RETHINKING ABORTION LAWS: NIGERIA AND INTERNATIONAL PERSPECTIVE

BY

ILODUBA MMESOMACHUKWU FAVOUR
2020/LW/15678

BEING A PROJECT SUBMITTED TO THE FACULTY OF LAW, ALEX EKWUEME FEDERAL UNIVERSITY, NDUFU ALIKE IKWO, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B)

SUPERVISOR

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TITLE PAGE

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DECLARATION

I, **ILODUBA MMESOMACHUKWU FAVOUR**, a Student of the Faculty of Law Alex Ekwueme Federal University, Ebonyi State, do hereby declare on my honor, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed……

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CERTIFICATION

This is to certify that this long essay titled "Rethinking Abortion Laws: Nigeria and International Perspective" has been assessed and approved by the Undergraduate Studies Community of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo" as an original work carried out by Iloduba Mmesomachukwu Favour with registration number: 2020/LW/15678 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Barr. P.O Olebara.

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DEDICATION

This research work is dedicated to God Almighty for His love, mercies and grace all throughout my undergraduate days and to my family, my lovely parent for their support and encouragement throughout the period of my LL. B journey.

Finally, I dedicate this work to all researchers who have gone before me and those that will come after me

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To my parents, Sir & Lady Clifford Iloduba, for always being a source of strength, encouragement and support to me. To my siblings; Ada, Mma, Onyi, Bube and Dalu, for always being my safe space and to my friends for their patience, understanding, and constant encouragement. Their belief in me and their support were essential in helping me overcome challenges and stay focused on this project.

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LIST OF ABBREVIATIONS

AC-	Appeal Case
All FWLR –	All Federation Weekly Law Report
All NLR-	All Nigeria Law Report
AFCHPR-	African Charter on Human and People's Rights
Cap-	Chapter
CC-	Criminal Code
CEDAW-	Convention on the Elimination of All Forms of Discrimination against Women
CHR-	Chancery Report
LFN-	Laws of the Federation of Nigeria
NCLR-	Nigeria Constitutional Law Report
NWLR –	Nigeria Weekly Law Report
PC-	Penal Code
Pt-	Part
P-	Page
SCJN-	Supreme Court of Nigeria Judgment
SACLR-	South Africa Constitutional Law Report
SC-	Supreme Court
WACA-	West Africa Court of Appeal

ABSTRACT

In the society today, so much value is ascribed to human life. This is so because life is generally regarded as a precious gift to humanity, which should be cherished and protected, as failure to cherish and protect life will bring about the inevitable extinction of the entire human race. Abortion is one of the numerous contemporary issues that undermine the sanctity and value of human life; for it involves terminating a pregnancy by removing a fetus or embryo before it can survive independent of the uterus, or killing the fetus inside the uterus. Diverse justifications have been advanced both in favour of and against the liberalization of abortion laws globally. Nigerian laws allow abortion only to preserve the life of the mother in the case of medical challenges; abortion done for any other contrary reason is proscribed and regarded as a crime. The main objective of this study is on rethinking abortion laws: Nigeria and international perspective. The study also carried out comparative analysis of abortion laws of some jurisdictions. In the course of carrying out this study, doctrinal research methodology is adopted and the study recommends among others that they should be an adoption of a liberal approach to abortion in Nigeria. This is because Nigerian women and girls do not seem to be deterred by the legal consequences of the "crime" of abortion. The aftermath, however, is that most of the abortions are carried out in medically unsafe environments, thereby endangering the lives of users. The study concludes that passing a liberalized legislation is only the beginning of the availability and safety of abortion. Anyone naive, vulnerable and poor can be affected by unwanted pregnancy. The promotion of access to safe and legal abortion will certainly save the lives of women and strengthen equality between women and men.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Abortion is not a modern aberration, but a practice common to human communities throughout history. Indeed, abortion has been used throughout the world for thousands of years as a way of ending unwanted pregnancy. Generally, it is impossible for any pregnant woman who does not desire to have a baby, even for the most serious or justifiable reasons, except of course where her life is endangered by the pregnancy, to secure an abortion in any government hospital.[1]

Even when such government hospital will agree to do such abortion on the legally justifiable grounds, an average Nigerian woman cannot even afford the services of a government hospital, let alone a willing private clinic. She is forced to resort to unsafe abortion by patronizing untrained personnel who use inappropriate and contaminated instruments under unhygienic conditions to perform it.[2]

Abortion has been seen to have the effect of jeopardizing the reproductive health of our women, particularly adolescents. This is the stark reality of our time which no restrictive abortion law, no matter the penalty can prevent, indeed, which restrictive abortion law is responsible for. It is the expediency of this situation that has inspired this study which, irrespective of one's personal belief in the sanctity of human life, explores the need for reform of abortion laws in Nigeria.

Across the Globe, women have historically been subjected to conflict-related sexual violence in situations of unrest by State and non-State armed groups. Such violence is used against civilians to demoralize, destroy and even change the ethnic compositions of entire

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[1] Francis Okonofua, '*Attitudes and Practices of Private Medical Providers towards Family Planning and Abortion Services in Nigeria*' available at <https://doi.org/10.1136/bmj.325.7371.988/d> accessed 11 June, 2025.

[2] Albert Faundes & John Barzelatto, 'The Human Drama of Abortion' *Journal of Women's Health, Issues and Care* [2014] 1(2) 3-7.

communities.[3]

The United Nations Security Council (UNSC) noting its systematic and widespread rampancy and recognizing gender inequality as one of its root causes has taken steps to ensure that this problem is addressed.[4] The Nigerian criminal law provides a framework that criminalizes abortion. *Sections 228, 229 and 230* of the Criminal Code and *sections 232 and 233* of the Penal Code criminalize abortion except when done to save a woman's life.

The laws prescribe a 14-year jail term for illegal abortion providers and a 7-year jail term for a woman who has an abortion. Consequently, many victims of sexual abuse in conflict situations resort to unsafe abortions and those who have children often suffer backlash from their communities who consider them tainted, rejecting them with attendant consequences for their physical and mental health.[5]

Several health and human rights bodies have recognized the importance of ensuring the protection of the health and human rights of women and girls. At the international level, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women have indicated that women's right to health include their sexual and reproductive health and reiterated States commitment in this regard.

The World Health Organization (WHO) has recommended that countries permit abortion in cases of rape and incest. Furthermore, the Human Rights Committee[31] has consistently urged states to review their restrictive abortion laws to guarantee access to safe abortion by victims of sexual violence. Also, the CEDAW Committee's General Comment No. 30 recommends that 'states ensure provision of sexual and reproductive health services

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[3] Albert Niedermeyer, 'Compendium of Pastoral Medicine' *International Journal of Gynecology & Obstetrics*, [1999] 64(2) 317.

[4] Elkanah Ekhator, 'The Impact of the African Charter on Human and Peoples' Rights: A Case Study of Nigeria' *Commonwealth Law Bulletin* [2015] 41(1) 3-8.

[5] *Ibid* (n 4) 7.

including abortion in conflict situations.[6]

Regionally the Maputo Protocol to which Nigeria is a party provides that abortion should be permitted in situations of rape amongst other grounds.[34] Also, *article 60* of the African Charter, encourages the African Commission to be guided by the Charter and other international human rights documents adopted by state parties.

In the discharge of its functions, the African Commission in *Doebbler v Sudan*[7] arrived at its decision by relying partially on the jurisprudence of other regional human rights bodies. The relevance of the provisions of *article 60* of the African Charter in applying jurisprudence from the European Court on Human Rights as well as the Inter-American Court on Human Rights was highlighted.

In Nigeria, there have been a number of efforts in the past at liberalizing these strict laws but such attempts have been unsuccessful. The Nigerian Medical Association (NMA) made an attempt at reforming abortion laws at its conference in 1972, but it suffered a setback.[8] Similarly, the National Population Council advocated women's access to safe and legal abortion on the basis of promoting good health and well-being, but this attempt also suffered the same failure of the past.[9]

In 1981 the Nigerian Society for Gynecology and Obstetrics sponsored a Termination of Pregnancy Bill. The Bill proposed that abortion should be permitted if, by the certification of two physicians, it is stated that the continuance of a pregnancy would occasion risk to the mother's life or her physical or mental health, or that it will create serious harm to any of the existing children in her family or produce a greater risk than if the pregnancy were terminated.

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[6] Joseph Okoye, *Abortion and Euthanasia: The Crime of our Day* (Unizik Press, 1987) 17.

[7] Communication 288/1999 – 16th Annual Activity Report, 48 – 50.

[8] *Ibid* (n7)

[9] [2001] 2 NWLR (Pt 20) 245.

The bill also proposed that abortion should be allowed if there is a substantial risk that, if born, the child would suffer a mental or physical handicap and that such abortion should be carried out in the first 12 weeks of pregnancy. However, physicians should be permitted to refuse the performance of an abortion on the ground of conscience. Unfortunately, the Bill was rejected and was never passed into law.[10]

In 1992, under the leadership of the late Prof Ransome Kuti, the Minister of Health, a draft decree was sponsored titled 'The termination of unsafe pregnancy and other related matters', but this attempt also failed. There have been many other initiatives aimed at defending women's sexual and reproductive rights and eliminating unsafe abortion. The campaign against unwanted pregnancy (CAUP) was created in 1991 and, in addition to several of its works, CAUP's focus since 2002 has been abortion bill reform which has suffered repeated revisions and failures.[11] Notwithstanding the various efforts at altering abortion law and jurisprudence in Nigeria, the position remains as strict as it is, and abortion can only be legally performed for remedial and therapeutic purposes, the aim of which is to save or preserve the life of the mother.

Nigeria is one of the nations with strict anti-abortion laws. It permits abortion only in minimal instances, when it borders on the medical ground of preserving a mother's life. Nigeria's jurisprudence may be founded on its cultural, social and religious background and perceptions, although there may be little correlation between the laws and the realities based on available statistics of illegal and unsafe abortion- related deaths in Nigeria.[12]

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[10] Robbison Dixon-Mueller & Andrew Germain, 'Population Policy and Feminist Political Action in three Developing Countries' *Journal of Population and Development Review* [1994] 20(1) 197-207.

[11] Benson Astor Oye-Adeniran, 'Advocacy for Reform of the Abortion Law in Nigeria' *Journal of Reproductive Health Matters* [2004] 12(1) 209-215.

[12] Bryan Awake, *Abortion: The Making and the Taking of a Life* (Watchtower and Tract Society Publishers, 1993) 45.

Religion is a very powerful force in the socialization of an individual and personality formation. It is a great force capable of modifying ideas, feelings and conditioning actions and by these acts as a source of inspiration in society. Undoubtedly, religion has potentials to be positively and negatively used by channeling its resources in ways that can be beneficial to the society.[13] This dimension of religion which enables its adherents to be disciplined and productive, responsible and open-minded shows the healthy side. Therefore, in Nigeria, albeit religion has the fortune and misfortune of serving good and bad causes, on the whole, it has contributed immensely in shaping the structures that hold social life together. On the issue of abortion as it relates to some women, religious devotion does not impact abortion decisions of young unwedded women.[14]

1.2 Statement of the Problem

Nigerian criminal jurisprudence prohibits abortion in all instances except when necessary to save the life of a woman. Although there is no specific body of laws known as "the Abortion Act" in Nigeria, the prohibitions and their accompanying strict exceptions are embodied in the provisions of both the Criminal and Penal Codes of Nigeria.

Additionally, in Nigeria, there is high rate of rape and sexual assault orchestrated by insecurity.[15] One of the aftermaths of the severe rape and sexual assault is unwanted pregnancy. Ordinarily, pregnancy should be a planned occurrence or at least the consequence of a conscious and consensual choice, but when it occurs as a result of unplanned, tragic or even traumatic actions such as rape, the trauma can be both lifelong and inoperable.

This problem has driven many pregnant women and girls to non-physician providers in a

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[13] Nathaniel Lordson Geisler, *Christian Ethics: Optional Issues*, (Baker Books, 1989) 8.

[14] Charles Oreoluwa Isiramen, *Abortion Controversy and the Nigerian Society* (Unilorin Press, 2007) 76.

[15] Lordson Obinna Ilobinso, *Policy on Abortion in the Nigerian society: Ethical Considerations* (Unilag Press, 2007) 348.

bid to avoid reluctant parenthood by accessing secretly illegal and septic abortions. These procedures turn out to be unhygienic and unsafe. Moreover, abortions by some physician providers equally result in risks to users. This medical negligence is underpinned by the restrictive laws as well because the inefficiency of physician providers appears to be strengthened by the ignorance or general apathy of women seeking abortion.

The effect is that most of these women and girls pay the price either through their lives or complications to their health. Abortion statistics ranges about 40% in Nigeria reveal an unacceptable high rate of maternal mortality and morbidity, with unsafe abortion constituting the highest percentage within the myriads of contributory factors.[16]

This has necessitated the need to regularize all the existing legal frameworks prohibiting abortion in Nigeria, in that some compelling circumstances may necessitate abortion being carried out. These circumstances are not just to save the life of the mother as a ground to carry a legitimate abortion but to save some ugly situations like economic hardship, population control, non-marriage between the parties involved, among other factors.

These and more are the problems that necessitated carrying out this study in order to revolutionize the existing legal frameworks on abortion in Nigeria and bring its practice in line with international best practices.

1.3 Research Questions

Flowing from the background and subsequent problems revealed or disclosed in the statement of the problem, the researcher would rely on the following questions to direct the path of this study. The research work will supply cogent answers to the following research questions:

[16] *Ibid*, Lordson Obinna Ilobinso (n 15) 40.

1. What is the position of Nigerian laws on the practice of abortion, and the likely circumstances upon which abortion can be allowed under the laws, are there striking differences in the practice with international perspective?
2. Are there likely impacts of abortion in women's rights and health in Nigeria?
3. What are the likely challenges in implementing abortion laws in Nigeria?

1.4 Aim and Objectives of the Study

The main aim of this study is rethinking abortion laws: Nigeria and international perspective.

Specifically, this study intends to achieve the following objectives:

1. To critically evaluate the position of Nigerian laws on the practice of abortion, circumstances upon which abortion is permissible under Nigerian laws and the striking differences in abortion practice in Nigeria with international perspective.
2. To discover whether there are impacts of abortion in women's rights and health
3. To evaluate and discuss the likely challenges in implementing abortion laws in Nigeria

1.5 Research Methodology

In carrying out this research work, the doctrinal method of research was adopted by the researcher; the information used was from both primary and secondary sources with particular references to Nigeria materials. Primary data was collected from case laws and statutes while the secondary data collected for this study were obtained from books, journals, articles, and internet. The main purpose of gathering information from the secondary sources is to augment the data from the primary sources**.**

The doctrinal research methodology was adopted because its ability to provide clarity and certainty about the principles of law in relation to abortion. It teaches how to find

authoritative answers to legal issues by utilizing judicial and statutory authorities and as such, forms the base of legal research in the academic field of law.

1.6 Scope of the Study

The research work is confined to appreciating on a general note the provisions of Nigerian laws, regional and international frameworks on abortion practices, considering the fact that the practice of abortion is an offence in Nigeria except where such practice is primarily to save the life of the mother. This study covers the provisions of Nigerian laws ranging from the Constitution being the supreme law of the land to Criminal Code Act, Penal Code, CEDAW, Africa Charter on Human and People's Rights and some institutions like Ministry of Health, Nigerian Medical Association, Churches and Mosques. The study also engages on in depth examination of these laws and makes reference to foreign and Nigerian cases in respect to abortion practices. The study also examined the rethinking of abortion laws in Nigeria.

1.7 Significance of the Study

This work tends to explore the practice of abortion in Nigeria in line with the provisions of the Nigerian laws and other international legal frameworks, considering the fact that abortion is strongly restricted in Nigeria with the use of two main sets of laws: the Criminal Code Act, which is operative in the southern part of the country; and the Penal Code, which operates in the northern part. This study will be of great importance to policy makers as it will be an eye open opening as to the re-thinking of abortion laws in Nigeria in line with international best practices.

It is also important to most especially lawyers and judges as the relevant sections of law and case laws cited in this work will aid them with a lot of authorities in handling matters of abortion and murder.

In addition, this research work will be of great benefit to law students and researchers as it will contribute to body of literature on abortion laws in Nigeria and so, will help students and researchers who would be carrying out research work on this topic in future.

1.8 Limitations of the Study

The task of carrying out a research work on this topic was very inspiring, educative and informative but it is not devoid of some constraints.

These constraints include:

a. Time Constraint: Due to the semester examination and studies, the Researcher could not have enough time to get the information needed for this study.
b. Lack of frequent power supply was also one of the challenges the researcher encountered in the course of carrying out this research.
c. Financial Constraint: The Researcher does not have the financial where withal to carry out some of the expenses in this research work.
d. Dearth of Materials: there were dearth of sufficient source materials in respect to the topic of this study and this hindered the quick delivery of the research.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORKS AND REVIEW OF RELATED LITERATURE

2.1 Conceptual Frameworks

2.1.1 Abortion

Abortion has been described as the abnormal termination of pregnancy, the ending of a pregnancy before the fetus can survive outside the womb of the mother. The word 'abortion' originated from two Latin words, abortus and abortive meaning miscarriage, premature birth or perishing by an untimely birth. The widest connotation of abortion includes all cases of fetal expulsion from the womb, whether through miscarriage, otherwise known as spontaneous abortion, or through induced or deliberated expulsion.[17]

In medical terms, the two words 'abortion' and 'miscarriage' refer to the termination of pregnancy before the fetus is capable of survival outside the womb. However, the term 'abortion' in social terms often represents the deliberate and direct termination of pregnancy as opposed to spontaneous loss.[18]

Abortion is the medical procedure of expelling a fetus from the uterus before it can result in a live birth. Several means are adopted to achieve this, either by taking medication or having a surgical procedure.

'Abortion' in the context of this research differs from 'miscarriage', a situation whereby pregnancy ends naturally without medical intervention, often referred to as spontaneous abortion. Reasons for abortion vary, ranging from health risks to economic factors, personal misadventure, socio-cultural factors and many others. Diverse justifications have been advanced both in favour of and against the liberalization of abortion laws globally. Nigerian

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[17] Alberet Faundes & John Barzelatto, 'The Human Drama of Abortion: A Global Search for Consensus' *Journal of Medical Law* [2006] 13(1) 44-50.

[18] Bryan Farlex, 'Medical Dictionary' available at <https://medical-dictionary.thefreedictionary.com> accessed 11 June, 2025.

laws allow abortion only to preserve the life of the mother in the case of medical challenges; abortion done for any other contrary reason is proscribed and regarded as a crime.

Abortion could either be spontaneous or induced. Spontaneous abortion, often referred to as miscarriage, occurs when the pregnancy is terminated without any intentional external intervention. This may be caused by the presence of a disease in the body of the pregnant woman or through existential crisis and genetic defect in the fetus.[19]

Induced abortion, on the other hand, known as abortus provocatus, is the deliberate termination of pregnancy by external intervention. When abortion is induced by external action, it is unnatural. Pregnancy can be terminated through the use of drugs or through surgical intervention after the implantation and before conceptus becomes independently viable.[20] Induced abortion could be direct or indirect. When it is direct, it is intended as an end or a means to an end; it is artificially carried out and the death of the fetus is always the intended result. Indirect induced abortion, on the other hand, occurs when the death of the fetus is never intended as the end result of a medical procedure. The death of the fetus only occurs as a permitted and unavoidable side effect of an action, maybe the treatment of another disease condition in the body of the mother.[21]

As stated above, abortion is carried out before the fetus becomes viable. The question then arises as to when the fetus can be termed viable. According to the World Health Organization (WHO), the viability of a fetus is at 22 completed weeks of gestation or a weight of 500 grams.[22] By implication, therefore, any pregnancy that terminates before this threshold is

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[19] Jefferson Ikenna Ikechebelu, 'Should We re-define Age of Fetal Viability in Nigeria? A Case Report of Newborn Survival from Pre-viable Pre-labour Rupture of Membranes' *Journal of Women's Health, Issues and Care* [2014] 2(1) 3-9.

[20] John Okoye, *Abortion and Euthanasia the Crime of our Day* (NAU Press, 1987) 17.

[21] *Ibid* (n 20) 21.

[22] Albert Niedermeyer, 'Compendium of Pastoral Medicine' *International Journal of Gynecology and Obstetrics,* [1999] 64(1) 317-321.

defined as abortion, whereas any termination when the fetus is above this limit will be considered premature birth.

The purpose for which abortion is induced equally varies. It could be induced to save the life of the woman, referred to as therapeutic abortion. Medical indications could give rise to therapeutic abortion, where such conditions may threaten the life of the mother. At other times it is induced at the request of the woman for reasons personal to her which centre on her choice and right to reproduction. Essentially, for the purpose of this discussion, abortion is the deliberate expulsion of the living viable fetus from the womb of a woman before it can thrive outside the womb. This is done deliberately with the aim of ending the development of the fetus into a living person.

2.1.2 Fetus

According to the Black's Law Dictionary,[23] fetus is a developing but unborn human, especially in the latter stages of development. Nigerian laws did not make explicit definition of who a foetus is, but the laws make elaborate provisions to protect the rights and interests of children yet unborn.

According to the Criminal Code, an "unborn child" is a child not yet born, in other words he has not completely proceeded in a living state from the body of his mother. The Criminal Code recognises an unborn child as a person but not one capable of being killed. However, under *section 228 and 229* of the same Code, the unborn child can be aborted and aborting him in the manner so stated by the Criminal Code is criminal. For example, *section 228* of the Criminal Code provides that:

> Any person 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

[23] Bryan Allen Garner, *Black's Law Dictionary* (10th Edn, Thomson Reuters, 2014) 739.

noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and liable to imprisonment for fourteen years.

Similarly, the Penal Code frowns at causing miscarriage of an unborn child, injuries to unborn children, exposure of infants, cruelty to children and concealment of births. Under the Nigeria Criminal Law therefore, the unborn child is recognised as an entity with life worthy of legal protection but ironically this child is denied legal personality and has no right to sue and be sued even when assailed by invaders. Though the Nigerian criminal law especially *sections 228 and 229* of the Criminal Code and *sections 233, 234, 235 and 236* of the Penal Code frowns at abortion, including attempts to procure abortion, and regards it as a felony in Nigeria. Yet, ironically under *section 307* of the same Criminal Code, taking the life of an unborn child is not an act of murder as long as the unborn child has not completely proceeded in a living state from the body of its mother and therefore not yet a person capable of being killed. The act is abortion simpliciter. This implies that the unborn child does not have right to be represented in any action through his/her guardian *ad litem*, until in the language of the code he/she completely proceeds in a living state from the body of his/her mother.

However, according to *section 307* of the Criminal Code, a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of his mother, whether it has breath or not, whether it has an independent circulation or not, and whether the naval-string is severed or not. Furthermore, by *section 328* of the Criminal Code, any person who when a woman is to be delivered of a child prevents the child from being born alive by any act or omission of such a nature that if the child had been born alive and had then died.

he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable for imprisonment for life. The Penal Code has similar provision in *sections 235 and 236*. A woman who procures abortion to kill the unborn child can be sued, and another person who

unlawfully procures the killing of the unborn child on the woman, can be sued for carrying out that act on the woman not necessarily on the unborn child.

Arguably, under the Criminal Code, the law is unconsciously according the unborn child the right to have his interest protected and be represented by someone else who could be referred to as his guardian ad litem. Nonetheless, such argument or interpretation may not succeed as a case of murder in the face of *section 307* of the Criminal Code. This is because section 307 of Criminal Code says that a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of his mother. It can only succeed as it is. It shows that Nigerian laws should boldly accord legal personality to the unborn child as is the case in other countries including America.[24] In the United States, majority of the states provide certain level of criminal protection for the unborn, as well as laws that protect the foetus from conception until birth.[25]

Furthermore, to emphasis the keen interest of the law in protecting the unborn child, *section 230* of the Criminal Code states that any person who unlawfully supplies to or procures for any person anything whatever, he knows that it is intended to be unlawfully used to procure the miscarriage of a woman, whether the woman is or is not with child is guilty of a felony, and is liable to imprisonment for three years.

In other words, mere supply of the substance knowing that it will be used for the unlawful purpose is criminal. Thus, by the phrase whether "she is or she is not with child" it is immaterial whether the woman is pregnant or not provided the act is done unlawfully with the intention of terminating a pregnancy. Thus, procuring abortion is unlawful except for the purpose of preserving the life of the mother. A combined analysis of *section 230* and the

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[24] Paul Benjamine Linton, 'The Legal Status of the Unborn Child under State Law' *St. Thomas Journal of Law & Public Policy*, [2011] 6(1) 7.
[25] *Ibid* (n 19) 8.

decision of the court in *R v Edgal & Ors*,[26] it necessarily follows that there may be a procurement of abortion which is lawful. In explaining the circumstances where the procurement of abortion may be unlawful the judge said: "my view is that ….it has always been the law that on a charge of procuring abortion the crown has to prove that the act was not done in good faith for the purpose of preserving the life of the mother."

It is submitted that according legal personality to an unborn child in Nigeria will add value to *sections 228 and 229* of the Criminal Code and make them functional for the safety and wellbeing of the unborn child.

In Nigeria, the law is more comfortable in calling the unlawful act of terminating the life of an unborn child abortion but not "killing" since the child has not proceeded completely from the body of the mother. Thus, the act of abortion is criminal as long as it was done unlawfully outside the context of preserving the life of the mother. The negative effect is that such interpretation seems to have reduced or may likely reduce the weight of quilt/blameworthiness attached to the crime and act of abortion in the country. This is because, abortion and unwarranted miscarriages abound today in the country, the life of the unborn child is always under constant threat of termination and extinction, and there is hardly any prosecution of acts of abortion in any of the courts in Nigeria. The reason is obvious. Though the unborn child is accorded legal protection mainly by the Nigerian criminal laws, his legal personality is not recognized under the Nigerian Laws.

2.1.3 Human Being

In the Nigerian Criminal Code, a "human being" is generally defined as a person who has been born completely and is alive, even if the umbilical cord is not severed or breathing has not yet commenced.[27] This means that a child is considered a human being once it has

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[26] [1938] 4 WACA 133.

[27] Section 307 of the Criminal Code Cap C38 LFN 2004.

completely proceeded in a living state from the mother's body. The code also outlines the concept of criminal responsibility, emphasizing that a person is liable for an act or omission that violates the code's provisions. Furthermore, the law recognizes the importance of criminal responsibility based on the capacity of the individual, with provisions for defenses related to factors like insanity, mistake, and immaturity.

2.1.4 Murder

Murder is the most heinous offence against the person. The offence both from the viewpoint of consequences vis-a-vis sanction is disastrous. It is disastrous in view of the fact that to kill a person means a complete annihilation of his existence and that of the murderer, if the latter's act is adjudged to be unlawful or unjustified. It is in view of this, that the termination of life is universally acknowledged to be the function of the Creator who gave it.[28]

This perhaps, explains why life is considered to be sacred and, the reason behind the contention whether human authorities have the competence to terminate it. The school of thought which supports the contention that human authority can terminate life in appropriate circumstances; have argued that there is no crime of homicide.[29]

By this, it is meant that homicide is only unlawful, where it is not justified or authorized by law. This is the purport of *section 306* of the Criminal Code which provides that "It is unlawful to kill any person unless such killing is authorized or justified or excused by law."

This means that the sacrosanct of life, may be breached by sovereign authorities - if to do so would make things even i.e. (for example) that he who kills, must also be killed. The above assertion is enshrined in *section 33* of the 1999 Constitution of the Federal Republic of Nigeria, wherein the right to life is protected, but may be derogated in the interests of private

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[28] Micheal Aregbesola Owoade, *Law of Homicide in Nigeria* (Obalemi Awolowo University Press, 1990) 16.

[29] Heaton Russell, *Criminal Law* (Blackstone Press Limited, 1996) 98.

defence of any person or to protect any person from unlawful violence, or for the defence of property, or killing in order to effect a lawful arrest, or killing done for the purpose of suppressing riot, insurrection or mutiny.

Statutorily, *section 316* of the Criminal Code defines murder as follows:

"Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances that is to say:

(a) If the offender intends to cause the death of the person killed, or that of some other person;

(b) If the offender intends to do the person killed or to some other person some grievous harm;

(c) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger life;

(d) If the offender intends to do grievous harm to some person for the purposes of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;

(e) If death is caused by administering any stupefying or overpowering things for either of the purpose last aforesaid;

(1) If death is caused by willfully stopping the breath of any person for either of such purpose, is guilty of murder.

The offence of culpable homicide is defined generally under section 220 of the Penal Code, thus:

"Whoever causes death: - (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or (b) by doing an act with the knowledge that he is likely by such act to cause death; or (c) by doing a rash or negligent act to commit the offence of culpable homicide." But for the offence to amount to murder (i.e. culpable homicide

punishable with death) such a homicide must come under *section 221* of the Penal Code, which provides as follows:

> Except in the circumstances mentioned in *section 222*, culpable homicide shall be punished with death- (a) if the act by which the death is caused is done with the intention of causing death; or (b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.

The above definition means that a person who can commit murder must be responsible, of sound memory and must have attained the age of discretion. This simply means that the person must be sane in accordance with the principles enunciated in the M'Naghten Rules. Such a person must be above 7 years and, if he is under twelve, he is liable if it is shown that he has a mischievous discretion, and in English law, he does not suffer from diminished responsibility.[30]

2.2 Theoretical Frameworks

2.2.1 Positivist Theory

This theory of law professes that law is as made by the sovereign or his agent. The agent in this perspective is the parliament which is primarily empowered to make laws or a delegated legislator with delegated powers to make delegated legislations or judges who in the course of deciding cases may establish case law or judicial precedents. In other words, law is law as made by the law maker and it remains the law until it is reformed by amendment or abolished. The existence of law is one thing; its merit or demerit is another. A law which eventually exists is a law, though people may dislike it.[31] John Austin believes that positive law is a command set by a political superior for a political inferior and which the inferior has to obey

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[30] *Ibid* (n 24) 18.

[31] John Austin, *The Province of Jurisprudence Determined* (HLA Hart Publishers, 1832) 184.

or suffer sanction. That law is a command made by a sovereign for an inferior and which the inferior has a duty to obey or suffer penalty.

A sovereign may be a person such as an absolute king, emperor or other dictator or sovereignty may rest in a group of persons such as the Armed Forces Ruling Council or in many people such as the people, in a constitutional democracy as provided in *section 14(2)(a)* of the constitution of Nigeria 1999 as amended. Positivists believe that the legal frameworks like Constitution, Criminal Code, Penal Code, CEDAW and other laws and institutions play pivotal roles in stamping out abortion except in circumstances allowed by the Nigerian laws.

2.2.2 Natural Law Theory

Natural law theorists believe that ideas and conceptions of law and justice transverse human history and all peoples and nations of the world, at different stages of their history, have intensely ruminated over and developed philosophies of law and justice.[32] Natural law theory holds that morality is based on human nature and human flourishing and can be known by natural human reason.[33] Natural law theory is a value-based theory of morality and practical rationality: axiological properties like goodness and badness are prior to deontic properties like rightness and wrongness, and all practical reasons obtain in virtue of facts about values.[34] At its conceptual foundation is a list of basic human goods: the fundamental intrinsic values that constitute human well-being, and the fundamental reasons for action that make human actions intelligible. For Natural Law Theory, all of the central ethical concepts—principles, obligations, rights, virtues, etc.—are understood in light of these goods.[35]

Natural law is a weapon against tyrannical and oppressive laws and regimes. Thomas Aquinas assertion that immoral rule would not be law however it may satisfy formal

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[32] Babatunde Abanuka, *The Ultimate Origin of Moral Norms* (University of Lagos Press, 1989) 63.

[33] Funso Adaramola, *Basic Jurisprudence* (Raymond Kunz Communication, 2004) 4.

[34] *Ibid* (n 33) 5.

[35] Richard Edward & Nigel Stoskwell, *Trusts & Equity* (4 Ed., Pearson Educational Ltd, 1999) 5.

requirements continues to resonate forcefully as mechanism needed to check abuse of power, draconian laws and autocratic rule generally. It has almost assumed the status of inviolability under contemporary legal systems.[36] The positive impact of natural law as highlighted in this paper, undoubtedly, will continue to ensure its relevance to the legal systems of the world now and in the future.

Natural law theory generally opposes abortion, asserting that it violates the natural inclination to preserve life and that a fetus has a right to life. This perspective, rooted in the belief that morality is inherent in nature, sees abortion as an unnatural act that interferes with the natural developmental process of life.

2.2.3 Pro-Life Theory

The end of every morality and by extension every law is to protect and safeguard relationships that make the human society conducive for life. In other words, the aim of every law, whether written or unwritten is to protect life and the property that enhances life. When a law, national or international, derails from this objective, that law is said to be unjust and/or anti-human.[37] Therefore, a proper understanding of the ultimate essence of law is the intensification of conditions and circumstances favourable for life and human co-existence.[38]

Pro-life theorists oppose abortion on ethical and moral grounds and argue that an "unborn child" has a right to life and they strive to get these rights legally recognized. Pro-life theory, in the context of abortion, centers on the belief that human life begins at conception and that abortion is the unjust taking of a human life. Pro-life advocates typically believe that a fetus, from conception, possesses the same fundamental right to life as any other human being and

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[36] Adam Jalaye, *Natural law And the Nigerian Experience: Nigerian Essays in Jurisprudence* (University of Lagos Press, 1993) 31.

[37] David Blanchard, *The Anti-Abortion Movement and the Rise of the Religious Right* (Twayne Publishers, 1995) 40.

[38] *Ibid*, David Blanchard (n 37) 41.

should be protected by law. They often emphasize the potential for life and the moral status of the unborn, viewing abortion as an act of violence against a developing human being.

2.2.4 Anti Pro-Life Theory

The anti-pro-life theorists contend that women have a legally protected reproductive right to abortion and work to keep abortion safe and legal and that the state could not prohibit abortion during the first trimester or before viability. That is, the potential for a fetus to live outside of the womb.[39]

The anti-pro-life theory of abortion centers on the idea that individuals/women have the right to make decisions about their own bodies and reproductive health, including the choice to terminate a pregnancy. This perspective emphasizes bodily autonomy and the right to make personal decisions without coercion or interference from others.

In line with the anti-pro-life theorists' postulations, women have the reproductive right to deal with their body the way they deem it fit, keep pregnancy or not and should not be compelled by law to keep unwanted pregnancy by way of incriminating abortion in Nigeria, and as such, should be allowed to remove fetus at the earliest stage of the pregnancy.

2.3 Review of Related Literature

Many scholars have worked on the topic under discourse especially as it has to do with abortions and the religious and cultural perspectives and the provisions of laws.

Adegbite,[40] Nigeria is one of the nations with strict anti-abortion laws. It permits abortion only in minimal instances, when it borders on the medical ground of preserving a mother's life. Nigeria's jurisprudence may be founded on its cultural, social and religious background

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[39] Stephen Staggenborg, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict* (Oxford University Press, 1991) 12.

[40] Folashade Rose Adegbite, 'Rethinking Abortion Laws in Nigeria: The Trauma of Rape Victims of Boko Haram' *African Human Rights Law Journal* [2021] 21(1) 1037.

and perceptions, although there may be little correlation between the laws and the realities based on available statistics of illegal and unsafe abortion- related deaths in Nigeria.

Faudes & Barzelatto,[41] are of the view that abortion is strongly restricted in Nigeria with the use of two main sets of laws: the Criminal Code Act, which is operative in the southern part of the country; and the Penal Code, which operates in the northern part as both laws have stringent provisions against the practice of aborting child in Nigeria, save under exceptional circumstances.

Okorie & Abayomi,[42] posit that it is impossible for any pregnant woman who does not desire to have a baby, even for the most serious or justifiable reasons, except of course where her life is endangered by the pregnancy, to secure an abortion in any government hospital. Since an average Nigerian woman cannot afford the services of a willing private clinic, she is forced to resort to unsafe abortion by patronizing untrained personnel who use inappropriate and contaminated instruments under unhygienic conditions to perform it.

According to *Hurst,*[43] abortion is not a modern aberration, but a practice common to human communities throughout history. Indeed, abortion has been used throughout the world for thousands of years as a way of ending unwanted pregnancy. Historically, early abortion was tolerated by the Church, and for centuries, it was not punished under English Common Law which has a great historical influence on the Nigerian Legal System.

To *Ponders,*[44] despite the criminalization of abortion, women continued to perpetrate the acts, unfortunately, under unsafe conditions expedited by the state of the law. This obviously

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[41] Albert Faundes, & John Barzelatto, 'The Human Drama of Abortion: A Global Search for Consensus' *Journal of Medical Sciences* [2006] 13, 24.

[42] Paul Chikere Okorie, & Olabis Ayo Abayomi, 'Abortion Laws in Nigeria: A Case for Reform' *Journal of International and Comparative Law* [2019] 23(1) 2.

[43] Jane Hurst, *The History of Abortion in the Catholic Church: The Untold Story* (CFC Publications, 1983) 15.

[44] Russia Ponders, *Restrictions on Abortion Rights*, (DW Publications, 2002) 24.

occasioned more deaths than ever and naturally aroused concern by the society and the government authorities. This development eventually gave rise to the liberalization of abortion laws in most of Eastern and Central Europe in the 1950s and in most of the remaining developed countries during the 1960s and 1970s. A few developing countries, like China and India, also relaxed their restrictions on abortion in the same period. The story has since been one of liberalization and not criminalization of abortion around the world.

According to *Schwartz,*[45] 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."This portion of the Protocol was further elaborated in a General Comment by the African Commission on Human and People's Rights issued in 2014. Despite the ratification of this protocol by many African countries, national laws still do not reflect this quantum leap in policy.

To *Boonin*,[46] over the course of human history, the criminalization of abortion has compelled women in different parts of the world to use unsafe and unreliable means of terminating unplanned pregnancies. Women use potions and pills or other types of drugs, many of which are not safe for use, this can lead to extreme irritation to the bowel and stomach; others used dangerous materials such as knitting needled, crochet hooks, lead or soap solution via syringes; blow to the back, hot baths and heavy pressure or kicks on the abdomen were used to force pregnancy termination. Women in Nigeria have tried different things to achieve their aims except visiting a qualified physician in a certified clinic, using dangerous practices to remove fetuses can have harmful side effects on the health of women.

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[45] David Schwartz, *Pregnant and Out of Options: The Quest for Abortion* (DTP Publication, 2010) 90.

[46] David Boonin, *A Defense of Abortion* (Cambridge University Press, 2002) 23.

All these scholars have worked extensively on the practice of abortion in Nigeria; however, they fail in discuss the position of various Nigerian laws and international treaties on abortion as well as, the cultural and religious perspective of the act of abortion. This is the lacuna that this study intends to fill.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS ABORTION IN NIGERIA

3.1 Legal Framework

3.1.1 Constitution of Federal Republic of Nigeria 1999 (as amended)

The 1999 Constitution of the Federal Republic of Nigeria87 is the supreme law and grund norm of Nigeria. *Section 188* of the Constitution confirms this stance. Also, in *section 1(3)*, it provides that; "Any law that is inconsistent with the provisions of the constitution shall to the extent of the inconsistency be void."

What this means is that all other laws in the federation have to be in alliance with the provisions of the constitution, else it would be void. Thus, looking at the elements that influence abortion, we can see that from the legislative point of view, that the constitution is a hinderer of legalization of abortion as laws must align with the purpose of the constitution.

As earlier stated, the Constitution of the Federal Republic of Nigeria is in its nature, pro-life. This is because most of its provisions are life-sensitive, especially under the provisions of *Chapter IV* which provides for Fundamental Rights.[47] Looking at *section 33* of the Constitution, which provides for right to life, the law protects all forms of human life.

Looking further into the constitution, the question of whether the provisions of laws, criminalizing abortion are in contention with rights as enshrined in the constitution. The essence of *Chapter IV*, in my opinion, is to bestow in citizens certain privileges.

Taking into account, *section 35* which provides for right to personal liberty. The Section provides that every person shall be entitled to his personal liberty. This gives citizens the right to make free thinking decision in matters that pertain to personal life.

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[47] Chapter IV Constitution of Federal Republic of Nigeria 1999 (as amended)

The current status of abortion in Nigeria clearly goes against this, as one cannot decide whether or not to carry out one. In the Canadian case of *R v. Morgentaler*,[48] the Supreme Court determined that the law that banned abortion was unconstitutional and infringed upon the right to liberty.

Also, in *section 37* of the Constitution provides for the right to private and family life. This provision goes to provide that every citizen has a right to privacy as well as that of a family life without unjust interference by the government. In the U.S case of *Eisenstadt v. Baird*,[49] The Supreme Court held that;

> "If the right of privacy means anything, it is the right of the individual, married or not, to be free from government intrusion into maters so fundamentally affecting a person as the decision whether or not to bear or begat a child".

Lastly, the constitution also provides in *section 42*, the right to freedom from discrimination on the basis of gender, finance, etc. The UNAIDS defines gender as "a person's opportunities, roles, responsibilities and relationships. These roles and relations have significant influence on the course and impact of reproductive health."

While it is acknowledged that pregnancy is a deeply personal medical state that only the female gender experience, the status of pregnancy should not be a basis to deny women control over their bodies. The laws on abortion in Nigeria as it stands, violates this right simply because it denies women the right to exercise control over their body.[50]

Taking these sections into account, we can see that the 1999 constitution of Nigeria is a bit shaky on this concept. Some may say that the constitution provides for right to life for all persons, however, how can one say for sure that a fetus is a person, seeing that it does not have certain characteristics of a person. The constitution has provided rights of which every

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[48] 1 SCR 30 [1988]

[49] 405 U.S. 438 [1972]

[50] Samson Singh, *Induced abortion: Estimated Rates and Trends Worldwide* (TYP Publishers, 2007) 32.

citizen in Nigeria is entitled to enjoy. The law gives a person the right to make free personal decisions, to have a private as well as family life, etc. However, the law on Abortion in Nigeria as it currently stands seems to impede on these rights and rid persons, especially women of some of these rights. Removal of a person's choice to either keep a pregnancy or not, is violating that person's right to choose what happens to her body.[51]

A person's right to dignity as provided by *section 34* of the constitution can also be said to be infringed upon in the instance where a person gets pregnant as a result of rape or incest. A situation that she does not want to remember. Being made to carry that pregnancy to term, because of laws that make it compulsory to do so, may cause a lot of psychological harm and as a result, violates a person's right to good health and dignity. By taking away such choice, the laws against abortion clearly violates the guaranteed rights to affected persons.[52]

3.1.2 Criminal Code Cap C38 LFN 2004

The Criminal Code in Nigeria plays a significant role in criminalizing abortion. The sections, applicable in southern states, define procuring an abortion as a felony, punishable by imprisonment for the woman, the provider, and anyone assisting in the process. While exceptions exist to save a woman's life, the restrictive nature of these laws contributes to a high rate of unsafe abortions and associated health complications.

Section 228 of the Code provides that;

"Any person who, with intent to procure miscarriage of a wo- man whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever is guilty of a felony and is liable to imprisonment for fourteen years."

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[51] *Ibid* (n 42) 39.

[52] *Ibid* (n 42) 41.

Under this provision, it is an offense punishable with 14 years' imprisonment for any person (including medical practitioners and health workers) to attempt to terminate any pregnancy by any means whatsoever, even where the woman is not certified pregnant.

Section 229 of the Criminal Code also provides that;

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

Under this provision, it is an offense punishable with 7 years' imprisonment for a woman to attempt to terminate her pregnancy by any means whatsoever. It is also immaterial that the woman is, in fact, not pregnant. It would technically, therefore, constitute an offense under this provision where, for example, a woman, upon suspicion that she is pregnant (per- haps after missing her monthly period) drinks salt water with the intention of securing a miscarriage even if it turns out that she was never pregnant.

The Criminal Code in *section 230* provides for supplying drugs or instruments to procure abortion. The above section in clear terms provides thus:

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

The provision creates an offense against any person who supplies or pro- cures anything which he or she knows is intended to be used to procure abortion whether or not the woman is pregnant. It follows that a local chemist who sells drugs to a pregnant woman or the errand

boy who mixes salt water being aware of the use intended, may well be guilty of an offense under the provision.

The Criminal Code in *section 328* also provides that;

> "Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had died, he would be deemed to have unlawfully killed the child, is guilty of a felony, and is liable to imprisonment for life."

Under this provision, it is an offense to kill a child when it is about to be born but before it is born. It seems that this provision is intended to ensure that all aspects of killing a child before it is born are covered by the Code. However, it should be noted that the definition of abortion by the World Health Organization does not include termination after viability, which is probably why this provision is not in the same chapter of the criminal code with abortion.[53]

Section 297 of the Criminal Code made provision for lawful abortion. The section explicitly provides thus:

> "Any person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Two basic issues of interpretation arise from this provision. First, what qualifies as a surgical operation? Is it synonymous with medical? Does it, for example, include the administration of prostaglandins considered by many doctors to be one of the safest and most effective methods of procuring abortion or other methods of abortion like menstrual extraction or anti-

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[53] Gabriel Bergel, *Abortion in America* (Ohio Publishers, 2007) 15.

progestin termination (abortion pill)? It would seem that the term "surgical operation", is strict and is deliberately used to indicate the necessity to save the life of the mother. It is, therefore, unlikely that the defense will countenance other means of procuring a miscarriage.[54]

Second, does the term "preservation of the mother's life" mean that she must actually be in danger of dying? Again, Nigerian courts have not interpreted this term. However, the English case of *R v. Bourne*,[55] decided under a similar provision, indicates that the preservation of the mother's life should include safeguarding her physical and mental health. In that case, a leading gynecologist, Dr. Aleck Bourne, tested the law by openly inviting the police to prosecute him for performing an abortion on a 14-year-old girl who had been raped.

The Court acquitted him on the grounds that he acted in good faith to preserve the life of the woman who might otherwise have become a "physical and mental wreck". In other words, the abortion of a pregnancy of a 14-year-old resulting from rape was to safeguard her physical and mental health and therefore, to pre- serve the life of the mother.[56]

It has been contended that the implications of the provisions of the criminal code, if strictly applied, would appear to be that all chemists, doctors and organizations (including family clinics) supplying and administering the IUD and the "morning after pill" are guilty of offenses under the criminal code, for these are both examples of post conception methods of birth control.

In *State v Njoku*,[57] the first defendant had sexual intercourse with A, resulting in A's pregnancy. The first defendant wrote to A, advising her to procure her own miscarriage and

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[54] Daniel Mccanthy, *Handbook on Critical Life Issues* (Bangalore Publications, 1998) 100.

[55] [1938] 3 All ER 615

[56] Simon Simran, and Ayodele Adetutu, 'Comparative Analysis of Sex Selection in Nigeria and India' *International Journal of Humanities and Social Science Studies* [2019] 4(6) 71-75.

[57] [1973] ECSLR 638

also sent her some tablets and ampoules of injection, giving direction for their use. He also gave A N6.00 (six Naira) to pay for the abortion. The second defendant arranged for the sum of N5.00 (five Naira) to be paid to the third defendant, a native doctor, and brought A to the third defendant's house where the latter administered to A, some powdered medicine stuffed in garri, which caused A to miscarry. The court held as follows:

(a) That by sending the tablet and ampoules to A with intent that she should use them to procure her miscarriage; the first defendant was guilty of felony under section 230 of the criminal code.

(b) That since the date of the giving of the N6.00 stated in the charge differed from the date stated by A in her evidence in court, the prosecution had failed to prove its case as charged, with respect to that count.

(c) That it was proved that the third defendant caused A to swallow medicine with intent to procure and which in fact procured her own miscarriage, and he was therefore guilty of a felony under *section 228* of the criminal code. The word "poison or noxious thing" in the section means any substance calculated to injure the health of the woman concerned by causing her to miscarry. It was not a necessary pre-requisite for a conviction to establish that the substance was an abortifacient.

(d) A was an accomplice in the conspiracy to procure her own abortion.

In *State v. Akpaete*,[58] the accused, a native doctor, performed an operation on the deceased to secure her abortion of a two months old pregnancy by inserting a not into her vagina. On withdrawing it, the deceased bled and later, contracted tetanus and died. He was charged with murder. The court held that I found him guilty of manslaughter instead on the ground that no reasonable man in the community in which the accused lived could have thought that his act

[58] [1976] 2 FNR 101

would endanger human life or cause death. However, the fact that the deceased consented to the abortion did not exonerate the accused from criminal responsibility.

This generally entails that Nigerian Criminal Code frowns at abortion and qualifies same as an offence. The Court pf Appeal interpreting these sections in *Attah v. State*,[59] held that Procurement of abortion is, per se, an offence or an illegal act under sections 228 and 229 of the Criminal Code.

3.1.3 Penal Code Cap 89 LFN 2004

this code is currently enforced across Northern States in Nigeria. The Penal Code is different from the Criminal Code in the sense that while the Criminal Code only states imprisonment as punishment for offenders, the Penal Code's punishments include imprisonment, fine, or both.[60] In addition, every offence against the Penal Code is punishable, whether the abortion was successfully done or not.

Specifically, in the Penal Code, the abortion laws are stated in sections 232, 233 and 234, respectively. *Section 232* of the Penal Code basically talks about causing abortion. It states that:

> "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

That is, an abortion caused intentionally, without the motive of saving the mother's life, is punishable by a jail term, which may be up to 14 years, and payment of fine.

Section 233 of the Penal Code talks about death caused as a result of an act done to cause abortion. It states thus:

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[59] [199]) 4 NWLR (Pt. 288) 403

[60] Joseph Thomson, *A Defense of Abortion* (Wadsworth publishing company, 1988) 18.

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

This means that anyone who intentionally causes a woman miscarriage or acts in a way that leads to the death of that woman shall be made to serve a jail term, which may be up to 14 years, and pay a fine. If the woman willingly agreed to the act, she would be imprisoned for life or made to serve a less jail term and pay a fine.

Lastly, *section 234* of the Penal Code talks about the unintentional causing of abortion. It states as follows:

> Whoever uses force to any woman and thereby unintentionally causes her to miscarry, shall be punished- (a) with imprisonment for a term which may extend to three years or with fine or with both, and (b) if the offender knew that the woman was with child, he shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

This means that anyone who unintentionally causes a woman miscarriage by using force on her shall be made to serve a jail term, which may be up to 3 years, and pay a fine. If that person was aware that the woman was pregnant, he/she shall be made to serve a jail term, which may be up to 5 years, and pay a fine.[61]

Nigeria, no doubt, as evident in the Penal and Criminal Codes, strongly prohibits abortion, except when it is done to save the mother's life. While this is laudable, we still have

[61] Walson Micheal Hern, *Abortion: Medical and Social Aspects* (MacMillan Publishers, 1995) 19.

numerous cases of abortions in the country.[62] The reason for this is simply that Nigeria's abortion provisions are inadequate in a number of ways, some of which are stated below:

a. Lack of uniformity: There is some level of disparity between the Criminal and Penal Codes. While the former only states imprisonment as punishment for offenders, the latter's punishments include imprisonment, fine, or both. Such disparity or lack of uniformity is unsafe and not ideal for nationhood, as it can foster confusion and exclusion, since both codes are applied in the same country.
b. Failure to educate Nigerians on the bioethical issues associated with abortion: Merely stating punishments for those involved in abortion is not enough. In addition to this, Nigeria's abortion provisions should be modified in such a way that they will include information that will serve the purpose of educating Nigerians on the bioethical issues associated with abortion. This will significantly reduce the rate of abortion in the country, as so many Nigerians seem to be ignorant of the moral implications of abortion.[63]
c. Failure to designate a body charged with ensuring compliance and implementation: Usually, when an Act is enacted, a body that will be charged with ensuring compliance is immediately established. In the case of Nigeria's abortion provisions, ably represented by the Criminal and Penal Codes, there is not statement whatsoever that establishes a body that will ensure compliance throughout the country.

Such body ordinarily is supposed to closely monitor medical centers in order to ensure that they are compliant, and when the laws are breached, the body is to ensure that necessary penalties are implemented on a case by-case basis.

3.1.4 Africa Charter on Human and People's Rights 1986

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[62] Kenneth Melissa and Zion Mimi, *Management of Abortion* (Rock & Co., 2005) 74.

[63] Abel Benson Patil, 'Medical Ethics in Abortion' *Indian Journal of Clinical Practice* [2009] 25(6) 6-12.

Nigeria is a party to various regional human rights treaties which impose related obligations on state parties. Additionally, the African Commission on Human and Peoples' Rights has in place established guidelines aimed at combating sexual violence and its consequences. Under the Guidelines States have an obligation to adopt legislative, regulatory and other necessary measures aimed at protecting victims of sexual violence for purposes of ensuring access to sexual and reproductive health services, including abortion.[64]

The African Charter on Human and Peoples' Rights (African Charter)1 establishes a system or framework for the promotion and protection of human rights in Africa within the framework of the Organization of African Unity (now AU). The African Charter came into force on 21st October 1986.[65] The African Charter promotes a plethora of human rights such as civil and political, socio-economic and cultural, individual and collective rights. The African Charter is the first regional mechanism to incorporate the different classes of human rights in a single document.

The rights encapsulated in the African Charter include right to enjoyment of rights without distinction of any kind,[66] right to life,[67] right to dignity of the human person, equality of all peoples,[68] right to existence and self-determination, right to free disposal of natural wealth and resources, right to satisfactory and clean environment, amongst other rights.

In addition to right to life, *article 29 (7)* of the African Charter requires individuals 'to preserve and strengthen positive African values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and in general, to contribute to the promotion of the moral wellbeing of society' can be used to curtail gay rights in Africa. All

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[64] Joseph Thomson, *A Defense of Abortion* (Wadsworth publishing company, 1988) 75.

[65] *Ibid* (n 53) 77.

[66] AFCHPR, Article 2.

[67] *Ibid*, Article 4

[68] *Ibid*, Article 19.

these provisions are geared towards preserving the right to life, uphold societal values and stamp out abortion except under the exceptional circumstances for which it is permissible.

3.1.5 Convention on the Elimination of all Discriminations against Women (CEDAW) 1979

CEDAW, which Nigeria has ratified, enjoins state parties to take all appropriate measures to eliminate discrimination against women in the field of health care, which includes access to healthcare services such as family planning.[69] It further provides that women should be accorded the rights to freely and responsibly decide on the number and spacing of their children and to have access to information, education and means to enable them to exercise these rights.

Nigeria has the obligation to refrain from interfering with the enjoyment of this right, to protect it by prevention of the violation, and to fulfil by taking appropriate measures towards the full realization of this right. The victims have the right to reproduction and self-determination, and they have a right to determine whether they should have a child and found a family. They have the right to the number and spacing of children without the control or coercion of the government.[70]

The Committee on the Elimination of Discrimination Against Women (CEDAW) have indicated that women's right to health include their sexual and reproductive health and reiterated States commitment in this regard. Also, the CEDAW Committee has urged states to ensure that priority attention is given to the provision of sexual and reproductive health services including safe abortion services in conflict situations.

The Committee, in humanitarian settings a human rights-based approach to sexual and reproductive health requires the following:

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[69] CEDAW, Article 12(1).

[70] CEDAW, Article 16(e).

i. ensuring available, accessible, adequate, and quality services without discrimination.

ii. ensuring that those who seek services are able to make informed and autonomous decisions, without spousal, parental, or third-party consent.

iii. establishing systems for maintaining privacy and confidentiality.

access to justice and effective remedies when individual rights are violated

The CEDAW Committee implicitly linked restrictive abortion laws to discrimination on the basis of gender and biology.[71] The Committee on the Rights of the Child has acknowledged the fact that adolescent girls who are in need of safe abortions due to sexual exploitation may be exposed to significant health risks. Such adolescent girls, therefore, have the right to both physical and psychological therapy and 'social reintegration in an environment that fosters health, self-respect, and dignity.[72]

3.2 Institutional Framework

3.2.1 Ministry of Health

The Nigerian Ministry of Health plays a crucial role in preventing unsafe abortions through various strategies. These include developing national guidelines for safe abortion services within legal limits, promoting family planning and contraception, and providing post-abortion care. The Ministry also works to address the social and environmental factors that contribute to unintended pregnancies and unsafe abortions, such as poverty and lack of access to healthcare, and the guidelines evaluated laws related to the termination of pregnancy in Nigeria, legal indications for safe termination of pregnancy in Nigeria, care preceding safe legal termination of pregnancy, methods of safe termination of pregnancy, post procedure

[71] Chiemeka Gabriel Ngwena, 'Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa' *Human Rights Quarterly* [2010] 32, 783-789.

[72] *Ibid* (n 60) 790.

care and monitoring and evaluations for safe termination of pregnancy for safe termination of pregnancy for legal indications.[73]

The federal ministry of health in order to guarantee the safety of a mother or one in the course of carrying out abortions on circumstances permitted by the law, came up the National Guidelines on Safe Termination of Pregnancies for Legal Indications. The law in Nigeria clearly stipulates that abortion can be performed to save a woman's life. Unfortunately, data indicates that health providers are unaware that there are medical indications that allow therapeutic abortions to be performed to save a woman's life as well as promote her health and wellbeing.[74]

However, there are no national standard guidelines to direct this practice. It is against this backdrop that the Federal Ministry of Health, with the support of stakeholders and partners developed this guideline on safe termination of pregnancies for legal indications to facilitate the reduction of maternal morbidity and mortality from the medical conditions that threaten women's lives when compounded by pregnancy and from abortion procedures themselves in Nigeria.[75]

The goal of the guidelines of the federal ministry of health is to serve as a tool for the provision of the safe termination of pregnancy within the legal framework, in circumstances where the continuation of such pregnancy threatens the lives of the women, thereby contributing to the reduction of maternal morbidity and mortality in Nigeria. The guidelines specifically have the following objectives:

(a) Provide information and guidance on the legal indications for the safe termination of pregnancy in Nigeria.

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[73] **<**https://nationalqoc.fmohconnect.gov.ng/wp-content/uploads**>** accesses 20 June, 2025.

[74] Orwell Akinyemi, 'The Incidence of Abortion in Nigeria' *Journal of International Perspectives on Sexual and Reproductive Health* [2015] 41(4) 170–181.

[75] Yeni Paul Cuca, 'The incidence of induced abortion in Nigeria' *Journal of International Family Planning Perspectives* [1998] 24(4) 156-164.

(b) State the medical indications for the safe termination of pregnancy for legal indications in Nigeria.

(c) Outline the standards and norms for providing safe termination of pregnancy services for legal indications in Nigeria.

(d) Guide policy makers and health managers on the implementation of safe termination of pregnancy for legal indications and related interventions.

Under the Guidelines, the ministry of health Monitoring and Evaluation is very important to help health workers, program managers, and policy makers monitor services to assess whether they are being provided to standard so that appropriate measures can be instituted to achieve set goals. In keeping track of the implementation of the safe termination of pregnancy policy and services, data needs to be collected and analyzed routinely across the three tiers of the health system.[76]

3.2.2 Nigerian Medical Association

The Nigerian Medical Association (NMA) was established in 1951. It is the sole professional association for all medical and dental practitioners in Nigeria. The NMA's establishment and regulation are intertwined with the Medical and Dental Practitioners Act, which established the Medical and Dental Council of Nigeria (MDCN).[77] Section 2 of the Act confers the following functions on the council:

(a) determining the standards of knowledge and skill to be attained by persons seeking to become members of the medical or dental profession and reviewing those standards from time to time as circumstances may permit;

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[76] Raymond Nnaemeka Nwabueze, *Comparative Health Law and Policy: Critical Perspectives on Nigerian and Global Health Law*, (Ashgate Publishing, 2015) 45.

[77] Medical & Dental Practitioners Act Cap M8 LFN 2004, section 1.

(b) Securing in accordance with the provisions of this Act, the establishment and maintenance of registers of persons entitled to practice as members of the medical or dental profession and the publication from time to time of lists of those persons;

(c) Reviewing and preparing from time to time, a statement as to the code of conduct which the Council considers desirable for the practice of the professions in Nigeria.

(d) supervising and controlling the practice of homeopathy and other forms of alternative medicine; among others.

All these functions are conferred on the Council in order to ensure that medical personnels are proactive in stamping out the high rate of illegal abortions in Nigeria, especially with unqualified health practitioners. This is geared towards protecting the constitutional right of women under section 33 of the Constitution of Nigeria 1999 as amended.

3.2.3 Churches

In Nigeria, churches play a significant role in the prevention of illegal abortions through various means, including promoting abstinence, educating on reproductive health, and providing pastoral care. They emphasize the sanctity of life, aligning with religious teachings that condemn abortion, and actively work to influence community attitudes and behaviors towards unplanned pregnancies.[78]

Biblically, life begins at fertilization or conception, therefore any effort to interrupt pregnancy is murder. *Exod. 20:13* provides that "You shall not commit murder" and Rom. 12:21 "Overcome evil with good." Other passages of Scriptures that spoke about miscarriage non about deliberate abortion include: *Exodus 21:22–23*: 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. But if there is serious

[78] Bankole Akinrinola, 'The Incidence of Abortion in Nigeria' *Journal of Reproductive Health* [2015] 41(4) 40-43.

injury, you are to take life for life. The fine is for causing a miscarriage and the death penalty is for causing the death of the pregnant woman. This is evidence for a biblical ban on abortion.

Numbers 5:11-31 describes the test of the unfaithful wife. If a man is suspicious of his wife's fidelity, he would take her to the high priest. The priest would make a substance for the woman to drink made from water and "dust from the tabernacle floor." If she had been unfaithful "her abdomen will swell and her womb will miscarry, and she will become a curse." If she was innocent the drink had no effect. This shows that God is against unfaithfulness to the marriage and abortion.[79]

Holiness is the beauty of the Church and her members. The Church teaches her members to be chaste, pure and undefiled. Chastity is the holy and habitual self-control of sexual impulses. The Church stresses the value of virginity and continence. Many adolescents and single girls report feeling pressured by their peers, boyfriends and fiancés a times to have sex before they are ready for marriage or before their wedding, but the Church teaches the youths to say no to sin and the lusts of the flesh. The Church condemns Planned Parenthood and family planning groups who encourage singles and adolescents to have sexual pleasure, use contraceptives, condoms and to carry out abortion thereby entrenching them into immorality.[80]

The Church enjoins the government to enforce more stringent laws so that value for life is imbibed and the fear of God instilled in the heart of people for a better society. The Church in Nigeria asks that the mother should live if the continuation of her pregnancy places her life in

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[79] Austin Chisom Eze, *The Avenger* (University of Port Harcourt Press, 2016) 12.

[80] *Ibid* (n 68) 14.

grave danger. Situations where the continuance of a pregnancy threatens the life of the mother, a termination of pregnancy may be justified like in ectopic pregnancy.[81]

The Churches teaches adolescents to stand firm in the faith of our Lord Jesus Christ, live a holy life, not to walk around indiscriminately or aimlessly and avoid lonely places alone with the opposite sex in order to avoid rape. The Church in Nigeria believes fetuses should not be aborted but the girl should deliver that baby. They should not be pressurized to abort.[82]

3.2.4 Mosques

Mosques in Nigeria play a significant role in shaping attitudes towards abortion, primarily through religious teachings that discourage the practice. While Islamic law doesn't explicitly forbid abortion in all circumstances, it generally views it as discouraged or forbidden, particularly after a certain stage of fetal development. Mosques often serve as platforms for disseminating these views, influencing community norms and individual decisions regarding pregnancy and reproductive health.[83]

Muslims believe anyone who aborts a child should be punished the same as a murderer. *Chapter 17, verses 31 to 33* of the Koran, clearly provides that "kill not your children for fear of what the lord shall provide, sustain them as well as the mother. Verily the killing of them a great sin.

This simply entails that one must not kill the child inside the belly, and anybody who does that commits great sin. No one should terminate a foetus for fear of poverty, because Gods says he is the one that takes care of both the mother and the fetus. But if [you] kill the child, you must ensure a query before God. This Islamic doctrine is inculcated in the mosque to

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[81] Rose Felicia Gardner, *Abortion: The Personal Dilemma* (The Paternoster Press, 1978) 45.

[82] Olowe Albert Oloyede, 'Abortion Deaths in a Teaching Hospital in Nigeria' *Nigerian Journal of Health and Biomedical Sciences* [2007] 6(2) 13.

[83] Lilian Remez, 'Confronting the Reality of Abortion in Latin America' *International Journal of Family Planning* [1995] 21(1) 32-36.

ensure that Muslims shy away from abortion except in the event it becomes hardy to preserve the life of the mother.[84]

[84] Augustine Sunday Adebowale, 'Sex Preference, Religion and Ethnicity Roles in Fertility among Women of Childbearing Age in Nigeria: Examining the Links using Zero-inflated Poisson Regression Model' *International Journal of Statistics and Probability* [2019] 8(6) 91–106.

CHAPTER FOUR
RETHINKING ABORTION LAWS IN NIGERIA

4.1 Impact of Abortion Laws on Women's Rights and Health

Nigeria operates restrictive abortion laws, which prohibit abortion except under exceptional circumstances of preserving the life of the mother. The Nigerian abortion laws are encoded in the portions of the criminal and penal codes related to miscarriage. The criminal code is applicable to Southern Nigeria while the penal code is applicable to Northern Nigeria. Essentially both codes prescribed a penalty of 7–14-year imprisonment for induced non-medically indicated abortion.[85]

Unsafe abortions contribute significantly to the high maternal mortality rate in Nigeria. Abortion-related complications fall within the first five major causes of maternal mortality in Nigeria. The restrictive abortion laws of Nigeria are thought to force women with unwanted pregnancies to seek clandestine abortion, most of which take place in unsafe places.[86]

By this argument, therefore, it stands to reason that if the abortion laws are liberalized, women will have access to safe abortion from qualified medical personnel and facilities, thereby reducing the risk of complications from unsafe abortions.

On the other hand, the agitations for liberalized abortion laws in Nigeria have met stiff resistance from pro-life groups. They argue that the high rate of unsafe abortions in Nigeria has nothing to do with the restrictive abortion laws of Nigeria. Furthermore, they argue that liberalization of abortion in Nigeria will increase the number of abortions and by extrapolation and its complications. It is known that a good proportion of private hospitals in Nigeria offer abortion services despite the existing restrictive laws.[87]

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[85] Eunice Ofarinloye, 'Complications of Unsafe Abortion in South West Nigeria: A Review of Cases' *African Journal of Medical Science* [2013] 43(1) 111-120.

[86] *Ibid* (n 75) 34.

[87] Micheal Ade Lamina, 'Characteristics of Abortion Care Seekers in Western Nigeria' *West African Journal of Medicine* [2014] 33, 189.

Pro-life groups quickly point to this as evidence that restrictive abortion laws are not driving abortion services underground and therefore not responsible for the high rate of unsafe abortions in Nigeria.[88]

There is no doubt that unsafe abortion is a major public health problem in Nigeria constituting up to 30% of maternal mortality in some health institutions in Nigeria.[89] It is noteworthy that reliable statistics on abortions in Nigeria (both safe and unsafe) are difficult to come by because of the restrictive abortion laws of Nigeria.

This shows that in Nigeria, restrictive abortion laws significantly impact women's rights, health, and autonomy. While abortion is generally illegal except to save a woman's life, this restriction pushes pregnant girls and women to unqualified health attendants to remove their unwanted pregnancies and as a result, leads to unsafe abortions performed by unqualified practitioners, contributing to high rates of maternal mortality and morbidity. This also infringes on women's reproductive rights and bodily autonomy, forcing them to carry unwanted pregnancies, including those resulting from rape.[90]

4.2 Examination of Unsafe Abortion Practices and Associated Risk

Unsafe abortion practices pose significant risks to women's health and well-being, contributing to maternal mortality and morbidity. These practices, often performed by untrained individuals in unsanitary conditions, can lead to severe complications such as hemorrhage, infection, injury to internal organs, and even death.

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[88] Sabestine Clandestine, 'Abortion in Port Harcourt: Providers' Motivations and Experiences' *Nigeria Journal of Medicine* [2008] 17(1) 291.

[89] *Ibid* (n 79) 293.

[90] Elizabeth Adinma, 'Unsafe Abortion and its Ethical, Sexual and Reproductive Rights Implications' *West African Journal of Medicine* [2011] 30, 245.

The prevalence of unsafe abortion is attributable to poverty, social inequity, and denial of women's human rights.[91] Countries with restricted abortion or where abortions are clandestine and unsafe, its consequences to women's health are harmful, particularly for young, poor, and low-education women. Unsafe abortion is practiced using different methods such as use of oral and injectable items, vaginal preparations, intrauterine foreign bodies, and trauma to the abdomen.[92]

Unsafe abortion is entirely preventable. Yet, it remains a significant cause of maternal morbidity and mortality in much of the developing world. Over the past decade, the World Health Organization has developed a systematic approach to estimating the regional and global incidence of unsafe abortion and the mortality associated with it. Estimates based on figures for the year 2000 indicate that 19 million unsafe abortions take place each year, that is,[93] approximately one in ten pregnancies end in an unsafe abortion, giving a ratio of one unsafe abortion to about seven live births.

Almost all unsafe abortions occur in developing countries. Women who resort to unskilled or untrained abortion providers put their health and life at risk. Worldwide an estimated 68 000 women die as a consequence of unsafe abortion. In developing countries, the risk of death is estimated at 1 in 270 unsafe abortion procedures.[94] Where contraception is inaccessible or of poor quality, many women will seek to terminate unintended pregnancies, despite restrictive laws and lack of adequate abortion services. Prevention of unplanned pregnancies by improving access to quality family planning services must therefore be the highest priority, followed by improving the quality of abortion services, where legal, and of post-abortion care.

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[91] Irene Figa-Talamanca, 'Illegal Abortion: An Attempt to assess its Costs to the Health Services and its Incidence in the Community' *International Journal of Health Services* [1986] 16(3) 375-389.

[92] *Ibid* (n 96) 380.

[93] Jeffert Fortney, *The Use of Hospital Resources to treat Incomplete Abortions* (Macmillan Publication, 1981), 42.

[94] *Ibid* (n 98) 45.

The risks involved also depend on the availability of facilities for the treatment of complications. In some countries, it is not uncommon to find that half of all obstetric admissions are for complications of unsafe abortion,[95] which undoubtedly compromises other maternity and emergency services.[96]

Whereas a spontaneous or an uncomplicated abortion may require up to three days of hospitalization, complicated cases may need a hospital stay five times longer. The treatment of abortion complications in hospital consumes a significant share of resources, including hospital beds, blood supply, and medication, and often requires access to operating theatres, anaesthesia and medical specialists. Thus, the consequences of unsafe abortion place great demands on the scarce clinical, material and financial resources of hospitals in many developing countries.[97] Major social, financial and emotional costs are also incurred by the women who undergo unsafe abortion. Unsafe abortion is a serious concern to women during their reproductive lives. Contrary to common belief, the majority of women seeking abortion are married or live in stable unions and already have several children. They use abortion to limit family size or space births. They may resort to abortion in the event of contraceptive failure or because of the lack of access to modern contraception. However, in all parts of the world, particularly in urban areas, an increasing percentage of those having abortions are unmarried adolescents; in some urban centres, they represent the majority of all abortion seekers.[98]

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[95] Charles Westoff and Lilian Ochoa*, Unmet Need and the Demand for Family Planning* (Institute for Resource Development Publication, 1991) 12.

[96] Judith Cleland, *Relationships between Contraception and Abortion: A Review of the Evidence* (London Press, 2002) 14.

[97] Mary Anate, 'Induced Abortion in Ilorin' *International journal of gynecology and obstetrics* [1995] 49(2) 197-198.

[98] *Ibid* (n 94) 200.

4.3 Public Health Implementation of Abortion Laws

In Nigeria, abortion is generally illegal with severe penalties, except when performed to save the life of the mother. Both the person providing the abortion and the woman undergoing the procedure can face imprisonment if caught. This restrictive law has contributed to a high rate of unsafe abortions and maternal mortality.[99]

While abortion in Nigeria is highly restricted by law, the restrictive measures have led to a public health crisis with high rates of unsafe abortions and maternal mortality. There is growing advocacy for legal reform to address these issues and improve women's access to safe healthcare.

In Nigeria, the implementation of abortion laws is considered poor due to several factors, including legal ambiguity, restrictive laws and a lack of awareness about existing provisions. This leads to a high number of unsafe abortions performed by unqualified providers, resulting in significant maternal morbidity and mortality. Many women or providers avoid prosecution by staying hidden, but criminalization still produces fear among clinicians, who may refuse care even when the law would permit it. This has contributed immensely to the high rate of unsafe abortions.

Unfortunately, unsafe abortion contributes meaningfully to Nigeria's maternal morbidity and mortality burden; studies over time have put the number of unsafe abortions in the hundreds of thousands per year, with thousands of deaths and many more severe complications requiring hospital care.

4.4 Comparative Analysis of Abortion Laws

[99] Felix Okonofua, 'Attitudes and Practices of Private Medical Providers towards Family Planning and Abortion Services in Nigeria' *Acta Obstetricia et Gynecologica Scandinavica* [2005] 84(1) 270-280

Abortion laws vary significantly across the globe, reflecting diverse cultural, religious, and legal perspectives. Nigeria's laws are restrictive, typically allowing abortion only to save the mother's life, while other countries have distinct laws and prospects about abortion.

South Africa: In South Africa, the country enacted the choice on termination of pregnancy Act 1992, also known as "The Choice Act" on the 1st day of February 1997.[100] This legislation repealed the 1975 Abortion Sterilization Act. Section 2 of that Act specifies when it is possible to terminate a pregnancy.

They are provided as the following;

a. Upon request of a woman during the first 12weeks of the pregnancy.

b. From the 13 weeks up to and including the20th week of the gestation period if a medical practitioner after consultation with the pregnant woman is of the opinion that

i. The continued pregnancy would pose a risk of injury to the woman's physical or mental health; or

ii. There exists a substantial risk in that the fetus; would suffer from a severe physical or mental abnormality; or

iii. The pregnancy resulted from rape or incest; or

iv. The continued pregnancy would significantly affect the social or economic circumstances of the woman; or

c. After the 20 weeks of the gestation period if a medical practitioner with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy:

i. Would endanger the woman's life

ii. Would result in severe malfunction of the foetus, or

iii. Would pose a risk of injury to the foetus

[100] *Ibid* (n 82) 247.

In the case of a pregnant woman under the age of 18, the Act stipulates a medical practitioner or a qualified midwife to advise a woman to inform her parents, guardian, family or friends before having an abortion. This would not mean that she would not be allowed to terminate her pregnancy, if she refuses. Throughout South Africa, the option of terminating abortion was only legal in very limited cases until 1 February 1997, when the Choice Act came into force. A woman in South Africa whose pregnancy is under 13 weeks can get an abortion on a simple request for a clear reason. It is interesting that there is no explicit mention of abortion in the South African Constitution but two parts of the Bill of Rights address reproductive rights.[101]

Under section 12(2)(a) of the Constitution of South Africa 1996 provides that "Everyone has the right to bodily and psychological integrity, which includes: The right to make decisions concerning reproduction"

While *section 27(1) (a)* of the Constitution states that "Everyone has the right to have access to health care services, including reproductive health care.

In the case of *Christian lawyers Association v Minister of Health*,[102] an Anti-Abortion Organization challenged the validity of the choice on termination of pregnancy act on the basis that it violated the right to life in section 1162 of the Bill of Rights; the Pretoria High Court dismissed their argument, ruling that constitutional rights only apply to people and not to foetuses.

United States of America: In United States, From the 1973 *seminal Roe v Wade*[103] ruling of the Supreme Court and other later related rulings, the existing understanding of abortion by the US judicial system, is that abortion is a provision which is legal but can be limited to by

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[101] Allwell Cockrell, 'The South African Bill of Rights and the 'Duck/Rabbit' *Modern Law Review Journal* [2010] 2(1) 513-537.

[102] [1998] (4) SA 1113

[103] Alo Russo, '*Signs Abortion Bill into Law, Codifying Roe v. Wade*' available at <http://www.signs.abortionbillinto.com> accessed 20 June, 2025.

governments at state level. States have adopted laws banning late-term abortions, demanding parental consent for minors and demanding that risk information on abortion be made available to patients before operations are carried out.[104] While federal and state laws differ, legal access to abortion remains dependent by state.

Abortion is legal in every US State, with at least one abortion clinic in every State.[105] Abortion is a politically sensitive issue and it has been routinely attempted in most jurisdictions to regulate abortion. A case in Texas led to Supreme Court case of *Whole Woman's Health v. Hellersted*,[106] which removed a number of restrictions in Texas.

Minors and abortion matters are governed at the state level and 37 out of 50 states allow parental involvement either by consent or notification. In some cases, a court may remove the limitations on parenting[107]. The common guidelines on abortions include obligatory periods of waiting, compulsory ultrasound and recommended therapy. Abortion laws are usually tighter in conservative Southern States than in other parts of the country. In 2019 the Reproductive Health Act (RHA) was enacted in New York, which repealed a clause banning abortions in the third trimester, except in situations of the continued pregnancy causes a pregnant woman's life to be threatened.[108]

United Kingdom: The United Kingdom (UK) is a distinctive country that consists of four nations: England, Wales, Scotland, and Northern Ireland. The UK reproductive health laws are governed by the Abortion Act of 1967.[109] It is a statute of the United Kingdom that, on certain grounds and through the National Health Service (NHS), legalizes abortions by registered practitioners and includes tax- free coverage of such medical practices. This

[104] *Ibid* (n 84) 45.

[105] *Ibid* (n 84) 49.

[106] 410 U.S. 113 [1973]

[107] <https://pmc.ncbi.nlm.nih.gov/articles/PMC11086958/> accessed 17 August, 2025.

[108] Theophilus Okafor, *Rights, Choice and Pregnancy: A Comparative Analysis of Nigeria's Abortion Laws with other Jurisdiction* (Baze University Press, 2024) 292.

[109] *Ibid* (n 91) 294.

includes practices that would otherwise constitute offences under the 1861 Offences Against the Person Act (OAPA).[110]

Legalizing abortions by registered practitioners on certain grounds and regulating the tax paid provision of such medical practices through the National Health Service (NHS). The Abortion Act of 1967 makes lawful activities that otherwise would constitute a crime under the Offences Against the Person Act of 1861 (OAPA). For a woman, the OAPA makes it a crime to 'induce miscarriage', or to assist another woman to do so.[111]

Section 1(1) of the Abortion Act 1967 (as amended by the Human Fertilization and Embryology Act 1990) states that:

> "An abortion is legal if it is performed by a licensed medical practitioner (a doctor) and is approved by two doctors acting in good faith, on one (or more) of the following grounds (each having to agree that at least one and the same ground is satisfied):
>
> (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
>
> (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
>
> (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
>
> (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.[112]

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[110] Gabriel Sedgh, 'Unwanted pregnancy and associated factors among Nigerian Women' *International Journal of Family Planning* [2020] 3(1) 34.

[111] Stanley Henshaw, *The Incidence of induced Abortion in Nigeria* (Geneva Press, 2006) 34.

[112] *Ibid* (n 93) 20.

In a nutshell, abortion in the UK is legal. Abortions may be done in England, Scotland and Wales for the first 24 weeks of pregnancy. It must, however, be approved by two practitioners, who must agree that the child would be more likely to pose a higher risk to the woman's physical or mental health than terminating it. Before 1967, abortions were prohibited and abortions were only permitted to take place up to 28 weeks after the passage of the Abortion Act. In 1990, that was lowered to 24 weeks.[113]

4.5 Other International Perspective on Abortion

Globally, the routine use of rape as a weapon of war has become an increasing area of concern during conflicts. Sexual violence during conflict is used against civilians to demoralize, destroy, terrorize and even change the ethnic compositions of entire communities.[114]

In 2009, the widespread and systematic cases of sexual violence perpetrated against women and girls during armed conflicts was highlighted by the United Nations Secretary-General in his report to the Security Council. The UNSC noting its systematic and widespread rampancy has taken steps to ensure that this problem is addressed.[115]

The UN Human Rights Committee highlighted the importance of taking measures to protect women from all forms of gender-based violence, including sexual violence during conflict. In Nigeria, since the Boko Haram conflict began in 2009 more than 2.2 million persons have been internally displaced with over 20,000 civilians killed and as many as 7,000 women and girls abducted.[116]

Also, more than half of the internally displaced population are women and girls many of whom have been subjected to a myriad of reproductive rights violations including early and

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[113] < https://www.bbc.com/news/health-19856314> accessed 20 June, 2025.

[114] < https://phr.org/our- work/resources/the-use-of-rape-as-a-weapon-of-war-in-darfur-sudan/> accessed 5 August, 2025.

[115] Allen Radhakrishnan, 'Protecting Safe Abortion in Humanitarian Settings: Overcoming Legal and Policy Barriers' *Journal of Reproductive Health Matters* [2017] 25(1) 40-49.

[116] *Ibid* (n 115) 41

forced marriage, sexual and gender-based violence, unsafe abortions, avoidable maternal deaths and injuries etc, and this has made many countries of the world to relaxed their abortion laws in the form of reform and legalization.

Reports by humanitarian aid organizations indicate the aggravated physical consequences of sexual violence during armed conflict due to its linkage with increased rates of maternal mortality. Unwanted pregnancy occasioned by rape and adverse conditions which result from the conflict increases the risks defined by the baseline maternal mortality rate.[117] Furthermore, women who are denied abortions may resort to non-sterile or non-medical methods of interrupting their pregnancies which could lead to death, infection, scarring or sterilization.

In *Federation of Women Lawyers (FIDA-Kenya) & 3 ors v Attorney General Kenya & 2 ors*,[118] the court in its comprehensive ruling declared that women and girls have the right to the highest attainable standard of health – which right in its broadest interpretation can be subsumed to include mental and social well-being as well as such physical rights as the right to non-discrimination and the right to life amongst others. It also declared that abortion is permitted for victims of sexual violence.

Applying these decisions to the situation of women and girls in Nigeria's Northeast and Middle-Belt region, it is obvious that Nigeria's failure to fulfil its obligations amounts to a violation of their human rights.

In recent years there has been a growing consensus within human rights treaty monitoring bodies and national courts recognizing States obligations to ensure protection of the human rights of women, including within the context of abortion. In *KL v Peru*,[119] the Human Rights Committee found the State of Peru liable for the violation of the human rights of KL who was

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[117] Faith Agbaje, 'The objectified Female Body and the Boko Haram Insurgency in Northeast Nigeria: Insights from IDP Camps in Abuja' *African Journal of Security Review* [2020] 1(2) 6-8.
[118] [2019] EKLR, Petition No 266 of 2015
[119] Communication No. 1153/2003.

denied access to abortion. Similarly, in *KL v Peru*,[120] the CEDAW Committee in its decision, finding a violation of article 12 of CEDAW, lamented the lack of effective procedures to operationalize the law that allowed access to abortion, resulting in the arbitrary denial of access to abortion services by the authorities.

Although the extant penal provisions which criminalize abortion have an exception permitting abortion for the purpose of saving the life of a woman, they do not take into account state obligations under human rights standards related to issues of sexual and gender-based violence in conflict situations. Running through events that occurred during the Nigerian civil war which spanned the period 1967 to 1970, there are several documented accounts of sexual violence particularly rape perpetrated against women and girls by both state and non-state actors.[121] Although at the time the question of abortion did not form part of the considerations for rape victims, evidence indicates that children who were born from rape were stigmatized by members of their communities.

The current Nigerian reality related to abortion access for victims of sexual violence during conflict perfectly sums up the opinion expressed by an author,[122] that Africa is associated more with human rights problems and humanitarian crises than with their solutions, more with the need for international human rights law than its application and more with the failure of national law than with its success.[123] Whilst the ratification and domestication of various human rights instruments indicate capacity and willingness to ensure human rights protection, there is need for full implementation of these standards particularly during humanitarian crises.

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[120] *Supra*

[121] Ada Ihueze, 'Women and Violent Conflicts in Destination Biafra' *Journal of Theatre and Media Studies* [2016] 10(2) 1-22.

[122] Albert Pliny, *The Development of International Human Rights Law and Humanitarian Law* (Sweet & Maxwell, 2019) 203.

[123] *Ibid* (n 120) 204.

Current available evidence detailing the plight of women and girls in conflict situations indicate the need for a review of the provisions under the extant laws which deny women and girls access to safe abortion services as needed.

4.6 Challenges of Implementations of Abortion Laws

Implementing abortion laws faces several challenges, including logistical, social and legal hurdles. These challenges often stem from limited access to safe and affordable services, inadequate training for healthcare providers, and social stigma surrounding abortion.

Access to safe abortion is a human right and a critical component of the sexual and reproductive health and rights of women and girls. When women and girls are denied timely access to safe and effective abortion services, they are more likely to resort to unsafe means. Unsafe abortion occurs when a pregnancy is terminated either by those lacking the necessary skills, or in an environment that does not conform to minimal medical standards or both.[124]

Access to safe abortion is contingent on legal, regulatory, policy, programmatic and socio-economic systems, which are complex and interconnected. These systems often cause barriers, which may determine if and when women and girls can terminate their pregnancy safely.[125]

Barriers or challenges to the implementation of abortion laws and safe abortion are far reaching and include the following:

Limited access to services: many regions lack adequate healthcare infrastructure, particularly in rural areas making it difficult for women to access abortion services.

Shortage of trained providers: A lack of healthcare professionals trained in providing safe abortion care, including counseling and post-abortion care, is a significant barrier.

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[124] Adeloye Rafiu, Unsafe Abortions Causes 20,000 Deaths a Year in Nigeria, available at: <https://doi.org/10.1136/ bmj.325.7371.988/d> accessed 4 August, 2025.
[125] Ibid (n 113).

Stigma and social pressure: social stigma surrounding abortion can discourage women from seeking care and can lead to inadequate support from healthcare providers and community members.

Religious and moral objections: healthcare providers who hold personal or religious objections to abortion may refuse to provide services, even when the abortion is legally permissible. Also, cultural norms and beliefs about abortion can create barriers to accessing services and perpetuate stigma.

Lack of awareness: limited awareness among women about their reproductive rights and the availability of safe abortion services can lead to delays in seeking care or resorting to unsafe procedures.

Conflicting legal interpretations: Differing interpretations of the provisions of abortion laws and regulations can create confusion and uncertainty for healthcare providers and women seeking care.[126]

Lack of adequate enforcement: even when laws are in place, inadequate enforcement of the laws can lead to unsafe practices and lack of accountability.

4.7 Analysis of Reforms and Prospect of Abortion Laws

Nigeria's abortion laws are highly restrictive, permitting abortion only to save a woman's life. While this law is intended to protect the sanctity of life, it has been linked to high rates of unsafe abortions and maternal mortality due to women seeking clandestine procedures from unqualified providers.[127]

There is a growing advocacy for reform, with calls to liberalize abortions to allow for a broader circumstance, such as rape, incest, or fetal abnormalities, and to address the public heath crisis of unsafe abortions.

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[126] *Ibid*, (n 125)

[127] Folashade Rose Adegbite, 'Rethinking Abortion laws in Nigeria: The Trauma of Rape Victims of Boko Haram' *African Human Rights Law Journal* [2021] 21(1) 103-105.

Many have argued that the abortion laws in Nigeria are purely restrictive in nature and should be reformed, because it is seen as a violation of women's rights and a contributing factor to high maternal mortality rates. These rights include the right to privacy, bodily autonomy and access to healthcare.[128]

High rates of unsafe abortions performed by unqualified providers result in significant morbidity and mortality among women, and the very need for safe abortion services. The possibility of severe fetal abnormalities is another reason why abortion laws should be reformed, as the birth of a child with serious health issues can be detrimental to both the child and family.

The high rate of insecurity in Nigeria has increased the rate of rape and unwanted pregnancies. One of the aftermaths of the severe rape and sexual assault by Boko Haram for instance, is unwanted pregnancy. Ordinarily, pregnancy should be a planned occurrence or at least the consequence of a conscious and consensual choice, but when it occurs as a result of unplanned, tragic or even traumatic actions such as rape, the trauma can be both lifelong and inoperable.[129] The concern is, since the initial abduction by Boko Haram is a failure on the part of the Nigerian state government to provide adequate safety and security for the victims, as a result of which they were subjected to such humiliating experiences, whether the trauma should be continued by disallowing the victims to exercise their rights to either keep the pregnancy or have it aborted.[130]

As the current legal framework fails to provide for such instances, the question arises as to whether the law should be expanded to accommodate the exercise of sexual and reproductive

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[128] *Ibid,* (n 112) 105.

[129] Thompson Macfarlan, They turned Me into a Sex Machine: Woman made pregnant by Boko Haram Rapist reveals her Horror, available at: <https:///www.dailynewspaper/2015> accessed 4 August, 2025.

[130] *Ibid* (n 114).

rights in this direction. In view of the current realities, grounds for reforming the abortion laws are very cogent and germane.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

Abortion in Nigeria is a complex issue, as its practice is not morally supported and the laws on abortion in Nigeria unlike some other jurisdictions like America and United Kingdom, are restrictive in nature and puts penal sanctions against anyone found culpable. That is, the Nigeria law does not condone abortions for any reason whatsoever, except where it is to save the life of the mother where such pregnancy can be fatal to her health. Not only does it not condone this practice, the law also punishes a person who partakes in the carrying out of an abortion, in line with the Nigerian criminal and penal laws. This position of Nigerian laws as regards abortion has triggered a lot of agitations that abortion practices in Nigeria should be less restrictive as such is an infringement to women's reproductive rights under the laws in Nigeria and across the globe. [131]

In the course of carrying out this research, the following findings were made:

(a) It is discovered that in Nigeria unlike some countries, the laws forbid the practice of abortion and attaches penal sanctions against anyone found capable of the practice, except in a compelling situation of saving the life of a mother.

(b) It is found out that abortion is one of the numerous contemporary issues that undermine the sanctity and value of human life; for it involves terminating a pregnancy by removing a fetus or embryo before it can survive independent of the uterus, or killing the fetus inside the uterus.

(c) It is also discovered in the course of carrying out this work, that the beyond saving the live of a pregnant mother, which is the only compelling circumstance in Nigeria

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[131] David Blanchard, *The Anti-Abortion Movement and the Rise of the Religious Right* (Twayne Publishers, 1995) 15.

where abortion is legalized, the main aims of legalization of the Nigerian abortion law should be to strengthen healthy maternity life by removing deaths and the risks of unsafe abortion and to raise the dignity and sacrosanctity of human life.

(d) It is also found out that in addition to the international laws that call for better reproductive health, even the African Protocol on Rights of Women, of which Nigeria is party to, Nigeria still has not made any adjustments to its abortion laws to fit into today's modern society.

(e) The laws governing abortion vary between northern and southern Nigeria, with different penalties for providers and women seeking abortions.

5.2 Recommendations

In an effort to achieve the objectives of this research work, and solve the problem(s) that necessitated this study, the following recommendations are expedient:

1. It is recommended that the National Assembly should amend the abortion laws in Nigeria so as to legalize abortion practice as it is practiced in other countries.
2. To ensure that the restriction of abortion in Nigeria does not impact women's reproductive rights, it is recommended that there should be increase to access to affordable and effective family planning, reducing unintended pregnancies and the subsequent need for abortions.
3. To prevent challenges in implementing abortion laws in Nigeria, it is recommended that government should launch public education campaigns to raise awareness about abortion laws, reproductive health, and available services.

5.3 Contributions to Knowledge

This research work contributes to the existing body of knowledge on the practice of abortion in Nigeria by providing a comprehensive analysis of the legal, social, and health-related

factors influencing abortion practices in the country. The study's findings offer valuable insights into the complexities surrounding abortion, shedding light on the prevalence, safety, and accessibility of abortion services, as well as the socio-demographic characteristics of women seeking abortions.

5.4 Areas of Further Studies

Further studies in the following areas will be imperative in understanding and appreciating the topic of this research:

(a) Analysis of trends and patterns in abortion rates, safety, and complications over time

(b) Critical examination of regional variations in abortion prevalence and safety within Nigeria

(c) Critical examination of the impact of cultural and religious factors on abortion attitudes and practices

(d) Evaluating the quality and accessibility of post-abortion care services and the likely barrier in Nigeria

5.5 Conclusion

Laws that refuse access to abortion both vilify and threaten the right of women to make responsible decisions about their bodies and lives. A restriction on abortions does not lead to fewer abortions, but contributes mainly to illegal abortions that are more harmful and raise maternal mortality.

Passing a liberalized legislation is only the beginning of the availability and safety of abortion. Anyone naive, vulnerable and poor can be affected by unwanted pregnancy. The promotion of access to safe and legal abortion will certainly save the lives of women and strengthen equality between women and men. Many women suffer from conditions related to pregnancy, such as haemorrhage or obstructed labour and it is only women who have to live with these physical consequences. Therefore, women are vulnerable to health risks that men do not face.

Nigeria is in the right position to draw from the experiences of other developing countries within the African continent as well as other developed countries around the world. We should strive to push for abortion law reforms that are socially and medically responsive to the yearnings and needs of the modern Nigerian society. Laws are meant to protect the interest and wellbeing of the people in the society. Our present laws do not do these, but instead the opposite. Change, therefore has to be made urgently to meet up with modern society.

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