



Sexual Slavery and Insurgency in Nigeria: Combating the Hurdles of Prosecution

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Abstract. Nigeria has in recent years, recorded an increased number of cases of sexual violence in armed conflict, mainly within the Northern region of the country. This is mainly a result of the activities of the Boko Haram armed group, with so much destructive effect on women and girls within that region. This paper examines the surge of sexual violence during armed conflict in Northern Nigeria, primarily driven by Boko Haram's war, its psychological and physical toll on women and girls, and the persistent failure of the Nigerian legal system to hold perpetrators accountable. The authors further argue that this failure stems from outdated laws, lack of political will, and the absence of specialized legal frameworks. They assert that this impunity emboldens continued violence. The paper concludes that Nigeria must urgently reform its legal system to criminalize conflict-related sexual violence and establish special courts for effective prosecution, thus, ensuring justice for victims and survivors and by extension deterring future violations.

Keywords: Sexual Slavery, Hurdles, Prosecution, Insurgency, Legal framework

1. Introduction

Insurgency as of today constitutes a big threat to international peace and security, and at the same time forms the biggest contributor to humanitarian challenges across the globe. Most of the insurgent group operations are diverse forms, including but not restricted to bombing, sexual violence, abduction of young school girls and adult women, forced marriage, forced pregnancy and the destruction of lives and property.¹ The crime of sexual violence committed against women during periods of armed conflict is just as old as the history of warfare itself.² Thus, for several decades, the bodies of women and young girls were considered as victor's spoils, booty of warfare, collateral damage, for both military and non-state actors alike. Women's bodies were also considered a good incentive for enlisting soldiers into fighting forces. Women and girls, generally suffer from war related sexual crimes such as rape, sexual slavery, forced pregnancy and other brutal forms of sexual and gender-based crimes during periods of armed conflicts. Generally, rape and other forms of sexual violence is traditionally subsumed in a culture of silence, a situation wherein victims reluctantly want to talk about it, and society on the other hand pretends that such crime does not exist.³ Consequently, the crime is either completely unreported, unprosecuted or

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¹ Adetunde Musbau, "Effects of Boko Haram's Insurgency and Violence on

Women in North-Eastern Nigeria, (2022) Vol. 4, No. 1&2, *Veritas Journal of humanities*, at 29

² Christiana Attah, "Boko Haram and sexual terrorism: The Conspiracy of Silence of the Nigerian anti-terrorism laws" (2016) Vol 16 *African Human Rights Law Journal*, at 387

³ *ibid*

unpunished, thus leaving the victims who are predominantly women and girls to languish in suffering without any form reparations or justice.⁴

Interestingly, the Rome statute of the International Criminal Court (ICC) has recently in articles 6, 7, and 8 acknowledged that sexual violence committed during armed conflict constitute crimes of genocide, war crime or the crime against humanity.⁵ This is clearly buttressed following the United Nations Security Council declaration of the various sexual abuses which took place in the former Yugoslavia in 1992 including the systematic rape and detention of women as international crime. By this affirmation, there is now a massive awareness and adjudication of sexual violence committed in wartime across the international community.⁶ Subsequently, the United Nations figured out in 2017 about 40 parties in 10 different conflicts who committed rape and other forms of sexual violence, some of the parties were pinpointed as insurgent groups obviously as a result of their affiliation with the Islamic States and al Qaeda.⁷ It is important to note that wartime sexual violence is often committed against women and men respectively, although sexual violence against men seems to be silent, unreported and unprosecuted owing to issues relating to shame and stigma.⁸

For proper elucidation of the subject matter under review, this article is divided into eight parts including the introduction. Part one of the paper deals with the

historical perspective of Boko Haram operations in Nigeria. Part two, on the other hand x-rays motives behind the use of sexual violence by the insurgent group. Part three, reviews the nature and effects of sexual violence by the Boko Haram group, this part also examines account and personal experiences of victims of sexual violence committed by the Boko Haram Sect. Part four, Captures the legal frameworks for combating sexual violence in Nigeria. Part five, similarly, deals with the Challenges in prosecuting cases of sexual violence during insurgency in Nigeria. While Parts six, seven and eight includes the way forward, recommendations together with the concluding remarks.

1.1 Historical Perspective of Boko Haram Operations in Nigeria

Boko Haram, a militant Islamist/jihadist group, has its ideology firmly rooted in the strict interpretation and application of Islamic law, known as *Salafism*.⁹ The group believes that Western education and values which the Nigerian state has embraced are incompatible with Islam and promotes secularism. Moreover, the recent manifestations of this militant Islamist group can be traced to a long-standing internal conflict within Islam over the proper interpretation and application of Islamic law.¹⁰ Boko Haram stated operation in Nigeria 2009 as a local peace militia and subsequently metamorphosed into a violent group in 2010 just as soon as its leaders were killed.¹¹ The

⁴ Beth Stephens, "Humanitarian Law and Gender Violence: An End to Centuries of Neglect" Hofstra Law and Policy Journal vol. 87, (1999), p 89, available at Scholarship. Law. stJohns.edu/chi/viewcontent.cgi?article=1032&content=jcr, accessed August 15, 2024.

⁵ Rome Statute of the International Criminal Court, ICC, 1998, available at https://en.m.wikipedia.org/wiki/Rome_Statute, accessed August 15, 2024.

⁶ Akpoghome, T and Awhefeada, U. "Challenges in Prosecuting Sexual Violence in Armed Conflict under the Nigerian law" Beijing law Review, vol. 11, No. 1, March 2020, p. 2.

⁷ Ibid

⁸ Nwaogu Dandy, "The Effects of Excluding Men from International and Regional Instruments of Protection of Sexual

Violence, BIU Law Journal (2021) vol. 5, p. 258

⁹ Matfess, Hilary. "Boko Haram: History and Context." *Oxford Research Encyclopedia of African History* (2017). Available at <https://oxfordre.com/africanhistory/display/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-119> accessed September 22, 2024. Salafism is a conservative form of Islam that advocates a strict adherence to the Quran and the Sunnah (the teachings and practices of the Prophet Muhammad). Salafis believe in returning to the "pure Islam" of the first three generations of Muslims and forbids religious innovations that deviate from this original understanding.

¹⁰ Ibid

¹¹ Adetunji Musibau, "Effects of Boko-Haram's Insurgency and Violence on Women in North-Eastern Nigeria" (2022) Vol. 4, No. 1 &2, *Veritas Journal of Humanities at 29*

group started its operation in Maiduguri, Borno state of Nigeria, by Mohammed Yusuf, a controversial preacher whose teachings advocated against Western education and government service, asserting that these were forbidden by the Quran. Originally known as Jamā'at Ahl al-Sunnah li-l-Da'awah wa al-Jihād (People Committed to the Propagation of the Prophet's Teachings and Jihad) the group became colloquially referred to as Boko Haram, which translates to "Westernization is Sacrilege" or "Western education is a sin," due to its teachings and lifestyle.¹²

Yusuf's vehement and confrontational critiques of sharia law's implementation led to conflicts with other religious groups and political communities. Despite its hostility to the government and repudiation of Western education, the group was generally peaceful until 2010. In July 2010, a violation of helmet regulations by a group of Boko Haram members escalated the already existing tensions between Boko Haram and the Nigerian government.¹³ Following the attacks on police stations in Bauchi and Yobe states by Boko Haram members, the Federal government launched a brutal counterinsurgency operation through the Joint Military Task Force. This operation resulted in the deaths of over 700 Boko Haram members and the capture of Mohammed Yusuf, the group's leader.¹⁴ Yusuf was subsequently assassinated by security

forces. Many believed that his death would mark the end of insurgency in Borno state. However, this proved to be short-lived, as Boko Haram re-emerged stronger under the leadership of Abubakar Shekau, the deceased leader's deputy.

Under Shekau's leadership, Boko Haram's tactics became increasingly aggressive, and its grievances expanded to include broader societal issues, directly confronting the Nigerian government and those who did not conform to its strict interpretation of Islamic law. Boko Haram's resurgence was accompanied by a series of violent attacks, including the Bauchi Prison break in 2010,¹⁵ the 2011 Christmas bombings in Jos and Maiduguri¹⁶, the January 2012 attack on government offices and police station.¹⁷ Despite the government's designation of Boko Haram as a terrorist organization and its concerted efforts to suppress the group's violence,¹⁸ Boko Haram persisted in its campaign of terror, shifting its focus to schools in order to discourage Western education in the Northeast.¹⁹ This led to a surge in the abduction of staff and students of Western educational institutions and government agencies, culminating in the infamous Chibok schoolgirl's abduction and subsequent incidents like the Damasak,²⁰ Dapchi, and Birnin Yauri school abductions.

¹² Atoi Ewere: Boko Haram Religious Fundamentalism and Western Education in North-East Nigeria. Available at http://1671639371_boko-haram-religious-fundamentalism-and-western-education-in-north-east-nigeria.pdf accessed September 22, 2024.

¹³ Yusuf's followers believed that helmets clashed with their proper religious headwear. Hence, preventing the pure practice of Islam.

¹⁴ Ibid 1

¹⁵ Scott Stearns: Gunmen Stage Massive Prison Break in Northern Nigeria. Available at <https://www.google.com/amp/s/www.voanews.com/amp/nigeria-says-732-inmates-freed-in-attack-on-prison--102422549/155762.html> accessed September 22, 2024.

¹⁶ Al Jazeera "Nigeria churches hit by blasts". Available at <https://www.aljazeera.com/news/2011/12/26/nigeria-churches-hit-by-blasts/> accessed September 22, 2024.

¹⁷ United States Institute of Peace: What Is Boko Haram?

¹⁸ Usman Talatu, Jonathan officially declares Boko Haram a terrorist Organisation. Premium Times Newspaper. June 4, 2013. Available at <https://www.premiumtimesng.com/news/137586-jonathan-officially-declares-boko-haram-a-terrorist-organisation.html?tztc> accessed September 22, 2024.

¹⁹ The February 2014 attack on male college students in Yobe state. Adam Nossiter : Islamist Militants Blamed for Deadly College Attack in Nigeria. New York Times. 25 February 2014. Available at <https://www.nytimes.com/2014/02/26/world/africa/dozens-killed-in-nigeria-school-assault-attributed-to-islamist-militant-group>. accessed September 22, 2024.

²⁰ About 400 women including children were abducted on November 24, 2014 from Damasak a town in Borno state by Boko Haram militants. Human Rights Watch, "Nigeria: A Year On, No Word on 300 Abducted Children." Available at

What began as a reformist religious community metamorphosed to one of the deadliest terrorist groups in the world.²¹ And a formidable threat to the country's security and stability and its influence is likely to persist for years to come if urgent and drastic steps are not taken by the Nigerian government to stop the operation of the group.

It must be noted that conflict related sexual violence has to do with any form of sexual violence, including rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and other comparable acts committed against men, women and children which is directly or indirectly linked to an armed conflict.

Under international law, conflict related sexual violence is considered to be a war crime, crime against humanity, crime of torture. Such violence can also constitute an act of genocide.²²

1.2 Motive of Operation

While no single reason is sufficient to justify or explain Boko Haram's motives for its operation, a combination of religious, socio-economic, and political aspirations plays a significant role in this regard. At its onset, the sect fought for the implementation of Sharia law in Borno state and ultimately, aimed for the Islamization of Nigeria. They believed that Western education and values erode traditional Islamic beliefs and customs. Thus, they aimed to purge the country of these foreign influences and establish an Islamic state through every possible means including violent attacks which they believed was a proof of religious commitment.²³ They also drew inspiration from the numerous rewards that await them in paradise if they die (as martyrs) while fighting for Allah through their terrorist acts. The group considered anyone who combined Islamic principles

with Western cultures including Muslim leaders, as infidels who should be re-Islamized and failure to respond requires that they be put to death.²⁴

Although the election of pro-sharia politicians may have addressed some concerns related to religious governance, it did not fundamentally address the underlying socio-economic challenges and poverty faced by many communities in the northeastern region. These socio-economic grievances including unemployment, corruption, insecurity, economic deprivation and exacerbated inequality between the poor and the rich led to easy recruitment or radicalization and devout participation of Boko Haram members in terrorism. Members of the sect believe that the youths were being deprived of what rightly belongs to them by unjust and ineffective government, citing embezzlement, diversion and misappropriation of funds as key examples. They saw overthrowing the government and establishing an Islamic state as a means to install Sharia and purge the country of these challenges. Boko Haram leader Yusuf established community support systems an initiative that provided employment and essential services for his members which was neglected by the government.²⁵ Further incentivizing participation, the group offered abducted women and girls to fighters as rewards, mitigating the financial burden of marriage.

The group was further motivated by some political events culminating from their insistence on the implementation of Sharia law, to the shift in power to the South (emergence of Goodluck Jonathan as the president after the death of Mohammed Buhari Northern Muslim).

They believed that Jonathan's emergence as the president was a planned marginalization of the North despite the "political arrangement" to alternate the presidency between Southern Christians and Northern

<https://www.hrw.org/news/2016/03/29/nigeria-year-no-word-300-abducted-children> accessed September 27, 2024.

²¹ K. Pisa and T. Hume, "Boko Haram Overtakes ISIS as World's Deadliest Terror Group, Report Says," CNN, November 19, 2015.

²² A Conflict Related Sexual Violence {CRSV} Survivor's Journey, available at <https://www.un/en/exhibits/exhit/conflictrelated-sexual-related-sexual-violence-crsv-survivors-journey-15-year#:textthe%20term%20%E2%80%9CConflict%2Drelat>

ed%20sexual,that%20is%20directly%20or%20indirectly accessed July 21 2025.

²³ Institute for Security Studies. (2014). Is Kenya's response to terrorism making it worse? Available at <https://issafrica.org/about-us/press-releases/is-kenyas-response-to-terrorism-making-it-worse> accessed 22 October, 2024.

²⁴ Matfess, H. Boko Haram: History and Context. Oxford Research Encyclopedia of African History. Oxford University Press 2017.

²⁵ Ibid.

Muslims.²⁶ Their willingness /quest to challenge the legitimacy and administration of Jonathan's presidency drew and motivated some of its members to support insurgency against the federal government.

2. The Nature and Effects of Sexual Violence committed by Boko Haram.

Sexual violence encompasses any unwanted sexual contact, comment, or act committed without consent.²⁷ This reprehensible act is often employed as a weapon of war, a means of personal violation, and an expression of misogyny.²⁸ With Boko Haram's resurgence in 2010 came increased radicalization and violence, majorly characterized by the mass abduction and victimization of women and girls. Exploiting existing gender power imbalance in Northern Nigeria, Boko Haram insurgent's subjected abducted females to various forms of sexual violence, including gang rape, forced marriage, and sexual servitude. Refusal of sexual demands often resulted in punishment and torture; in some cases, victims were gang raped on camera and subsequently executed.²⁹ A major effect of the Boko Haram abuse on women is the psychological trauma they are subjected to as a result of rape and other forms of sexual violence. Since the women are sexually abused without their consent, they are stigmatized, leading most of the women to commit suicide. Another such effect includes health challenges, in this regard, the women suffer the risk of sexually transmitted diseases like HIV/AIDS and other such similar transmittable diseases.

2.1 Victim's Account and Experiences

Horrific accounts of victims/ survivors who escaped or were rescued by the Nigerian army have illuminated

the brutal nature of the sexual abuses perpetuated by the group.

The following are excerpts from the victims' testimonies detailing the level of sexual violence they endured by victims:

Dada was only 11 years old and had not yet begun menstruating when she was abducted by Boko Haram militants. She was presented to a group of fighters and a man she had never met. Following a brief prayer ceremony, she was informed that she was married to him and taken to his hut. "I started thinking, 'How can they marry me? I am too young,'" she recounted. Several months later, she became pregnant. "I never knew what pregnancy was, only that my belly was growing bigger."³⁰

Jummai attempted to escape with her sister and children, but the insurgents found them and raped Jummai in front of her children. Fearing the insurgents would return, the women fled to a crowded displacement camp. There, Jummai discovered she was pregnant with twins.³¹

At just 16, *Haleema* was kidnapped and forced into marriage. Upon her escape, she discovered that she was pregnant by her Boko Haram husband.³² Hauwa was 14 when the militants invaded their home in search of her older brother. Unable to find him, they demanded her father's hand Hauwa to be married. When her father declined their demand, the insurgents killed him along with Hauwa's stepmother and subsequently abducted Hauwa to Sambisa Forest. There, she was coerced into marrying an insurgent and subjected to repeated sexual assault by her husbands

²⁶ Moss Kelly "Nigerian terror: The Rise of Boko Haram" (2018). Available at <https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article%3D1576%26context%3Dhonors201019&> accessed

²⁷ World Health Organization (2002) World Report on Violence and Health. Available at <https://www.who.int/publications/i/item/9241545615> accessed 22 October, 2024.

²⁸ CE Attah 'Boko Haram and sexual terrorism: The conspiracy of silence of the Nigerian antiterrorism laws' (2016) 16 African Human Rights Law Journal 385-406.

²⁹ Akukwe, O. Chibok Girls, Boko Haram and the Jihad of the Penis. Available at

<https://www.modernghana.com/news/555154/chibok-girls-boko-haram-and-jihad-of-the-penis.html> accessed 20 December 2024.

³⁰ Baker Aryn, Boko Haram: Nigeria struggles to absorb thousands more traumatized children now returning from brutal captivity. Time Magazine. 27 June 2017. Available at <https://time.com/boko-harams-other-victims/> accessed 20 December 2024.

³¹ Ibid

³² Elbagir Nima 'Boko Haram kidnap victim: Stigmatized for carrying captor's baby'. Available at <https://edition.cnn.com/2015/06/11/africa/boko-haram-pregnant-victim/index.html> accessed 20 December 2024.

and other men within the camps, enduring treatment akin to a common slave.³³

Aisha, a 19-year-old girl was abducted by Boko Haram militants while attending a friend's wedding. During her three months in captivity, she was subjected to repeated sexual violence, including gang rapes. She was forcibly trained in the use of firearms, bomb detonation, and village attacks.³⁴ Yazan Imra, then 18, was abducted from Gambarou, a border town between Nigeria and Cameroon, and taken to a terrorist hideout. During her two years of captivity, Imra was sexually abused and gave birth to a child who is now 16 months old.³⁵

Hamsatu, now 25, endured seven months of sexual slavery at the hands of Boko Haram. Upon reaching the Sambisa Forest, she was assigned to a small hut. Days later, a fighter, whose name she never learned, entered the hut, recited a prayer, and declared them married. The ensuing months were marked by consistent Hamsatu reports being raped almost daily, both by this fighter, whom he considered her "husband," and by a rotating group of other fighters who visited the hut each evening. These acts of violence often occurred in silence, with the men forcibly removing her headscarf and raping her on the hut floor. Approximately two months into her captivity, Hamsatu became pregnant.³⁶

Rosemary, abducted prior to the Chibok abduction, reported that she was subjected to sexual assault by over seven men on a daily basis for more than two months.³⁷

During periods of insurgency in Nigeria, rape has been effectively employed as a weapon of terror. Despite the existence of laws criminalizing rape, perpetrators often face no legal consequences. Boko Haram exemplifies this, where forced marriages were merely a pretext to legitimize repeated sexual assault. Marriages to Boko Haram insurgents were meaningless designation meant to give religious sanction to repeated rape. While the group's ideology ostensibly focuses on opposing the Nigerian government, evidence suggests that a pervasive desire for sex, violence, and terror significantly fueled their campaign.

The experiences of these victims and survivors strongly support the conclusion that Boko Haram insurgents utilized rape, forced marriage, and sexual servitude as troop incentives: to reward and motivate fighters, a unifying force: to foster a sense of unity among Boko Haram members, opportunistic exploitation: to gratify the desires of individual fighters, ideological perpetuation: to indoctrinate and control its victims and as an instrument of terror: to inflict psychological and physical trauma on the population.³⁸

3. Legal Framework on Sexual Violence in Nigeria.

Sexual violence has become a disturbingly prevalent feature of insurgencies in Nigeria. While the atrocities committed by Boko Haram are well documented, and numerous domestic and international legal frameworks exist to protect women from sexual violence, the lack of prosecutions of Boko Haram

³³ AE Petri, "These Girls Escaped Boko Haram. Now They're Sharing Their Stories." Available at <https://www.nationalgeographic.com/photography/article/boko-haram-survivors-visit-dc> accessed 20 December 2024.

³⁴ Amnesty International : Chibok two years on: Remembering all Boko Haram's victims. Available at <https://www.amnesty.org/en/latest/news/2016/04/chibok-two-years-on-remembering-all-boko-harams-victims/> accessed 20 December 2024

³⁵ Kindzeka, M. Sex slaves for Boko Haram. Available at <https://www.google.com/amp/s/amp.dw.com/en/cameroon-sex-slaves-for-boko-haram/> accessed 20 December 2024.

³⁶ Kevin Seiff "They were freed from Boko Haram's rape camps. But their nightmare isn't over". Available at <https://www.smh.com.au/world/they-were-freed-from-boko-harams-rape-camps-but-their-nightmare-isnt-over-20160404> accessed December 20, 2024.

³⁷ Ibid 19.

³⁸ Nossiter, A. Boko Haram militants raped hundreds of female captives in Nigeria' The New York Times 18 May 2015. Available at <https://www.nytimes.com/2015/05/19/world/africa/boko-haram-militants-raped-hundreds-of-female-captives-in-nigeria.html&ved=> accessed 20 December 2024.

members for such heinous crimes is a concern to many including the authors of this paper.

Although these legislations do not explicitly criminalize sexual violence during insurgencies, the rape provisions in these legislations could present avenues for prosecuting members of Boko Haram for sexual violence. This analysis outlines key elements of legislations that can be utilized to bring perpetrators of sexual violence during insurgency to justice.

3.1 Constitution of the Federal Republic of Nigeria 1999 (as amended 2011)

Chapter IV of the Nigerian constitution guarantees the fundamental human rights of the citizens. Section 34 of the Constitution specifically provides that:

- 1) Every individual is entitled to respect for the dignity of his person, and accordingly-
 - a) No person shall be subject to torture or to inhuman or degrading treatment.
 - b) No person shall be held in slavery or servitude; and
 - c) No person shall be required to perform forced or compulsory labor.

By subjecting their abductees to various degrees of sexual abuse, forced labor and sexual slavery, Boko Haram militants violated the fundamental human rights of these women. Hence, this provision can be relied on in prosecuting members of the sect who have been apprehended for sexual violence.

3.2 Violence against Persons Prohibition Act, 2015 (VAPPA)

This Act seeks to prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims. Section 1 of the VAPP Act provides that a person commits the offence of rape if:

- i) He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
- ii) The other person does not consent to the penetration; or
- iii) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or

addictive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

Section 2(1) of the Act further provides that where the offender is found culpable under section 1, he would be sentenced to life imprisonment. Where the offender is less than 14 years, the punishment is a maximum term of 14 years imprisonment.³⁹ In cases where the offender is above 14 years, the Act provides for a minimum of 12 years imprisonment and for gang rape, the offenders are liable jointly to a minimum term of 20 years without an option of fine.⁴⁰ The Act also recommends the award of appropriate compensation to the victim by the court and mandates that a register of convicted sexual offenders be maintained and accessible to the public.⁴¹

3.3 Criminal Code Act.

The Criminal Code,⁴² The Act is applicable to the southern states in Nigeria. By virtue of Section 357 of the Code, a person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false act, or, in case of a married woman, by impersonating her husband is guilty of an offence called rape. Section 358 provides the punishment for rape which is life imprisonment.

The Criminal Code also criminalizes indecent assault of females, abduction including the abduction of females under sixteen years.⁴³ By virtue of section 63, the code also creates the offence of statutory rape it provides that; it is immaterial that the offender/perpetrator believed that the girl is 16 years or above the age of 16 years or that carnal knowledge of the girl took place with the girl's consent or at her suggestion. Also, section 225 prohibits the abduction of girls under 18 with intent to have carnal knowledge.

3.4 Penal Code

The Penal Code of 1960 applies to the Northern states of the federation. Section 282(1) the Penal Code provides for the offence of rape. It states that: A man is said to commit rape, who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances:

³⁹ Section 2(1)(a) VAPPA 2015.

⁴⁰ Section 2(1)(c) VAPPA 2015.

⁴¹ Section 4 VAPPA 2015.

⁴² CAP C38 LFN 2010

⁴³ Section 360-362 Crime code Act

- a) Against her will;
- b) Without her consent;
- c) With her consent, when her consent has been obtained by putting her in fear of death or of hurt;
- d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married;
- e) With or without her consent when she is under fourteen years of age or of unsound mind.

By virtue of Section 283 of the Penal code whoever commits rape shall upon conviction be sentenced to life imprisonment or for any less term and shall also be liable to a fine. Under section 283 of the code, rape is still committed even where the girl consents if she is below the age of 14 years or of unsound mind. Furthermore, any consent given by a girl below 16 to her guardian, teacher or any person entrusted with her care or education is deemed invalid.

However, section 282(2) introduces a marital exemption, stating that sexual intercourse between a husband and wife is not considered rape if the wife has reached puberty. This provision raises concerns, as it could potentially be exploited to justify forced marriages. True consent in marriage necessitates the voluntary and willing participation of both parties.

3.5 Child Rights Act.

The Child's Rights Act (2003) unequivocally prohibits all forms of child sexual abuse. The Act defines a child as any person under the age of eighteen (18). Section 31 provides that no person shall have sexual intercourse with a child and a person who has sexual intercourse with a child commits an offence of rape and is liable on conviction to imprisonment for life. According to subsection 3, where a person is charged with an offence under this section, it does not matter that, (a) the offender believed the person to be of or above the age of 18 years; or (b) the sexual intercourse was with the consent of the child. A child cannot give consent under the law.

Section 32 further provides that a person who sexually abuses or sexually exploits a child in any other manner not specifically mentioned in that part of the CRA commits an offence and is liable on conviction to imprisonment for a term of 14 years.

In this light, the authors argue that instead of prioritizing amnesty and de-radicalization programs for "repentant" Boko Haram members, justice should be dispensed to survivors by holding perpetrators accountable for their crimes, particularly those involving sexual violence, which are clear violations of several Nigerian legislations. The voices and opinions of victims must be central to any considerations regarding justice, reconciliation and reintegration. Granting amnesty signals permissiveness for sexual violence and even if granted, should be strictly limited to participation in armed conflict and should not extend to the grave crimes of sexual violence.

4. Challenges in prosecuting cases of sexual violence during insurgency in Nigeria.

The establishment of the International Criminal Court (ICC) has in no small way enhanced the opportunity of prosecuting perpetrators of the crime of sexual violence within the international community. Similarly, the adoption of Resolution 1325 in 2000 by the United Nations Security Council also further created awareness on the prosecution and punishment of the crime of sexual violence.⁴⁴ However, it must be noted that despite the chances created by the ICC and adoption of other important resolutions by the UNSC just a very few perpetrators have been tried and punished by international courts and tribunals for crimes of sexual violence either as war crime, crime against humanity, or genocide, sadly, amongst the few that have been tried only one or two were found guilty and convicted.⁴⁵ Part of the challenge includes the unavailability of credible evidence against perpetrators. Prosecuting cases of sexual violence committed during insurgency in Nigeria presents significant challenges. While the national courts have primary jurisdiction over crimes committed within Nigerian territory, effectively bringing perpetrators to justice remains elusive because of the following:

4.1 Weaknesses of the present Criminal and Penal Codes

It is impossible at the moment for Nigeria to prosecute sexual violence offences committed during armed conflict without the deliberate reform of the above laws. Presently, there is no available national legislation that criminalizes sexual violence during armed conflict. It must be clear that both the criminal code and the penal code which are applicable in the

⁴⁴ Theresa Akpoghome, "Challenges of Prosecuting Sexual Violence in Armed

Conflict Under Nigerian Law" (2020), Vol. 11 No. 1, *Beijing Law Review at 5*

⁴⁵ *ibid*

Southern and Northern states of Nigeria are peacetime legislations. Thus, the laws need to be amended to reflect wartime situations.

4.2 Lack of Specific Legal Framework:

While general legislation addresses sexual violence (e.g., rape), there is a notable absence of specific legal provisions that explicitly define and criminalize sexual violence in the context of insurgency. This lack of clarity creates legal ambiguities and hinders effective prosecution. For example, Section 1 of the Violence against Persons prohibition Act (VAPPA) which was enacted in 2005 clearly gives a wider definition of the rape and includes male and female, however, the application of the law is only restricted to the Federal Capital Territory (FCT) Abuja, hence the urgent need for reform.⁴⁶

4.3 Difficulties in Apprehending Perpetrators:

Many victims of sexual violence committed by the Boko Haram insurgent group are occasionally rescued by the Nigerian Armed Forces, or sometimes the victims themselves may escape from Boko Haram camps, making it extremely difficult to identify, apprehend, and prosecute the primary perpetrators of the sexual violence. The decentralized and fluid nature (that is the lack of a fixed structure, clear leadership, or permanent locations) of insurgent groups further complicates efforts to track down and bring perpetrators to justice.

4.4 Lack of Domestication of International Treaties on Sexual Violence.

Presently, it is difficult for the Nigerian nation state to prosecute the crime of sexual violence in times of armed conflict because of the lack of domestication of international treaties on the subject matter under review.⁴⁷ Section 12 of the 1999 Constitution of Nigeria provides that for any international treaty which the government enters into to become law and enforceable by the courts such treaty has to deliberately go through the process of domestication by the National Assembly. Sadly, Nigeria has similarly ratified quite a number of treaties in this regard, but it is yet to domesticate any of them, treaties like the Additional Protocol to the Geneva

Convention, the Rome Statute, Convention on the Elimination of All forms of Discrimination Against women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa. (The Maputo Protocol). It is important to note that until the Rome Statute and the other important treaties are domesticated, the courts in Nigeria would lack the capacity to prosecute the crimes of sexual violence committed during armed conflict.⁴⁸

4.5 Challenges in Collecting and Preserving Evidence:

Collecting and preserving evidence related to sexual violence in conflict-affected areas is usually difficult. Access to medical facilities and forensic experts is often limited, hindering the collection of crucial medical evidence.

4.6 Victim Reluctance and Stockholm syndrome

Some victims may be reluctant to report the crimes due to fear of reprisal, social stigma, or feelings of shame and guilt. In some other cases, victims may develop an emotional bond with their captors during captivity, a phenomenon known as Stockholm syndrome, making them unwilling to cooperate with authorities or testify against their abusers. In Nigeria, there are instances where perpetrators take their victims as 'bush Wives' and then the victims later refuse to return home after they have been set free. It has also been reported of cases where freed victims willingly returned back to their abductors immediately after they gained freedom.⁴⁹ Thus, as a result of the emotional attachment of the victims to their abductors it makes it difficult for victims to come forward to testify and this is a major problem of prosecution of crimes of sexual violence committed by Boko Haram in Nigeria.⁵⁰

4.7 Limited Access to Justice

Victims often face barriers in accessing justice, these barriers include limited access to legal aid, inadequate support services. Most times, victims may live in very remote villages where it becomes difficult to physically access the venue of the legal system. In some cases, even when victims courageously walk into the police station to report a case of sexual

⁴⁶ Theresa Akpoghome, "Challenges in Prosecuting Sexual Violence in Armed Conflict under the Nigerian Law", (2020), Vol. 11 No. 1, *Beijing Law Review at 5*

⁴⁷ *ibid*

⁴⁸ *Ibid at 6*

⁴⁹ *Ibid at 7*

⁵⁰ *ibid*

violence, the response they get in return is often discouraging. It is either that the police officer is not on the ground to attend to her, or accuses her of indecent dressing as reason for being sexually abused. On the other hand, the police could even have gender bias on issues of sexual violence. At other times, it is possible to have the police station completely destroyed by the fighting forces making it entirely herculean for the police to operate effectively.⁵¹ There is also the issue of lack of trust in the justice system. Additionally, corruption and impunity within the justice system can further discourage victims from seeking justice thus, hindering effective investigation and prosecution of the crime of sexual violence in the country.

4.8 Lack of Special Courts for Sexual Violence Cases in Conflict Situations

In order to effectively investigate and prosecute the crime of sexual violence in Nigeria, there is a need for urgent establishment of specialized courts and other similar agencies within the country with trained personnel having capacity to investigate and prosecute offences of this nature. This becomes necessary owing to the fact that most prosecutors and judges in the ordinary court room do not have special knowledge relating to sexual violence, and also the fact that conflict related sexual offences are international crimes, it becomes expedient for judges and other court staff be properly equipped with international criminal law procedures, adequate knowledge of the meaning and elements of the crime in question.⁵² The authors are of the view that owing to the special nature of the crime of sexual violence, it ought not to be tried generally with other types of crimes in the regular courtroom in order to protect the privacy and image of the victim, thereby securing their confidence and reputation. Another inherent benefit of this kind of special court is that it will help minimize issues of stigmatization for victims. Most time as a result of public knowledge of sexual violence against a victim, she is often treated as an outcast and subsequently rejected by spouses and family members. This in turn causes the victims sometimes to inflict injuries on themselves as a way to express trauma and anger. It is important to note that shame, guilt and the lack of support for victims of sexual violence greatly impact on their image and self-worth. In the same vein, stigmatization comes with other serious consequences like anxiety, shock, depression, post-traumatic, memory loss, and sexual dysfunction.⁵³ Another major

effect of stigmatization on the victim is the fact that a girl who's has been sexually abused may find difficulty in getting a life partner, and those already married may be divorced by their husbands.⁵⁴

5. The way forward

To effectively surmount the already identified challenges of the prosecution of sexual violence a lot of efforts and proactive steps need to be urgently undertaken by both the Nigerian government, the legislature and other important stakeholders. The under listed measures by the authors could be helpful to the government of Nigeria if carefully adopted.

5.1 Strengthening Legal Frameworks and Institutions:

While prosecuting Boko Haram members for crimes such as terrorism, kidnapping, and murder is essential, it's equally vital to ensure that sexual violence is not overlooked. Strengthening legal frameworks and institutions by incorporating specific offenses related to sexual violence during insurgency and rigorously enforcing these provisions, is paramount.

The legal definition of sexual violence should be comprehensive, encompassing a wide range of acts beyond just rape, including forced marriage, sexual slavery, forced pregnancy, and other forms of sexual abuse. Such legislation should also ensure the prosecution of perpetrators of sexual violence regardless of their nationality or where the crime occurred. In addition to strengthening laws and institutions, access to justice for survivors must be guaranteed. The government should take up the costs of litigation in cases of sexual violence, removing the financial burden that often prevents survivors from seeking redress. Furthermore, courts must prioritize these cases and avoid unnecessary delays, Unending adjournments serve only to frustrate victims and undermine the pursuit of justice.

5.2 Advocacy and Awareness

Civil society organizations, human rights groups, and international actors must continue to advocate for greater political will to address sexual violence during insurgencies. Raising awareness about the issue and its consequences can help to put pressure on governments to act.

5.3 Enhancing evidence collection and preservation

⁵¹ Ibid at 7

⁵² Ibid

⁵³ Ibid at 8

⁵⁴ ibid

It is vital that strict protocols for maintaining the chain of custody of evidence are followed. Investigators and prosecutors should be trained in trauma-free interviewing techniques to gather testimony without re-traumatizing survivors. Additionally, organizations that document human rights abuses, including sexual violence, should be supported as this documentation can be used for future prosecutions.

5.4 Addressing societal stigma and victim-blaming

It is unconscionable that most women who escaped or were rescued from Boko Haram's camps, particularly those bearing children fathered by Boko Haram members are often blamed and stigmatized. These women are not perpetrators; they are victims in dire need of compassion, comprehensive support, counseling, and protection. This support includes long-term psychological support (therapy and counseling), community sensitization, medical care, educational support, vocational training and other forms of economic empowerment. This enables them to heal, empowers them to testify against their abusers and aids in the pursuit of justice.

5.5 Promoting Accountability for Perpetrators

Sexual violence in conflict times must be treated as a grave and distinct crime. Therefore, Justice demands that perpetrators of sexual violence be held accountable. By specifically holding Boko Haram members responsible for these crimes, a precedent is established that such acts are never justifiable regardless of when it is committed, and will be punished, even after hostilities cease. In addition, individuals and entities who sponsor or are responsible for these terrorists' acts should be identified, prosecuted and punished. Furthermore, where domestic mechanism seems insufficient, the possibility of referring these cases to the International Criminal Court /ECOWAS Court of Justice as a human rights court should be explored.

5.6 Establishment of Specialized Courts across the states in Nigeria

It is important to have in place specialized courts in all the thirty-six states in the country including the Federal Capital Territory, Abuja. This will ensure the effective handling of sexual violence cases, prompt prosecution of perpetrators as well as timely delivery of justice to the victims. The authors recommend that a special court building different from the already existing court buildings be raised in all states, with judges and other court staff with training and special

knowledge on sexual violence cases. The judges must be persons who are advocates for women and gender emancipation with deep passion for justice and equity. The court procedure should be such that the time line for giving of judgment in sexual violence cases comes within a very short period of time with adequate punishment of either life imprisonment or the castration of the perpetrator, as well as having the names of such perpetrators published in all national newspapers within the country to shame and blacklist them, this will serve as serious deterrent to prospective offenders. On the other hand, there should be adequate reparation and compensation for the victims by the court. The authors further recommends that the Nigerian government both at federal and state levels should be financially committed to provide for modern and digital facilities as well as ensure that the judges of the court are very well paid and victims promptly and adequately compensated.

6. Conclusion

Since the abduction of the Chibok school girls in 2014, Nigeria has experienced an increased rate of sexual violence mainly by insurgent armed groups, committed mainly the Boko Haram sect. Sadly, for all the atrocities by the armed group, there is no record of a single prosecution or accountability of any member of the group for the acts of sexual violence. However, some of the reasons for the lack of prosecution of the Boko Haram group are already pointed out in this paper as part of challenges of prosecution, including but not limited to the absence of domestication of ratified treaties by the Nigerian government, inadequacy of the extant laws, lack of specialized courts to attend to sexual violence cases etc. In addressing the devastating aftermath of Boko Haram's atrocities, particularly the systematic sexual violence, and preventing future occurrences there is need for a comprehensive and sustained strategy. This necessitates prioritizing justice for survivors, ensuring that the voices of the victims are central to all efforts toward healing and Reconciliation. Justice must be seen to be effectively served, such victims of Boko Haram exploitation, particularly women and girls subjected to sexual abuse. The Nigerian government must sincerely show commitment and willingness to genuinely investigate, prosecute, firmly, and hold perpetrators accountable for their actions.

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