) 111.

101 FE Okonofua et al 'Perceptions of policymakers in Nigeria towards unsafe abortions and maternal mortality' (2009) 35 *International Perspectives on Sexual and Reproductive Health* 194.

and Oye-Adeniran[102] examine the correlation between Nigeria's restrictive abortion law, secret abortion and unsafe abortion. They posit that the legal restriction of abortion is the reason why most women seek unsafe abortion; of women's disinclination to report on the issue and the leading cause of maternal mortality and morbidity which is a serious public health problem in Nigeria.[103] Thus, an attempt was made in the field to investigate the findings contained in the literature.

Public health concern is articulated as a basis for the case for liberalisation of the law particularly in cases of pregnancies caused by rape. IR12, a reproductive and family health expert, IRs13-14, obstetricians and gynaecologists, IR15, a medical practitioner, IR16, a policymaker, and IR17, a nurse, all acknowledge the reality of unsafe abortion-related deaths and the need for legal and policy reform in Nigeria. IR15 hinted as follows:[104]

> As high as 35% or more of pregnancy related deaths in Nigeria are as a result of unsafe abortions … we must do something about it and in earnest too … we are not supposed to be helpless about it … it isn't a natural disaster which is beyond human control. We know the cause and are not oblivious of how to tackle it … importantly we should relax the law by providing for safe legal abortion if we are serious about dealing with the ugly trend.

The above position was confirmed by IR12, IRs13-14 and IR17 who disclosed that from their experiences and researches most women with pregnancies caused by rape consider abortion as an option, but that, because the law on abortion is too restrictive in the circumstances most women secretly resort to it from non-experts. Even IR3 – a legal scholar and who is also 'a pro-birth' writer – concurs that the law is restrictive, and that there is a nexus between the restrictive nature of the law and resort by most pregnant rape victims to unsafe abortion. For this reason, IRs12-15 and 17 opine that if the law is not liberalised towards safe legal abortion for such women, Nigeria should be prepared to contend with the rising cases of maternal deaths and/or 'post-abortion treatments'. It is thus confirmed in the field that the law on abortion is perceived by the people as too restrictive; and not only non-functional but also counterproductive since it succeeds in only forcing women into undercover, mostly unsafe abortion rather than stopping the incidence of induced abortions.

102 BA Oye-Adeniran et al 'Advocacy for reform of the abortion law in Nigeria' (2004) 12 *Reproductive Health Matters* 209.

103 See Ngwena (n 88) 328; CG Ngwena 'Reforming African abortion laws to achieve transparency: Arguments from equality' (2013) 21 *African Journal of International and Comparative Law* 398.

104 IR15, medical practitioner, male aged 49+.

Furthermore, respondents such as IR11, a member of the Christian clergy, IR13, an obstetrician and gynaecologist, IR15, general medical practitioner; IR17, a nurse and IRs19-22, who are all women, introduced and emphasised the aspect of the mental well-being of most pregnant rape victims seeking abortion to the discourse. The respondents are favourably disposed to relying on mental health grounds to 'assist' women requiring abortion services in cases of rape. In this regard, IR22 said:[105]

> While the law places importance on the injury or harm to the 'body' of rape victims, the psychological or inner aspect of rape should not be regarded as less important. So when a raped victim insists that the resulting pregnancy is unwanted, and it seems that her condition is turning into mental wreck … her choice to do away with the foist pregnancy should not be discountenanced, because while she may supposedly be in 'good health' she is not … in fact she may be in a very hopeless emotional disorder as to be forced to resort to any foul means of terminating the pregnancy.

6.2 Constitutional and human rights

The constitutional right to freedom of religion[106] is also advanced in favour of the case for liberalisation of Nigeria's abortion law for rape victims. Remarkably, this standpoint is canvassed by the Muslims who are estimated to constitute 50 per cent of the roughly 200 million Nigerians.[107] IRs 4-6, Muslim leaders and clerics, illustrated how the extant law on abortion is inconsistent with section 38 of the Nigerian Constitution which guarantees the freedom to practise one's religion to all citizens. IR5 articulated the point as follows:[108]

> From the standpoint of Muslim women … the extant abortion law is a denial of a constitutional right … The Constitution guarantees, amongst others, the right to religion, and our religion grants women the right to choose to keep or abort pregnancies caused by rape … it is therefore perverse that our statute laws are impediments to the exercise of this religious and constitutionally-recognised right.

Thus, the available literature and the findings in the field suggest that although Islam negates abortion,[109] the adherents to the Islamic

105 IR22, female, journalist aged 44.
106 Sec 38 of the Constitution of the Federal Republic of Nigeria 1999.
107 United Nations World population prospectus: The 2015 revision (2015) 21. Cf Z Pierri & A Barkindo 'Muslims in Northern Nigeria: Between challenge and opportunity' in R Mason (ed) *Muslim minority-state relations, violence, integration and policy* (2016) 133.
108 IR5, Muslim leader and lawyer, male aged 44+.
109 Qur'an ch 17 verse 31 states: 'Kill not your children for fear of want … verily the killing of them is a great sin.' Also, Qur'an ch 6 verse 151. These verses have been construed as outlawing abortion.

faith – the Muslims – strongly believe that since their religion permits safe and timely abortion in cases of rape, their women in those circumstances ought to be entitled to it. Most other people consider it unconscionable to require a pregnant rape victim to carry an unwanted pregnancy to term, especially when the right to choose is sought to be exercised before the foetus gains a soul, which in Islamic religion is the beginning of human personhood, and which takes place arguably by the 120th day of conception. IRs 5-6 decry the Nigerian law on abortion and denounce the policy and law makers of failing to make a significant effort towards liberalising the law in spite of the rampancy of rape, unsafe abortions and pregnancy-related mortality in the country.

6.3 Professional ethical codes of medical personnel

Another argument canvassed for the liberalisation of the law on abortion for rape victims involves the professional or ethical codes of medical practitioners ordained to protect their patients' lives, as contained in the Physicians' Oath and other ethical codes. IR13, an obstetrician and gynaecologist, IR15, a medical practitioner and IR17, a nurse, regard compliance with their ethical obligations to protect human lives as including saving pregnant women from killing or injuring themselves, and curtailing them from becoming mentally wrecked because of unwanted pregnancies caused by rape.

IR17 related an incident in which the ethics of her profession, namely the Nurses' Pledge, and that of another doctor, namely, the Physicians' Oath, justified performing an abortion in order to safeguard a patient against killing or fatally injuring herself. She recounts:[110]

> I've had cause to participate in terminating pregnancy caused by rape … there was no way we could do otherwise to save the woman from herself. The woman had attempted to commit suicide because of stigma … [pause] … it wasn't a joyful decision but one that had to be taken and fast too. By our callings we are to save lives but in the circumstance … we had to forgo the foetus – a lesser-ill – as a compromise to the woman who otherwise was ready to 'end it all'.

Most of the respondents, particularly members of the medical profession, regard abortion in circumstances such as those portrayed by IR17 above as choosing the 'lesser-ill'. This is notwithstanding the fact that the oaths to which they had averred appear to discourage the procedure. To IR17, the woman's dreadful state of health

110 IR17, nurse, female, aged 55+.

following a rape incident, an unwanted pregnancy and the fact that she had attempted to commit suicide were not consistent with the requirements of the oaths to protect the foetus. Thus, abortion was 'done to save the life of the woman, who otherwise was prepared to "end it all" by again attempting suicide'.

Indeed, it is not uncommon to hear of rape victims attempting to wound themselves or even resorting to suicide. A well-known female newscaster on the national television station, Tokunbo Ajayi, was reported to have committed suicide after being raped by robbers.[111] There have also been many reported cases, for instance, of teenagers who committed suicide in order to avoid stigmatisation after being raped.[112] Thus, to most people, rather than suicide, abortion in the circumstances is rational and in harmony with medical ethics. On this point, IR2, a legal practitioner, is of the opinion that nothing should stand in the way of the 'choice' or decision of a woman to abort an unwanted pregnancy resulting from rape. Rather, the respondent posits that the situation should be dealt with 'in line with the professional ethics' by allowing her to undergo a safe abortion.

6.4 Complexities in respondents' arguments; and how doctors resolve the conflicting religious instructions and professional ethics

The foregoing reveals that public health concern is used unanimously to buttress the arguments for liberalisation of Nigeria's law on abortion. However, while the constitutional and/or human rights argument is used in support of the relaxation of the law, the same is relied on by a few respondents to oppose the call for liberalisation. In the same vein, as religious instructions and morality are used to oppose legal abortion, the same is used by other participants to support a safe legal procedure. This part analyses the complexities found in the respondents' arguments, and discusses the factors influencing the conflicting positions while relying on the same basis.

First, human rights are resorted to by some respondents in support and by others in opposition to the call for legal abortion in favour of a rape victim. The stand of the three respondents who are opposed to legal abortion, namely IR3, a legal scholar, and IRs9-10, a Christian leader and clergies respectively, is that the foetus has a right to life which is equal to the right to life of the woman. To IR3 'the right to

111 A Chizoba 'Sexual exploitation and rape of women and children' *The Vanguard* 22 July 2010.
112 'Nigeria: Rape victim commits suicide' *PM News* 22 October 2013.

abortion is in contradiction to the foetus's right to life'. Similarly, IR9 sees a foetus as having the right to life 'which is by no means less significant to that of its pregnant mother'. However, none of the 19 other respondents regards the foetus as having a right to life which is near to being equal to that of its mother. All these show that there is no unanimity in the discourse on abortion right from the perspective of the foetus's personality and/or right to life.

Furthermore, in spite of the acknowledgment of the adverse effects of unsafe abortion on women and public health, IRs 9-10 are not in support of legal abortion on religious and moral grounds. However, some other respondents such as IR11, also a Christian clergy, rely on the same religious and moral grounds to support safe legal abortion. IR11 believes that the majority of people would be in support of safe legal abortion rather than obedience to a restrictive abortion law that merely forced women into secret, unsafe abortions. IR11 posits that the right to safe abortion ought to be granted particularly to pregnant rape victims on a moral basis, arguing that to continue to deny women abortion in the circumstances would be immoral, especially where such women are ultimately forced into resorting to deadly abortion. The allusion to religion and morality, by both sides of the divide, in support of their conflicting positions points to the reality that the religion and moral sentiments must be worked on for a proposal towards liberalisation of the abortion law to be successful.

Furthermore, some of the respondents who are healthcare providers express the fact that they often are in a dilemma as to what decision to take between the requirements of their professional ethics and religious beliefs on safe abortion. IR16 professes Christianity, which forbids abortion, but he considers himself obliged by his professional ethic to avert abortion-related maternal deaths especially if a woman would otherwise resort to an unsafe abortion. As a middle course, IR16 disclosed that what he did on one occasion was to refer a woman in need of an abortion to another qualified provider. He said:[113]

> (after heaving a sigh) … as a Christian my faith detests abortion … but I may be in a tight spot because our profession has to do more with stopping maternal deaths ... I have on some occasions resolved this difficulty by referring abortion seekers to other providers … it is a hard decision which cannot be snubbed because of the reality of unsafe abortions.

113 IR16, policy maker and doctor, male, aged 54.

It is found in the course of the field research that situations similar to the above are being faced by many other healthcare providers. The responses show that while many of them are not favourably disposed to conducting abortion because of their religious beliefs, they may wish that the woman is able to obtain a safe abortion from another certified professional.

The dilemma faced by healthcare providers on abortion, particularly for rape victims, is shown in the responses of IR15, a medical practitioner. The respondent insists that it is difficult to resolve the rate of maternal deaths arising from clandestine abortion in Nigeria with her religious creed which condemn the procedure. She added that it is because of her being aware of the reality of the maternal deaths resulting from unsafe abortions that she has tried to regard herself as under an obligation to carry out the procedure when needed. She confirms:[114]

> When I experienced such dilemma, I opted for the lesser evil which was safe abortion. Religion is against abortion, but a woman who was raped by dare devil armed robbers was pregnant, and she had attempted to commit suicide because of the stigma … yet the church is against safe timely abortion. As a doctor I am to assist in saving the woman's life … this is a dilemma … I chose the 'lesser evil' … which is to abide by my medical training … it was not an exciting decision but one cannot overlook such a serious problem.

Furthermore, IR17, a nurse who regards herself as a 'deeply' religious person, mentioned how she had handled the dilemma of choosing between professional ethics and religious teachings on abortion. This, she said, was resolved by considering the 'greater good' intended to be attained by a safe abortion. IR17 consider that the 'greater good' tilted towards the rules of professionally ethics – averting abortion-related maternal deaths. She cited the Bible inspiring her favourable attitude towards safe legal abortion instead of an unsafe abortion for rape victims. Relying on the scriptures, she contends that the Nigerian abortion law may sometimes be circumvented while showing empathy, particularly to a rape victim. She said:[115]

> While my (Christian) faith could be said to prohibit the procedure I have participated in an abortion on compassionate ground … I believe that it would be wrong to deny a woman a safe abortion .... As a Christian I believe that the life of an unborn is sacred ... But as a caregiver I shouldn't see a woman's life endangered by unsafe abortion and yet insist on the foetus's life.

114 IR15, medical practitioner female, aged 48+.
115 IR17, nurse, female, aged 55.

This demonstrates that most providers would prefer to avert the possible death of a woman and/or other complications arising from unsafe abortion, thus putting their professional obligations over religious principles.

6.5 Patterns versus dissenting views

This study found as a pattern that respondents who are members of the medical profession are generally in support of safe legal abortion and, by implication, the call for liberalisation of the law in favour of rape victims. Conversely, it is also found as a pattern that those who are Christian clergies are anti-abortion. There are, however, also respondents from these two groups who hold opinions that fundamentally tend to refute the generally-held views of their group and hold opinions that are profoundly at variance with those evolving from this author's hypothesis and analysis of data.

The succeeding paragraphs therefore focus on the two respondent groups in which the dissent occurred, the opinions of the 'dissenters', the motives for having such significantly different, though not necessarily negative or unacceptable, opinions from those of their groups and the lessons that can be learned therefrom. The respondents are referred to as dissenters as their opinions appear to be somewhat peculiar to them.

Dissenting views emanated from IR16, a doctor and policy maker. The respondent doctor is not favourably disposed to legal abortion even in the case of pregnancies resulting from rape. He believes that the undisclosed motive of the proponents of safe legal abortion ultimately is towards abortion on request. He appears not to be hopeful that a liberalised abortion law would ensure safe abortion or reduced abortion-related maternal deaths in Nigeria. This position of IR16 is against the generally-held views of others in his group, who are convinced that the broadening of access to safe abortion would bring down the rates of maternal deaths. However, it is found that what prompted the doctor's attitude is his status in the church. He is a deacon.

Dissenting information is also elicited from IR11, a pastor. It was expected as a pattern that the respondent would be opposed to the procedure. However, it turned out that the respondent pastor supported abortion on what he referred to as 'ethical grounds' such as for pregnant rape victims, and on broader medical grounds of mental health and to save a woman's life. IR11 insisted, even as a clergy, that he would rather support safe legal abortion for rape

victims, because many women in the circumstances would otherwise be so frustrated as to resort to clandestine andmore often than not, unsafe abortions, resulting in deaths or life-long indispositions.

IR11 is of the opinion that religious instructions could be circumvented in order to avoid a fatality that would otherwise be caused by an unsafe abortion. When the respondent was told that most other Christian clerics regard abortion as a sin, his response was to refer this researcher to how Christ himself circumvented the law by doing what was unlawful on the Sabbath when he healed a man who had a withered hand. The respondent also narrated how King David did what was against the law, because of starvation, by his eating the bread of the 'Presence' which was lawful to priests alone.[116] To IR11, these imply that the law may be side-stepped for safe legal abortion in situations such as in the case of an unwanted pregnancy caused by rape. It is found that the respondent's attitude is a reflection of his experiences of women who have been hospitalised for life-threatening health issues or had died following complications from unsafe abortions. It is found that the respondent had previously worked in the gynaecology department of a hospital. This explains why the respondent insisted that women should be granted access to safe legal abortions in order to 'save lives'. IR11 strongly believes that[117]

> the position of religion notwithstanding … most pregnant-rape victims would (rather) opt for an abortion … [and] if they [could be so] desperate as to seek abortion we should not be indifferent to their plight. They ought to be assisted to access a safe procedure.

The stand taken by IR11 above show that when people are enlightened they could attach greater importance to tackling the reality of the menace of maternal deaths caused by unsafe abortions, instead of being dogmatically inclined to follow religious principles. Conversely, this also means that devotion to professional ethics by medical doctors may not necessarily be the case with some doctors such as IR16 whose stance, as reported above, shows that an individual's religious conviction may not necessarily be thrust aside, regardless of the level of his education or knowledge of the reality of unsafe abortion. Thus, religion sentiment is an issue that needs to be addressed if the current calls for liberalisation of Nigeria's laws on abortion are to be successful.

116 St Luke ch 6, verses 1-11.
117 IR11, Christian clergy, male, aged 53+.

7 Conclusion

The finding of this study, namely, that the Nigerian law on abortion has failed to achieve its aim of lowering the rate of abortion, but encourages clandestine and unsafe abortion, is in line with the hypothesis that the law is inconsistent with the general attitude of the people. It is also found that people support the liberalisation of the law. As predicted by Ngwena, agitation for abortion law reform would not abate 'as long as criminalisation remains the main tool for regulating abortion'.[118] Consequently, the study concludes that it is imperative for Nigeria to liberalise the law in a way that conforms to the country's treaty obligations so as to avail women of their reproductive autonomy and the right to choose whether or not to bring pregnancies caused by rape to term. This would be consistent with the progress made in some other jurisdictions, particularly that of South Africa, which offer strong evidence that the enactment of a less restrictive law on abortion enhances women's reproductive health.

118 Ngwena (n 103) 398.