

ABORTION CHALLENGES IN NIGERIA: THE NEED FOR REFORM OF APPLICABLE LAWS

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ABSTRACT

This paper critically examines abortion challenges in Nigeria and calls for a critical and urgent reform of our applicable laws. This is premised on the fact that available statistics indicates that over 1,000,000 abortions occur in Nigeria annually, thereby representing about 33 abortions per 1,000 women of childbearing age. It has also been averred that a portion of maternal deaths in Nigeria are caused by unlawful abortions and that such deaths do involve teenagers and young women. Women typically get abortions for a variety of reasons, such as their inability to care for a child financially and emotionally, their fear of being rejected by their partners, parents, peers, religious leaders, community leaders, and society if the pregnancy is discovered, their use of birth control, their age or illness making them physically or mentally unfit to have children, or their desire to end unwanted pregnancies brought on by rape or the failure of contraception, among others. Unfortunately, Nigeria's current abortion laws ignore these facts, thus encouraging illicit abortions and all of its negative effects. This paper in view of the above examines the state of the law on abortion in Nigeria in comparison with other jurisdictions with a view to establishing that the Nigerian law is archaic and is in dire need of reform. This paper concludes that government must be proactive in dealing with abortion challenges even before they arise, through modern methods of health and safety measures as obtained and practiced in other climes.

Keywords: Abortion challenges, applicable laws, urgent reform, life, Nigeria.

INTRODUCTION

The termination of a pregnancy prior to viability is referred to as an abortionⁱ. In other words, it is pregnancy termination before the *foetus* is ready for independent existenceⁱⁱ. The Osborn's concise law dictionaryⁱⁱⁱ defines it "as any miscarriage or expulsion of a human *foetus* before gestation is completed". It has also been defined as the "premature expulsion from the uterus of the products of conception, either the embryo or a nonviable *foetus*"^{iv}.

It is observed that definitions of the term "abortion" also include descriptions of the much less controversial concept "miscarriage", which is in itself an expulsion of a human *foetus* before viability (with both terms actually being nothing, but mere synonyms).

Succinctly, definitions of abortion sometimes include distinctions between spontaneous abortions which are true miscarriages and induced abortions, for instance, the end of a pregnancy that occurs after, concurrently with, directly after, or shortly after the demise of the embryo or *foetus*, such as (a) the spontaneous evacuation of a human *foetus* within the first 12 weeks of gestation. (b) induced expulsion of a human *foetus*^v.

It should be noted therefore, that it is the induced form of abortion, which has been largely criminalized in Nigeria, that this paper is concerned with and not the spontaneous kind. Abortion, for the purpose of this write up, refers to the elimination of an embryo or *foetus* from the uterus before it is sufficiently developed to survive independently, deliberately induced by the use of drugs or surgical procedures^{vi}.

This paper in lieu of the above deals with 10 interrelated parts starting with the introduction as part 1. Part 2 highlights abortion under the Nigerian Law using the Criminal Code Act (CCA) and Penal Code (PC) as a compass in addition to some primary and secondary sources of law, such as statutes and cases. Succinctly, part 3 takes cognizance of the fact that there is a separation of church from the state. Part 4 deals with the reality of abortion in Nigeria. This then leads us to an appraisal of abortion laws in some selected jurisdictions with such places as the United Kingdom (U.K.), Africa, the United States of America (U.S.A.) examined under part 5. Part 6 takes the position of a critical and urgent need for reform and the effect of abortion in Nigeria which is a crime. Under part 7, abortion is considered as a human right, thereby leading to lessons for Nigeria from other selected jurisdictions under part 8. Part 9 deals with suggested reforms of our abortion laws and part 10 succinctly concludes this paper.

ABORTION UNDER THE NIGERIAN LAW

With the human right to life duly provided for and its sanctity well protected under section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), abortion is highly penalized under various statutory provisions in Nigeria. These provisions can be found in sections 228-230 and 297 of the CCA^{vii} and section 232 of the PC^{viii}.

Thus prohibited, the CCA 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^{ix}.

With regards to a woman intending to or actually carrying out an abortion on herself, whether she is really pregnant or not, by any administration of poison, force or any means, it states that she will be guilty of a felony punishable by seven years imprisonment^x. It is deducible that the Nigerian state is highly intolerant to threats to *foetal* life, except in cases where its continued existence threatens the life of the mother, in the event of which an induced abortion becomes lawful. This exception in a case of threat to the mother's life is referred to as "therapeutic abortion" and it is expressly provided for in section 232 of the PC as applicable in the Northern States. The CCA expressly fails to do so, leaving the courts to infer it from its use of the word "unlawfully"^{xi}. Thus, whoever commits an abortion "unlawfully" by virtue of the CCA, is in violation of the law and thus guilty.

This however has the effect of raising the question, what constitutes an "unlawful" abortion in respect of the CCA which is the statute that is applicable to Southern Nigeria? Adopting the holding in the English case of *R v Bourne*^{xii}, the Nigerian courts have since then allowed only "therapeutic abortion in order to save a woman's life or her physical and mental health"^{xiii}. In this case, a 14 year old girl was raped by five soldiers, which act resulted in a pregnancy. Aleck Bourne, an eminent gynaecologist at the time, performed an abortion on her and he was accused of committing the crime of carrying out an illegal abortion. Macnaghten J acquitted him, by stating that;

If the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the

continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are entitled to take the view that the doctor is operating for the purpose of preserving the life of the mother^{xiv}.

Strengthening this line of reasoning as regards the statutory provisions for therapeutic abortion, the CCA in section 297 further states that a person is not guilty of a crime for performing exercising reasonable care and diligence, in good faith a surgical operation upon “an unborn child for the preservation of the mother’s life...”^{xv}

In line with these provisions and judicial precedent, Nigeria still maintains an unwavering anti-abortionist stance, duly enforced through her courts. Thus, in *R v Idiong and Umo*^{xvi}, where the 1st defendant procured the services of the 2nd defendant, a native doctor, to give native medicine to bring about an abortion leading subsequently to the lady’s death, the West African Court of Appeal (WACA) found the 1st defendant criminally liable for initiating and concluding the procedures for abortion, but the manslaughter and murder charges were not upheld. The second defendant, who believed the medication would help the dead woman's suffering from a retained placenta, had acted honestly, according to WACA.^{xvii}

THE SEPARATION OF CHURCH AND STATE

Constitutionally speaking, the Nigerian state, though not expressly secular, admits an affirmation of no state religion^{xviii}. However, the demographic trend points to a high religiosity majorly along the lines of Islam, Christianity, and the indigenous traditional religions. It is so difficult to talk of Nigeria without her religions, such that the geographical designations Northern and Southern parts of Nigeria, carry with them the presumptions of Muslim and Christian affiliations, respectively. These differing religions form the foundation upon which the society’s moral codes are based and ultimately even her legislations, as legislators are not culturally distinct from the masses, for instance, the PC^{xix} is operative in the Northern part of Nigeria.

Now while discussions of the sacrosanctity of human life can be a little bit sketchy with regards to the traditional religions for lack of a codification, and even non-existence of, any discernable

dogmas, the Christian religion purportedly places much value on human life on account of man being made “in the image of God”^{xx}.

The Holy Bible makes one specific prohibition against induced abortion thus; “If people are fighting and hit a pregnant woman and she gives birth prematurely but there is no serious injury, the offender must be fined whatever the woman’s husband demands and the court allows”^{xxi}.

All of these falls in line with the Nigerian constitutional provision for the right to freedom of thought, conscience and religion^{xxii}, and the right to freedom of expression.^{xxiii} However, nothing in those provisions creates a right to force one’s thought or conscientious and religious opinions on others, hence the fight against Boko Haram’s terrorist Islamization scheme for the entire country^{xxiv}.

It is hereby maintained that legislations finding their basis in the religious convictions of legislators are just as coercive as brute force, and are only more insidious.

The phrase “separation of church and state” finds its roots in a letter from Thomas Jefferson to the Danbury Baptist Association in Connecticut on 1 January, 1802^{xxv}, paraphrased thus;

I contemplate with sovereign reverence that act of the entire American people, which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separability. I share your belief that religion is a matter that lies solely between Man and his God, that he owes no account to anyone else for his faith or his worship, and that the legitimate powers of government reach only actions, & not opinions.

This concept, originally intended to protect the Church from State interference was also used by John F. Kennedy in a letter to the Greater Houston Ministerial Association, to offer same protection to the state from the church paraphrased thus;

I believe in a country where church and state are completely separate; no Catholic prelate would advise the President on how to behave, and no Protestant minister would advise his congregation on who to vote for; no church or church school is given any public funds or political preference; and no man is denied public office merely because his religion differs from that

of the President who might appoint him or the people who might elect him.

I believe in a nation where the official religions are neither Catholic, Protestant, nor Jewish; where no public official solicits or accepts directives on public policy from the Pope, the National Council of Churches, or any other ecclesiastical source; and where no religious organization seeks to impose its doctrine on the government.^{xxvi}.

In pursuance of this fair concept of separation of state from church, legislators in the non-religiously affiliated polity of Nigeria would be therefore loath to base legislations upon the practices and opinions of any one or multiple religions, to the detriment of non-adherents of those faiths.

THE REALITY OF ABORTION IN NIGERIA

With the nation's highly restrictive abortion laws combined with her high religiosity, it would be anticipated that the rate of abortion would be remarkably low, however records have placed it alarmingly high.

For instance, 2012 had an estimated 1.25 million induced abortions^{xxvii}. At a rate of 33 abortions for every 1000 women, it was concluded that nationally, one in seven pregnancies ended in induced abortions^{xxviii}.

The reasons for this state of affairs paraphrased include; 1. In Nigeria, 14% of women between the ages of 15 and 49 do not use contraceptives despite wanting to space their pregnancies or stop having children. These women are married and/or sexually active and have an unmet need for family planning. Unmet needs are experienced by 22% of sexually active, unmarried women. 2. In 2012, 59 unplanned pregnancies per 1,000 women aged 15 to 49 made up roughly one-fourth of Nigeria's 9.2 million pregnancies^{xxix}.

This shows that legal and moral codes regardless, women in Nigeria still resort to induced abortions. This has the effect of opening them to a lot of risks as they are relegated to patronizing quacks for unsafe abortions, as qualified medical personnel would find themselves criminally liable for conducting abortions^{xxx}. According to data, unsafe abortion complications can range from minor issues like pain and bleeding to more serious ones like sepsis (systemic infection), pelvic infections, device injuries, and even death. Nearly 10% of "near-miss events"

cases in which women would have died if the health system had not intervened were thought to be related to unsafe abortion among women treated in Nigerian secondary and tertiary hospitals in 2012 for complications of pregnancy or delivery. About 40% of women who have abortions experience complications serious enough to require medical attention and treatment,^{xxxii} and abortion accounts for 40% of maternal deaths in Nigeria, making it the second leading cause of maternal mortality in the country^{xxxii}.

It is obvious that despite statutory, religious and socio-ethnic restrictions on the conduct of abortion, the act still remains one in high demand, showing a clear divide between ideals and reality, that perhaps a more objective look at the concept and act itself is required.

AN APPRAISAL OF ABORTION LAWS IN SOME SELECTED JURISDICTIONS

The United Kingdom

The abortion law in the United Kingdom (U.K.) deserves special consideration due to the connection between Nigeria's abortion law and the U.K.'s law due to colonialism. Before 1900, Nigeria's abortion law was patterned along U.K.'s Offences against the Person Act 1861 (which had made provisions on abortion). In 1916, the Criminal Code, introduced into Nigeria by the British colonial masters, was adopted throughout the country. Forty two years later, the PC was introduced to replace the Criminal Code in the Northern part of Nigeria to reflect the norms of the predominantly Moslem society. The PC is a product of British law in colonial India^{xxxiii}. Britain has, since 1967, progressed while Nigeria has remained stagnant and irresponsive to the realities of the time.

The current abortion law in the U.K. is the Abortion Act 1967 as amended by section 37 of the Human Fertilization and Embryology Act 1990. This Act makes it lawful that a licensed medical professional may end a pregnancy if two other registered medical professionals are of the sincere opinion paraphrased thus that: 1.the pregnancy has not gone beyond twenty-four weeks, and continuing it would put the pregnant woman's or her unborn child's physical or mental health at risk, higher than if the pregnancy were terminated; or 2. the termination is required to avoid the pregnant woman from grave, long-lasting harm to her physical or mental health; or 3. greater risk to the pregnant woman's life would result from the pregnancy's

continuation than from its termination; or 4. if the child were to be born, there is a significant chance that it would have severe physical or mental defects^{xxxiv}.

However, if a registered medical professional is of the opinion, formed in good faith, that the termination is necessary to preserve the life or prevent grave permanent harm to the pregnant woman's physical or mental well-being, he does not need the opinion of two registered medical professionals^{xxxv}. The Act also provides that a person may refrain from participating in any of the treatment to which he has a conscientious objection^{xxxvi}, except where the pregnant woman needs the treatment to protect her life or to avert serious, irreversible harm to her physical or mental health^{xxxvii}.

In spite of the advances made by this Act, it has been criticized on the following grounds. It does not give women the right to choose since the power to decide whether a woman can get an abortion is up to her doctors^{xxxviii}. The grounds for abortion are badly defined in that doctors have immense discretion when permitting abortion which leads to doctors abusing their powers by indulging their personal opinions and even prejudices^{xxxix}. It builds a delay by the requirement of two doctors certifying that a woman has legal grounds prior to a termination^{xl}. It does not ensure adequate provision of abortion services, since there is no statutory obligation for health authorities to provide abortion care to those who need it^{xli}.

Consequently, there are proposals for amendments of the law to include the following: abortion on request in the first 3 months of pregnancy and only one doctor's approval up to 24 weeks; a duty on doctors to declare their conscientious objection and to make unambiguous a woman's right to see or be referred to another doctor; a duty on the health authorities to provide comprehensive and easily available family planning, pregnancy testing, counselling and abortion services to meet the needs of local women^{xlii}. In 2008, members of parliament in the U.K. voted to retain the current legal limit of 24 weeks^{xliii}. However, it should be noted that in Northern Ireland, the Abortion Act of 1967 does not apply. The relevant laws regulating abortion are the Offences against Persons Act 1861 and the Criminal Justice Act (Northern Ireland) 1945^{xliv}, which makes abortion illegal except in certain conditions^{xlv}. The only exception would be an ethical abortion carried out solely to protect the mother's life. Preservation of life has been held to comprise both bodily and mental wellbeing, and not just life-threatening situations^{xlvi}.

Africa

Only a few of Africa's 54 countries, including Togo, Tunisia and South Africa have legal abortion on request. Burundi and Zambia have legalized abortion for social health reasons. On the rest of the continent, abortion is restricted under outdated colonial laws^{xlvi}. However in 2003, African countries agreed to a Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa in Maputo which provides for the protection of the rights of the girl child and women, just as it also guarantees the rights to sexual and reproductive health^{xlvi}. The Maputo Protocol urges all ratifying countries to "protect the reproductive rights of women by authorizing 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 *foetus*"^{xlvi}. This component part of the Protocol was further expounded in a General Comment by the African Commission on Human and People's Rights issued in 2014¹. Despite the ratification of this Protocol by many African countries, national laws still do not reflect this quantum leap in policy.

The United States of America

The abortion law in the United States of America (U.S.A.) is basically judicial. In 1973, the U.S.A. Supreme Court in *Roe v Wade* recognized abortion as a right under the United States Constitution^{li}. The Court ruled that during the first trimester of pregnancy, the state cannot bar any woman from obtaining an abortion from a licensed physician^{lii}. The only reason the state can control an abortion during the second trimester is to safeguard the woman's health^{liii}. The third trimester is a time when the state may impose restrictions to safeguard the unborn child, but not at the risk of the mother's life or health^{liv}. In 1989, the U.S. Supreme Court in *Webster v Reproductive Health Service*^{lv}, ruled that states may bar public employees and public hospitals from being used for abortions^{lvi}. States may also require doctors to conduct viability test for advanced pregnancies^{lvii}. In 1992, the U.S. Supreme Court in *Planned Parenthood* ruled that the requirements of a mandatory 24 hours delay before an abortion, lectures by doctors against abortion, consent from parents of minors and reporting requirements were constitutional^{lviii}.

A CRITICAL AND URGENT NEED FOR REFORM AND THE EFFECT OF CRIMINALIZATION OF ABORTION IN NIGERIA

Abortion is criminalized in Nigeria by virtue of section 228-230 of the CCA and section 232 of the PC. The laws restrict not only women from carrying out abortion on themselves, but doctors and other qualified medical practitioners from helping out, thereby making the relatively safe procedure nothing but a highly placed mirage.

Penalizing abortion by Nigerian legislations has practically solved nothing. The facts shows that whether abortions are legal or not, women faced with the harsh realities of pregnancy and its damaging potential on their lives will seek abortion out regardless of faith and/or religious creed. Whether consensual or non-consensual, pregnancies are not always the desired outcome of sexual intercourse. About one-fourth of the 9.2 million pregnancies in Nigeria, in 2012, were unintended^{lix}. 1.25 million of those pregnancies, ended in induced abortions^{lx}. Thus, with the unsafe practices of quack abortion providers, abortion accounts for 40% of maternal deaths in Nigeria^{lxi}, as opposed to the mere number of one death for the 109,406 abortions recorded in England and Wales in 2016^{lxii}, while carrying a risk of less than 0.05% of complications that might need hospital care, in America, when carried out in the first trimester^{lxiii}.

Nigerian medical practitioners have not indicated an incapacity or inadequacy to practice safe methods of the procedure. Infact, in 1981, the Society of Gynaecologists and Obstetricians of Nigeria (SOGON), sponsored a bill in the National Assembly titled “The Termination of Pregnancy Bill, 1981” which called for the legalization of abortion at the conviction of two registered doctors, that the life of the pregnant woman was endangered and where there was a substantial risk that the child would be born with a physical or mental disability^{lxiv}. The bill which took into consideration “the increasing number of illegal abortions carried out under inadequate health conditions which led to high death rates among [women and girls]”^{lxv}, failed as it was countered by the conservative National Council of Women’s Societies which believed more efforts should be put towards family planning education and prevention of pregnancy outside of marriage^{lxvi}.

The question which demands an answer is; what are people’s reservations towards abortion, despite the lives it saves when practiced in a safe and healthy environment, which legalization inevitably provides? Why does the American holding in *Roe v Wade*^{lxvii} continue to come under constant attack with abortion clinics being consistently picketed?

This leaves us with a lacunae to which a critical and urgent reform of our legislative enactment is inevitably necessary to fill.

Throughout history, the criminalization of abortion had forced women in all jurisdictions to embrace unreliable and dangerous means of eliminating unwanted pregnancies. They took pills and potions or certain drugs, many of which were poisonous and caused extreme irritation to the stomach and bowel; some tried to carry out their own abortion using crochet hooks, knitting needles, soap or lead solutions through syringes; hot baths, blows to the back and kicks or heavy pressure on the abdomen were also ways of trying to cause abortion. Everything was tried except qualified personnel and descent hospitals.

Except for the methods of self-help employed, which is more modernized, the story is largely the same in Nigeria today as a result of the continued criminalization of abortion. Pregnant women who desire abortion go to any length (except government hospitals) to get it albeit, at great risk to their reproductive health. In short, the law is a dead letter law observed more in breach than in compliance as it fails to recognize the social, cultural, psychological and even medical factors that are responsible for women seeking abortion. Women get abortions for a variety of reasons, including the inability to support a child financially and emotionally, the fear of being rejected by partners, parents, peers, religious leaders, community leaders, and society if the pregnancy is discovered, the need for birth control, physical or mental health issues, being too young or ill to have children, the desire to end unwanted pregnancies brought on by rape or the failure of contraception, *etcetera*.

These reasons cannot be wished away or suppressed by any law no matter how stringent. It is for the law to respond and cater for these situations, if it is to have any meaningful impact in the society. There is, therefore, the urgent need for amendment of the law to accommodate the realities of today. This need is underscored by the high population and low age of the sexually active, the high prevalence of maternal death in Nigeria and the lack of access to contraceptives^{lxviii}. The figures are generally believed to be underestimated. The World Health Organisation and other United Nations statistical sources estimate maternal mortality at 800 maternal deaths per 100,000 live births^{lxix}. However, it has been argued that an estimated 1,000,000 abortions are carried out in Nigeria each year and that unauthorized abortion is to blame for 50% of maternal deaths particularly in adolescents and young women. In 2008, the Society of Gynaecology and Obstetrics of Nigeria claimed that unsafe abortions accounts for 11% of maternal fatalities in Nigeria^{lxx}.

It should also be noted that restrictive abortion laws do not actually prevent the procurement of abortions nor decrease the number of abortions performed. For instance, the abortion rate is 29 per 1,000 women of childbearing age in Latin America and 32 per 1,000 in Latin America regions in which abortion is illegal under most circumstances in the majority of countries there^{lxxi}. The rate is 12 per 1,000 in Western Europe, where abortion is generally permitted on broad grounds^{lxxii}.

ABORTION AS A HUMAN RIGHT

Governments, international treaty-monitoring bodies and others^{lxxiii} increasingly recognize abortion as an intrinsic human right, integral to women's ability to make their own decisions about the number and spacing of their children^{lxxiv}. Apart from the social, psychological and economic reasons, there is, these days, even a more growing global demand for liberalization of abortion on grounds of human rights as women's right to control their fertility is being recognized. Article 16(1) of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, of which Nigeria has been a state party since 1985, is quite instructive in this regard. It provides thus that "When parties . . . in particular shall ensure, on a basis of equality of men and women . . . the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."^{lxxv}

When this provision is read together with the rights to privacy and liberty (also internationally guaranteed under the U.N. International Covenant on Civil and Political Rights)^{lxxvi}, it becomes easy to conclude that the present state of the law on abortion is a violation of women's human rights. To put it in the words of Fathalla:

Motherhood, for a woman, should be a free, informed choice. It is a reproductive wrong when fertility control by women is changed into fertility control of women. . . but what is less realized is that from a human rights point of view and from the point of view of reproductive subordination of women, there is little choice between coerced contraception and coerced motherhood. Coerced contraception and coerced motherhood are two sides of the same bad coin. They deny women the dignity of making an informed choice in their lives. Coerced motherhood in one form or another is much more pervasive. Women

are coerced into motherhood when women, including adolescents, are denied any other choice in life except child bearing and rearing, and when children are considered the only good that a woman is expected to deliver.^{lxxvii}

African countries have also joined the bandwagon in recognizing the important link between human rights and abortion^{lxxviii}. In 2005, these countries blazed the trail with the approval of the Protocol on the Rights of Women in Africa, which marked the first time that an international human rights agreement explicitly recognized abortion rights^{lxxix}. In 2006, Ministers of Health and delegates from 48 African countries approved the Maputo Plan of Action, which identified reducing unsafe abortion as one of the nine action areas essential for achieving the Millennium Development Goals^{lxxx}. Also, in 2007, the world's leading human rights advocacy organisation, Amnesty International, adopted a policy supporting women's right to information and services for safe and legal abortion in cases of unwanted pregnancy resulting from rape, incest or posing serious risk to the woman's life or health^{lxxxi}.

LESSONS FOR NIGERIA

Generally, the Nigerian society is ever changing and dynamic in nature. Hence, to achieve the much desired change as an ever changing and truly dynamic society in reforming our applicable laws as it pertains to abortion, there are lots of lessons for Nigeria to learn in reforming our laws from contemporary changes in the laws of other countries and jurisdictions earlier on examined. Some of the lessons are as follows:

1. In the U.K., abortion laws are liberalized and same should be incorporated into our laws, so as to decriminalize abortion in Nigeria. However, in the UK, a registered doctor does not need the consent of two other registered doctors to end a pregnancy if he is of the opinion, formed in good faith, that the termination is necessary to preserve the life or prevent grave permanent harm to the pregnant woman's physical or mental wellbeing without risking the full wrath of the law, thereby permitting abortion. There are also proposed amendments so as to enable abortions on request in the first 3 months of pregnancy and only one doctor's approval up to 24 weeks; a duty on doctors to declare their conscientious objection and to make clear a woman's right to see or be referred to another doctor; a duty on the health authorities to provide comprehensive and easily

available family planning, pregnancy testing, counselling and abortion services to meet the needs of local women. Also in 2008, members of parliament in the U.K. voted to retain the current legal limit of 24 weeks in performing acts of abortion. These proposals should be considered by the National Assembly of Nigeria and necessary amendments effected in our laws.

2. On the African continent, Togo, Tunisia and South Africa have legal abortion on request. Burundi and Zambia have legalized abortion for social health reasons. The giant of Africa should not fall under countries with laws gagging abortion under outdated colonial laws which urgently require amendments. Even the Maputo Protocol urges all ratifying countries to “protect the reproductive rights of women by authorizing 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 *foetus*”. Nigeria can learn from this by ratifying and domesticating same into our laws in liberalizing our stringent stand on abortion.
3. In the U.S.A., abortion is a right recognized under the U.S.A. Constitution and exercised by the pregnant woman. The Court further ruled that the state cannot prevent any woman from getting an abortion from a licensed doctor during the first trimester of pregnancy, which is a positive development in upholding the pregnant woman's human right. Nigeria should quickly amend her laws to reflect this.
4. Abortion is a fundamental human right to be exercised by a pregnant woman and same should be incorporated into the Constitution of the Federal Republic of Nigeria 1999 (as amended) by legislative amendments.
5. Abortion as a criminal offence should be completely expunged from the CCA and PC.

SUGGESTED REFORMS

In line with developments taking place in the world and for the protection of our pregnant women, abortion should be decriminalized and a proper abortion law put in place which, having regard to all considerations, should provide for the following reforms, among others^{lxxxii}.

1. The law should provide for abortion on request in the first 3 months of pregnancy. This should take care of all conceivable reasons for abortion without any medical implication since abortion is indisputably safe at this point. The law should however, prescribe the qualification of the

medical practitioner to carry out the abortion and the minimum standard facilities that must be present in the hospital (particularly private hospitals) that will be authorized to carry out abortions. The law may even limit the reasons if it is thought most desirable. It should also create means of supervision and enforcement to prevent abuse particularly by private hospitals and clinics^{lxxxiii}.

2. The law should prescribe for safety of the mother in the second 3 months and of the *foetus* in the last 3 months of the pregnancy.

3. The law should provide for conscientious objection and referrals^{lxxxiv}.

4. The law should encourage dissemination of information on reproductive health care and particularly use of contraceptives to avoid unwanted pregnancies which foist on the women a complete state of helplessness. It should further be emphasized that adequate and effective education on contraceptives can significantly decrease resort to abortions in Nigeria. Access to contraceptives can lower Nigeria's high rate of maternal mortality by 70%, prevent unintended pregnancies, unsafe abortions, and HIV/AIDs, which may result in 50% decrease in infant deaths^{lxxxv}.

CONCLUSION

It has been shown in this paper that abortion has a long history and its criminalization is, indeed, a comparatively recent development. It has also been shown that its decriminalization and liberalization is in vogue in most parts of the world today because it is safer and better to do so. The continued criminalization of abortion in Nigeria is, therefore, archaic, unrealistic and a dangerous trend. It is archaic because our laws are not dynamic to meet the ever changing abortion needs of the society. It is unrealistic because it is not known to have reduced the rate of abortion, from the statistics shown above, but has only succeeded in making abortion clandestine with its attendant consequences. It is dangerous because of the maternal deaths and damage to women's reproductive health resulting from the inevitable use of quacks and self-help.

In addition, abortion has been shown to be a human right, hence its criminalization in Nigeria is a gross violation of that right. Overall, some lessons have been pointed out for Nigeria to learn from and some proposals made for the reform of the Nigerian law on abortion. Hopefully, the implementation of these lessons and reform ideas will save our generation of women from this compelled suicide currently being practised.

ENDNOTES

- ⁱ Bryan A. Garner *Black's Law Dictionary* (ed., 8th ed. 2004); The New International Webster's Comprehensive Dictionary of the English Language- Encyclopedic Edition (Typhoon Media Corp. 2004).
- ⁱⁱ This is about seven months (28 weeks) but may occur earlier, even at six months (24 weeks). *Roe v Wade* [1973] 410 U.S. 113; Patrick A. Finney, *Moral Problems in Hospital Practice: A Practical Handbook*, 24 (Herder Book Co. 1992).
- ⁱⁱⁱ Leslie Ruther Ford and Sheila Bone (ed.) (English Edition, London, Sweet and Maxwell 1993) pp. 3.
- ^{iv} Dorland's Illustrated Medical Dictionary (31st ed.). Saunders. 2007. ISBN 9781416023647.
- ^v Abortion. Merriam-Webster.com Dictionary, Merriam-Webster, (Since 1828) <<https://www.merriam-webster.com/dictionary/abortion>> accessed 26 June, 2020.
- ^{vi} Chambers 21st Century Dictionary. London: Chambers Harrap 2001.
- ^{vii} Cap. C38 Laws of the Federation of Nigeria, 2004. Hereinafter 'CCA'.
- ^{viii} Cap. 89 Laws of Northern Nigeria. Hereinafter 'PC'.
- ^{ix} Section 228 CCA.
- ^x Section 229 *ibid*.
- ^{xi} CCA, *supra*.
- ^{xii} [1938] 3 All E.R. 615.
- ^{xiii} Cf. W.O. Chukwudebelu, P.C. Nweke "Abortion and the Law" in B.C. Umerah, ed., *Medical Practice and the Law in Nigeria*, (Ikeja, Longman Nigeria, 1989) pp. 61.
- ^{xiv} See *R v Bourne, supra*.
- ^{xv} CCA.
- ^{xvi} [1950] 13 W.A.C.A. 30.
- ^{xvii} *Ibid*.
- ^{xviii} Section 10 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- ^{xix} Cap. 89. Laws of Northern Nigeria, 1963.
- ^{xx} Genesis 1:27 Authorized *King James Version (KJV)*.
- ^{xxi} Exodus 21:22, the Holy Bible, *New International Version (NIV)*.
- ^{xxii} Section 38 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- ^{xxiii} Section 39 *ibid*.
- ^{xxiv} Nwafor. Boko Haram top member surrenders to Nigeria Army, (1 April, 2017, 3:02 pm), <<https://www.vanguardngr.com/2017/04/boko-haram-top-member-surrenders-nigeria-army/>> accessed 26 June, 2020.
- ^{xxv} Wikipedia. Separation of church and state, (6 September, 2019, 20:39) <https://en.m.wikipedia.org/wiki/Separation_of_church_and_state_in_the_United_States> accessed 26 June, 2020.
- ^{xxvi} John F. Kennedy. *American Rhetoric Top 100 Speeches* (12 September, 1960) <<https://www.americanrhetoric.com/speeches/jfkhoustonministers.html>> accessed 26 June, 2020.
- ^{xxvii} Abortion in Nigeria. (October 2015) <<https://www.guttmacher.org/fact-sheet/abortion-nigeria#>> accessed 27 June, 2020, Bankole, A. *et al.*, The Incidence of Abortion in Nigeria, *International Perspectives on Sexual and Reproductive Health*, 2015, 41(4):170-181; Prada, E. *et al.*, Maternal near-miss due to Unsafe Abortion and Associated Short Term Health and Socioeconomic Consequences in Nigeria, *African Journal of Reproductive Health*, 2015, 19(2):52-62; and National Population Commission and ICF International, Nigeria Demographic and Health Survey 2013, Abuja, Nigeria: National Population Commission; and Rockville, MD, USA: ICF International, 2014.
- ^{xxviii} *Ibid*.
- ^{xxix} *Ibid*.
- ^{xxx} Section 228 CCA.
- ^{xxxi} Abortion in Nigeria, *supra* n.27.
- ^{xxxii} F.E. Okonofua. Preventing Unsafe Abortion in Nigeria. *African Journal of Reproductive Health*. (1997) 1(1):25-36.
- ^{xxxiii} See T.B.E. Ogiemien, *Abortion Law in Nigeria: The Way Forward* 21 Women's Health and Action Research Centre, Occasional Working Paper Series, 2000. pp.17.
- ^{xxxiv} Section 1(1) of the Abortion Act 1967 (U.K.).
- ^{xxxv} Section 1(4) *Id*.
- ^{xxxvi} Section 4(1) *Id*.

^{xxxvii} Section 4(2) *Id.* Note that in 1991, RU 486 (a French abortion pill) was approved for use in Britain for pregnancies up to 9 weeks duration.

^{xxxviii} E.D. Harris, *The Abortion Act 1967: Out of Date and Out of Time?*, *Keep Calm Talk Law* (31 July, 2018), <<http://www.keepcalmtalklaw.co.uk/the-abortion-act-1967-out-of-date-and-out-of-time/>> accessed 27 June, 2020.

^{xxxix} *Ibid.*

^{xl} S. Sheldon. *The Decriminalization of Abortion: An Argument for Modernization* (2016). 36 *Oxford J.L. Stud.* 334-65

^{xli} *Ibid* at 345.

^{xlii} *The Campaign for Choice: Obstacles to Abortion*, *Abortion Law Reform Association*, <<http://central.gutenberg.org/article/WHEBN0000178922/Abortion%20in%20the%20United%20Kingdom>> accessed 27 June, 2020.

^{xliii} *MPs Reject Cut in Abortion Limit*, *BBC News* (21 May, 2008), <http://news.bbc.co.uk/2/hi/uk_news/politics/7412118.stm> accessed 27 June, 2020.

^{xliv} Reviewed in 2006.

^{xlv} Section 58 of the *Offences against Persons Act, 1861 (U.K.)*; section 25 of the *Criminal Justice Act (Northern Ireland) 1945*. The only ground permissible for abortion under the proviso to section 25(1) of the *Criminal Justice Act* is where the act is done in good faith for the purpose of preserving the life of the mother.

^{xlvi} *N. Ir. Health and Soc. Serv. Bd. V. A.*, [1994] NIJB 1 (MacDermott, L.J.).

^{xlvii} As of 2015, an estimated 90% of women of childbearing age in Africa live in countries with one form of restrictive abortion law or another (i.e. prohibited altogether, or no explicit legal exception to save the life of a woman- Angola, Central African Republic, Congo (Brazzaville), Democratic Republic of the Congo, Egypt, Gabon, Guinea-Bissau, Madagascar, Mauritania, Sao Tome and Principe, Senegal; to save the life of a woman- Cote d'Ivoire, Libya, Malawi, Mali, Nigeria, Somalia, South Sudan, Tanzania, Uganda; to preserve physical health and to save a woman's life- Benin, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Kenya, Lesotho, Morocco, Niger, Rwanda, Togo, Zimbabwe; to preserve mental health and all of the above reasons- Algeria, Botswana, The Gambia, Ghana, Liberia, Mauritius, Namibia, Seychelles, Sierra Leone, Swaziland. Even where the law allows abortion under limited circumstances, it is likely that few women in these countries are able to navigate the processes required to obtain a safe, legal procedure. Abortion is not permitted for any reason in 11 out of 54 African countries. Five countries in Africa have relatively liberal abortion laws: Zambia permits abortion on socioeconomic grounds, and Cape Verde, Mozambique, South Africa and Tunisia allow pregnancy termination without restriction as to reason, but with gestational limits. *Abortion in Africa: Incidence and Trends Facts Sheet*, *Guttmacher Institute* (May 2016), <<http://www.guttmacher.org/facts-sheet/facts-abortion-africa>> accessed 28 June, 2020.

^{xlviii} Article 14(2)(c) of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, adopted on 1 July, 2003 (entered into force on 25 November, 2005) (hereinafter referred to as *Maputo Protocol*).

^{xlix} Article 14(2)(c) of the *Maputo Protocol*.

^l *African Commission's General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (adopted on 28 April-12 May, 2014 in Luanda, Angola), available at <<http://www.soawr.org/blog/general-comment-no-2-article-141-b-c-and-f-and-article-14-2-and-c>> accessed 28 June, 2020. This General Comment provides interpretive guidance on the overall and specific obligations of States Parties towards promoting the effective domestication and implementation of Article 14 of the *Maputo Protocol*.

^{li} [1973] 410 U.S. 113.

^{lii} *Id.* at 164.

^{liii} *Id.* at 164.

^{liv} *Id.* at 165.

^{lv} [1989] 492 U.S. 490.

^{lvi} *Id.*

^{lvii} *Id.* at 491.

^{lviii} *Planned Parenthood of Southeastern Pa. v Casey*, [1992] 505 U.S. 833. However, in 2019, states are taking action to restrict or expand access to abortion amid a national debate over *Roe v Wade (supra)*. Multiple states such as Kentucky and Georgia have passed bills that ban abortion once a foetal heartbeat is detected, around six weeks of pregnancy, while Alabama recently passed the strictest abortion law in the country, banning the procedure with few exceptions. Several other states are considering "trigger" laws that go into effect to ban abortion should *Roe v Wade (supra)* be overturned, while other states like New York have passed bills that

enshrine abortion rights. Jessica Campisi *et al.*, All the states taking up new abortion laws in 2019, *The Hill* (27 May, 2019), <<https://thehill.com/policy/healthcare/445460-states-passing-and-considering-new-abortion-laws-in-2019>> accessed 1 July, 2020.

^{lix}Abortion in Nigeria. (October 2015) <<https://www.guttmacher.org/fact-sheet/abortion-nigeria#>> accessed 1 July, 2020.

^{lx}*Ibid.*

^{lxi}F.E. Okonofua, n.32.

^{lxii}Department of Health, Abortion Statistics, England and Wales: 2016.

^{lxiii}Induced Abortion in the United States. (September, 2019). <<https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>> accessed 1 July, 2020.

^{lxiv}Victor Opara, “Re-characterizing Abortion in Nigeria: An Appraisal of the Necessity Test”, *ILSA Journal of International and Comparative Law*, Vol. 11, 2004. pp. 145.

^{lxv}Rebecca J. Cook & Bernard M. Dickens, *Emerging Issues in Commonwealth Abortion Laws* (1983).

^{lxvi}Wikipedia. Abortion in Nigeria. (2019). <https://en.m.wikipedia.org/wiki/Abortion_in_Nigeria> accessed 1 July, 2020.

^{lxvii}[1973] 410 U.S. 113, 150.

^{lxviii}The 2006 census estimate of the Nigerian population stood at 140 million people. However, the division into age/location in the National Population Commission website still references the 1990 census. This census puts Nigeria’s population figure at 88.99 million people. It was projected to reach 115 million by the year 2000 and 178.5 million by the year 2015. 45% of this population are under 15 years. 20.6% are between 15 and 24 years. 22% are women within child bearing age. 63.7% constitute rural population (without access to decent hospitals or clinics or reproductive health information). 36.3% constitute urban population. A large proportion of the population consists of women (i.e. adolescents and rural dwellers) with high sexual urge, no access to reproductive health information and no economic power. It is more difficult for these people to prevent unwanted pregnancies or access private clinics and therefore, they stand a greater risk of illegal abortion and unsafe abortion. The Nigeria Demographic Health Survey (NDHS) from 2008 stated the average age of first sexual intercourse at 17.7 for women and 20.6 for men. National Population Commission, *Nigeria: Demographic and Health Survey* (2008), <<http://population.gov.ng/images/Nigeria%20DHS%202008%20Final%20Report.pdf>> accessed 1 July, 2020. This information is omitted in the National Population Commission, *Nigeria: Demographic and Health Survey* (2018), <<https://www.dhsprogram.com/pubs/pdf/PR118.pdf>> accessed 1 July, 2020. However, in Great Britain, the National Survey of Sexual Attitudes and Lifestyles (Natsal) carried out in 1990 and 2000 showed that the age of sexual intercourse had fallen from 17 to 16 for both men and women. Nearly 30 percent of men and 26 percent of women aged 16-19 first had sexual intercourse before age 16. Sexual Behaviour, Factsheet, Family Planning Association (April, 2009), <<https://www.fpa.org.uk/sites/default/files/sexual-behaviour-factsheet-april-2009.pdf>> accessed 1 July, 2020.

^{lxix}WHO, Maternal health in Nigeria: Generating Information for Action (25 June, 2019), <<http://www.who.int/reproductivehealth/maternal-health-nigeria/en>> accessed 1 July, 2020.

^{lxx}Abortion Laws Around the World, Pew Research Centre (30 September, 2008), <<http://www.pewforum.org/2008/09/30/abortion-laws-around-the-world/>> accessed 1 July, 2020.

^{lxxi}Abortion in Latin America and the Caribbean 2018, Factsheet, Guttmacher Institute (March, 2018), <<http://www.guttmacher.org/fact-sheet/abortion-latin-america-and-caribbean>> accessed 1 July, 2020.

^{lxxii}Abortion in Africa: Incidence and Trends Facts Sheet, *supra* note 47.

^{lxxiii}The United Nations Human Rights Council (UNHRC), the Committee on the Elimination of Discrimination against Women, the European Court on Human Rights, and Colombia’s Constitutional Court are some examples of global, regional and national bodies that have called for liberalization of laws criminalizing abortion on human rights grounds. U.N. Human Rights Committee, General Comm. No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights- Right to Life, U.N. Doc. CCPR/C/GC/36, <<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>> accessed 1 July, 2020.

^{lxxiv}Briefing Paper, *Safe and Legal Abortion is a Woman’s Human Right*, Centre for Reproductive Rights (October, 2011), pp. 3 available at <<https://reproductiverights.org/sites/default/files/documents/Safe%20and%20Legal%20Abortion%20is%20a%20Womans%20Human%20Right.pdf>> accessed 1 July, 2020.

^{lxxv}Article 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women (18 December, 1979), 1249 U.N.T.S. 13.

^{lxxvi}Article 9(1) of the International Covenant on Civil and Political Rights (16 December, 1966), 999 U.N.T.S. 171.

^{lxxvii}M.F. Fathalla, Reproductive Rights and Reproductive Wrongs: The Case for Maternal Mortality as a Reproductive Wrong, MacArthur Fifth International Distinguished Lecture on Population Issues (16 February, 2004), available at <<https://www.researchgate.net/publication/273448549>> accessed 1 July, 2020.

^{lxxviii}P.C. Okorie and O.A. Abayomi. “Abortion Laws in Nigeria: A Case for Reform”, *Annual Survey of International & Comparative Law* (2019).Vol. 23: Iss. 1, Article 7. pp.165-192.

^{lxxix}Briefing Paper, The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights, 1, Centre for Reproductive Rights (February 2006), available at <https://www.reproductiverights.org/sites/default/files/documents/pub_bp_africa.pdf> accessed 1 July, 2020.

^{lxxx}Safe and Legal Abortion is a Woman’s Human Right, *supra* note 74, at 23.

^{lxxxi}*Ibid.*

^{lxxxii}It should be noted that the first organized attempt to reform the existing law on abortion in Nigeria was made by the Society for Gynaecology and Obstetrics of Nigeria (SOGON) in a memorandum addressed to the federal government in 1999 which attempt yielded no result. Also in 1981, a medical doctor, Dr. Obatayo Ogunkoya M.B., M.D., introduced into the House of Representatives, a bill entitled “An Act To Enforce The Law Relating To The Termination of Pregnancy By Registered Medical Practitioners”. This Bill generated considerable public debate, but was thrown out at first reading. Section 1(1) of the Bill made it lawful for a registered medical practitioner to terminate a pregnancy if two registered medical practitioners are of the opinion formed in good faith that:

- i. The continuance of the pregnancy poses a risk to the life or physical or mental health of the woman or any existing children of her family, greater than if the pregnancy were terminated; and
- ii. There is a substantial risk of the child being born with severe physical or mental abnormalities. See section 1(1) of the above Bill.

^{lxxxiii}The present state of the law whereby anybody can perform an abortion to save the life of the woman is unsatisfactory.

^{lxxxiv}This will enable doctors with a religious or ethical objection not to be involved with abortion procedures, but to refer the patient to another competent doctor. Note Rule 21 of the Rules of Professional Conduct for the Medical and Dental Practitioners in Nigeria, 1995, which requires the doctor not to relinquish the management of a patient to the detriment of the patient and to hand over the patient properly to another medical practitioner for further management.

^{lxxxv}The Case for Legal Abortion in Nigeria, Nigerians Talk (22 January, 2013), <<http://nigerianstalk.org/2013/01/22/the-case-for-legal-medical-abortion-in-nigeria/>> accessed 1 July, 2020.