

Rape as a tool of terrorism: Exploring the situation in northeastern Nigeria and scrutinizing the legal frameworks

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Abstract

This article reviews and examines the use of rape as a tool of terrorism in the North Eastern part of Nigeria. The study will examine the causes of terrorism in North Eastern Nigeria and why women prefer to be quiet about being raped by terrorists. The issue of granting amnesty to terrorists and whether they will still be prosecuted will be explored. More so, existing legal framework that addresses the prosecution of rape during and after armed conflict will be reviewed. It is recommended that the National Assembly should enact an Act that will explicitly deal with the crime of rape during and after armed conflicts in Nigeria especially so as to take care of emerging and unforeseen circumstances.

Keywords: Rape, Sexual Terrorism, Boko Haram, and Victims

1. Introduction

Globally, terrorism is becoming a household word as there is no country that is completely absolved from its effect. Globalization has drastically influenced the growth of terrorism as the event in one part of the globe has direct or an indirect consequence on others. This elucidate why war, violence and other forms of trans-national political brutality are in a lot of ways more threatening today than ever before as civilian casualty has been on the high ^[1].

It is however difficult to come up with a single definition for the term “terrorism” which has evolved over time, but its political, religious, and ideological goals have practically never changed ^[2].

To Bruce Hoffman, “Terrorism is ineluctably political in aims and motives, violent—or, equally important, threatens violence, designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia), and perpetrated by a subnational group or non-state entity ^[3].”

The UN General Assembly Resolution 49/60 which was adopted on December 9, 1994 described terrorism as: “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them ^[4].”

Also, according to Schmid, “Terrorism refers, on the one hand, to a doctrine about the presumed effectiveness of a special form or tactic of fear-generation, coercive political violence and, on the other hand, to a conspiratorial practice of calculated, demonstrative, direct violent action without legal or

moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties ^[5].”

Rape is one of the most insidious yet least acknowledged human rights violations in the world ^[6]. Rape has severe short and long-term effects on the survivors, perpetrators, families, communities, ethnic groups, region, and the ability of the nation to become whole once again. The violence penetrates and cut through flesh as well as souls, and the successful healing of both is not guaranteed. Serious complications with childbirth, menstruation, urination, and fecal removal are common. Many victims are rendered sterile as a result of the trauma, operations, or scar tissue ^[7]. In addition to causing injury, rape increases women’s long-term risk of a number of unintended pregnancy, sexually transmitted infections (STIs), and adverse pregnancy outcomes. In fact, the children born from mothers who are victims of rape during terrorism are stigmatized in the in the Internally Displaced Persons Camp in the Northeastern part of Nigeria.

Rape during conflict constitutes one of the most common and the most intense forms of violence against women ^[8]. The rape of women in conflict is used as “a deliberate strategy to undermine community bonds, weaken resistance to aggression.” ^[9] The act of rape as an instrument of terrorism is continuously employed by the Boko Haram sect to terrorise women and girls in North Eastern part of Nigeria. Several accounts of rape and other sexual violence have been given by women and girls who were abducted from their villages by the Boko Haram sect.

This article reviews and examines the use of rape as a tool of terrorism in the North Eastern part of Nigeria. The study will examine the causes of terrorism in North Eastern Nigeria and why rape is being use as a strategy for inflicting terror on women and girls. More so, existing legal frameworks that

address the prosecution of rape during and after conflict will be reviewed.

1.1 Causes of terrorism in North Eastern Nigeria

The acts of terror gained global attention in September 11, 2011, when Osama Bin Laden, the leader of Al Qaeda, a deadly terrorist group, bombed the World trade center in United States of America. This calculated attack that took the most powerful nation and the world by surprise, has heartened the resolve of other smaller terrorist groups to carry out attacks in other parts of the world.

In North-Eastern Nigeria, a violent terrorist group named Boko Haram has waged a bloody asymmetric war on the country. Boko Haram sect whose formal name in Arabic is Jama'a Al-Sunnah li-da'wa wa al-jihad, a Sunni Group for preaching and Jihad was initiated by Mallam Lawal when in 1995 he started the Muslim Youth Organization under the name shabaab. In 2002, when Lawal left to continue his education, the leadership of the group was taken over by Mohamed Yusuf. It was under his leadership that the group gained political influence and recognition in Nigeria^[10].

Prior to the use of violence and terror by the group, scholars and analysts have maintained that Yusuf was a nomadic preacher that established an Islamic school free of charge to publicize its ideology. He at the same time started a farm, provided welfare and employment for its member. It was in the school that Yusuf recruited unsuspecting and innocent Almajari to its cause^[11]. With time, the group became increasingly rebellious and also engaged in the abduction of women and girls as wives and sex-slaves. The Nigerian government lunched a violent attack on the organisation to put an end to its spread across north-eastern Nigeria in 2009. The uprising led to the death of 800 Boko Haram members, including Yusuf^[12].

There have been arguments around the death of Yusuf as many believed he was extra-judicially killed by the law enforcement agency. This view thus increased his "martyrdom" position in the eyes of his followers^[13]. With the killing of Yusuf, his second in command, Abubakar Shekau in 2010 becomes known as the leader of the organization with one of the most radical and destructive terror crusade against the nation Nigeria and its people. He declared in these frightening words to journalists that: "jihad has begun"^[14].

The terrorist sect is greased by the obnoxious philosophy-western education is evil and the sects' devotees appear to be meticulously programmed in the incomprehensible doctrine of the absurd. The terror group has embarked on ruthless human rights abuses and war crimes such as forced conversion of people of other faith to Islam; murder, torture and persecution of members of other religions; wanton attacks on churches and mosques and killing and raping of women, children and civilian (noncombatant) populations^[15]. At this junction, one may ask "what are the root causes of Boko Haram terrorism in Nigeria"?

Poverty in Nigeria is one of the root causes of Boko Haram insurgency. The North Eastern region of Nigeria is the least developed region in the country. This is in spite of the fact that Nigeria is blessed with rich human and material resources. When the gap between the rich and poor is incomparable, there comes a breaking-point where there is bound to be a class conflict that materializes in various forms of insurgency. Similarly, former president of America, Bill Clinton has noted

that the reality about Boko Haram insurgency is the poverty rate in the North, which is three times more than what it is in Lagos^[16]. Furthermore, when poverty and lack of knowledge are garbed with religious, ethnic or other partisan sentiments, then there is bound to be violence and senseless devastation of lives and property.

Unemployment is another catalytic factor to Boko Haram insurgency in Nigeria. As a result of the drying up of Lake Chad, many people whose livelihood depends on the lake lost their source of livelihood, thereby becoming unemployed. The unemployment rate in Nigeria especially among the youths is quite alarming. The unemployment rate in Nigeria rose to 23.9 percent compared to 2.1 percent in 2010^[17]. The sect finds the unemployed youths as fruitful ground to indoctrinate their misguided beliefs. It must be noted that Mohammed Yusuf's radical belief gained a following among disaffected young men and the unemployed youths, who are forced to make a livelihood between the twin divide of creativity and criminality^[18].

Bad leadership and corruption among the political class also contributed to emergency of Boko Haram terror group in Nigeria. Good governance as described by the World Bank entails the following:

"Efforts to create an enabling environment and to build capacities

Ultimately, better governance requires political renewal.

This means attack on corruption from the highest to lowest level^[19]."

Lack of good governance therefore suggests that the socio-political environment is infested with administrative injustice, human rights abuse, poor state or lack of infrastructures, abuse of office, inequality and endemic corruption. The expected response to such unjust social formation is for the oppressed to seek for liberation through membership of terror group. This is a sort of pay-back to the government that has failed to take care of their people.

In addition, the rate at which radical jihadist fundamentalist groups is growing around the world also contributed to Boko Haram insurgency. The progress made by such terrorist groups like Taliban, Islamic State of Iraq and Syria (Isis), Al-Qaeda, Al-shabaab among others have promoted the course of Boko Haram insurgency in Nigeria. In 2014 for instance, Boko Haram leadership swore allegiance to Islamic State (IS)^[20].

1.2 Why Rape?

Rape of women and girls has long been a widespread feature of war and terrorism. For many years, perpetrators of sexual attacks during acts of terrorism and other forms of conflicts have benefited from effective impunity. Women and girls have been raped by men in practically all wars, and of course all rapes are aggressive assaults. However, sexual violence in today's conflict is cruel enough to necessitate a separate naming. In the Democratic Republic of the Congo, for example, war "atrocities against women have been so horrific and extensive" that this violence is variously referred to as "a war within a war," "murderous madness," or the "war against women"^[21]. Some also call it 'rape jihad'; others opt for 'sexual terrorism' or 'forced marriage'^[22].

Whatever one may choose to call it, it is the use of sexual abuse (under the guise of religion) to spread terror with the intention of controlling or manipulating the government or

parts of a population. By intimidating and humiliating families, terrorists hope to exert influence over their targeted audience. Emphasizing its patterned and nature, Green refers to today's war rape as "collective rape," and notes that group rape is "generally more intense and more violent than other forms of rape..."^[23]. During the civil war in Bosnia in the late 1980s, the term "genocidal rape" was introduced to depict the Serbian use of rape to destroy the Muslim "enemy" by "sexually contaminating" their women as an example of the "new extreme of men's inhumanity to women in war"^[24]. Some of this violence is likely genocidal in either intent or outcome, and "murderous madness" is an appropriate descriptor. Public description of war tends to focus on the victories and defeats of military troops or perhaps on the impacts on a degenerated civilian population, such as displacement or death as 'collateral damage'^[25].

Until lately, the ways in which conflicts impact on women and children in particular received very little attention. At least since the International Criminal Tribunals for Rwanda and Yugoslavia, there is a growing consciousness and concern in both public awareness and among legal and political leaders, of the extent and need to deal with the rape of women and girls during conflict. The occurrence of rape during conflict is such that Major General Patrick Cammaert, former Commander of the UN Peacekeeping operations in Democratic Republic of Congo (DRC) in 2008, declared that 'it is now more dangerous to be a woman than to be a soldier in modern conflict'^[26].

The rape of women and girls has been used as a tactic of terror in wars since the beginning of armed conflicts^[27]. Catherine MacKinnon observed that "it appears to go through three main stages: First, rape is a routine and expected reward to the victors. Secondly, rape occurs due to a lack of military discipline. Finally, rape occurs as a military technique to demoralize the opposition"^[28].

Rape has been utilized as an instrument of war many times in the past centuries. In the organized "rape of Nanking" in 1937, Japanese soldiers killed 300,000 Chinese, and at least 20,000 women and girls were raped, including the elderly, infants, and the infirmed. In the Second World War, sexual mortification and rape were commonly used against Jewish people. Rape took place in prison camps, as well as in brothels created by the Germans. Acknowledged proof suggests that it is highly likely rape was used as a systematic weapon of terror and retaliation against enemies^[29].

Bosnian women were purposefully raped and impregnated as a part of ethnic purification and during the battle for Bangladeshi independence in 1971 from Pakistan, an overwhelming 200,000 women and girls are estimated to have been raped. Some of these women and girls died from the physical consequences of gang rape, and some afterward committed suicide^[30].

In Rwandan genocide in 1994, rape was utilized in an extensive manner, and in the ongoing conflicts in Darfur and the Congo rape has been used since 2000^[31]. In the Democratic Republic of Congo, where the occurrence of rape is described as the worst in the world, with one estimate putting the number of rapes in 2011 alone at 400,000^[32]. These memories live on today.

Even though the International Criminal Tribunal for the former Yugoslavia confirmed rape as a crime against humanity in 2001 and thereby challenged mainstream understandings of rape as an inevitable by-product of war, religion-based

terrorists are committing violence against women and girls that we have never witnessed before in history. Today, women's bodies are becoming 'battlegrounds' or "territory to be conquered"^[33].

Sexual terrorism is usually classified as being gendered in nature, as a result of the fact that the victims are chiefly girls or women. In sexual terrorism, the rape or assault is part of a broader objective: to spread terror or send a message, a motivation similar to that found in the use of suicide bombings. They validate sexual terrorism by claiming that the Prophet Mohammed sanctioned the rape of both non-Muslims (infidels) and Muslims who do not stick strictly to Islam^[34]. Boko Haram, Nigeria's terror group, whose name roughly translates as "Western education is forbidden" in local Hausa tongue; has kidnapped more than 1,000 women and girls in north-eastern Nigeria since 2009, and has committed copious physical and psychological abuses against them in captivity^[35].

Due to the terror inflicted on the Nigeria State by the Boko Haram sect, several women and girls were subjected to physical and psychological abuse; forced labor; forced participation in military operations, including carrying ammunition or luring men into ambush; forced marriage to their captors (with a reputed "bride price" of ₦2,000 each); and sexual abuse, including rape^[36]. Even before the abduction of the Chibok girls', Director of Defence Information has reported the outlandish and bizarre discovery of "several used and unused condoms" in the captured terrorists' camps^[37]. Although the rape of women and girls abducted by Boko Haram has been underreported because of a culture of silence, shame, and disgrace around sexual abuse in Nigeria's conservative North; below are account of some girls and women on the sexual abuses they suffer as documented in Human Rights Watch's 2014 report entitled: "Those Terrible Weeks in their Camp: Boko Haram Violence against Women and Girls in Northeast Nigeria".

An 18-year-old victim described how a Boko Haram combatant sexually abused her when she went to use the bathroom:

"I did not know he followed me when I walked a short distance away from the tree under which we slept. He grabbed me from behind, roughly fondling me while trying to take off his pants. I screamed in fright and he hurriedly left me as I continued to shout for help^[38]."

Another woman, who was raped in 2013 in a Boko Haram camp near Gwoza, described how a commander's wife appeared to encourage the crime:

"I was lying down in the cave pretending to be ill because I did not want the marriage the commander planned to conduct for me with another insurgent on his return from the Sambisa camp. When the insurgent who had paid my dowry came in to force himself on me, the commander's wife blocked the cave entrance and watched as the man raped me^[39]."

A 15-year-old who was abducted in 2013 and spent four weeks with Boko Haram told Human Rights Watch:

"After we were declared married I was ordered to live in his cave but I always managed to avoid him. He soon began to threaten me with a knife to have sex with him, and when I still refused he brought out his gun, warning that he would kill me if I shouted. Then he began to

rape me every night. He was a huge man in his mid-30s and I had never had sex before. It was very painful and I cried bitterly because I was bleeding afterwards^[40].”

A 19-year-old woman, who was married and had children, described how she and one other woman were raped after having been abducted with four other women in April 2014:

When we arrived at the camp they left us under a tree. I managed to sleep; I was exhausted and afraid. Late in the night, two insurgents shook me and another woman awake, saying their leader wanted to see us. We had no choice but to follow them, but as soon as we moved deep into the woods, one of them dragged me away, while his partner took the other woman in another direction. I guessed what they had in mind and began to cry. I begged him, telling him I was a married woman. He ignored my pleas, flung me on the ground, and raped me. I could not tell anyone what happened, not even my husband. I still feel so ashamed and cheated. The other woman told me she was also raped, but vowed never to speak of it again as she was single and believes that news of her rape would foreclose her chances of marriage^[41].

A 20-year-old woman, abducted in September 2013, told Human Rights Watch that the insurgent she was “married” to wore a mask all the time, even when he raped her. Even though she had since escaped, she said,

“I am still afraid to go anywhere because he could be any one of the people around me. Every time I see a huge dark man, I jump in fright that it might be him coming to get me back. I stay awake some nights because I dream of those terrible weeks I spent in their camp^[42].”

Apart from the above disturbing narratives documented by Human Rights Watch, Stephen Davis, an Australian negotiator, who visited Nigeria to mediate the freedom of the Chibok girls adopted by Boko Haram, gave chilling accounts of girls taken captive by the terrorist group.

“Girls tell how they were raped every day, week after week. One girl was raped every day, sometimes several times a day by groups of men. Some did not survive the ordeal^[43].”

Likewise, a clergy and specialist on counter-terrorism, Oladimeji Thompson, of The Omoluabi Network, who has been working with other groups to help victims of the abduction conquer their pains, gave a terrifying narration based on an explanation of one of the Chibok girls’ escapees. He said, “*One of the girls I interviewed was being raped 15 times by 15 men every day.*” He said the girl was traumatised and confused.

“It’s obvious this girl needs to be managed. She looked confused. She found it hard to talk to me but after much prodding; she confessed to me that she was raped 15 times by 15 men throughout the time she was with the Islamic insurgents before she could escape from their den^[44].”

The examples above are only a little of the accounts of sexual slavery, gang rape and other forms of sexual violence used by

Boko Haram terror group against women and girls in north-eastern Nigeria. Many more of the victims live in silence; either too scared of reprisal or too ashamed to talk as a result of the sexual stigmatization that is associated with rape in this Part of the world.

1.3 Silence and Stigmatization

In spite of the increase in the occurrence of rape during sexual terrorism, reported numbers from observation is a tip of the iceberg, since countless cases of sexual terrorism go unreported pointing to the fact that the existing data on sexual terrorism may not be sufficient to approximate the true scale of the problem.

Sexual violence can be described as a universal problem with women and girls being mostly susceptible as a result of their subordinates’ status^[45] during armed conflicts, the ugly situation worsens and the number of occurrences are alarming.

The possibility that male might experience sexual violence from same sex or opposite sex is not ruled out, nevertheless, the predominance is higher among girls and women. The pitiable side of it is that a lot of these assaults happened without being reported. It is not easy to create correct statistics on the occurrence of rape in conflict for a range of social and methodological reasons including the extensive under-reporting of rape due in no small part to the social stigma attached to the status ‘raped woman’ and the disintegration of social infrastructure which would ordinarily assist in the collation of such information, such as health services, police, courts, and psychosocial services^[46].

Records have it that African women experience sexual violence at disturbing rates but they are less liable to reveal or seek assist in the aftermath of the sexual violence^[47]. Also, the National Crime and Safety Survey have it on record that sexual violence in Nigeria is under-reported when match up to other major crimes^[48]. Although it was also revealed that over 700,000 women are raped or sexually assaulted yearly with fewer than half reporting the crimes^[49]. Most women prefer to be silent about being raped even during armed conflicts.

Different studies have it recorded that sexual violence in any situation is underreported worldwide. For example, one out of five women reports sexual assault and one out of three girls reported forced initiation into sexual acts^[50].

Many reasons may be implicated for the non-disclosure of assault^[51] and the explanations for non-reporting of sexual violence are complex and multifaceted. The poor revelation of sexual violence has made many perpetrators escaped prosecution since majority of the victims kept silent either due to the fear of being stigmatized or closeness of the assailants. Among the many reasons for under reporting sexual violence to experts include shame, concerns for confidentiality, guilt and fear of not being believed^[52]. Furthermore, many families do frown at public acknowledgment of being sexually violated.

Non-reporting of rape and other sexual assault has been linked with shame, humiliation, guilt, cultural taboos, to avoid victimization at the hand of medical authorities^[53] and stigmatization. It is also acknowledged that the age of the abused, affiliation between perpetrator and sexual category of the assaulted and cognitive variable and the likely outcome of disclosure as factors encourage silence^[54]. Also, cases of sexual violence may go unreported because many perpetrators of reported cases went unpunished owing to lack of proof or disbelief. It has also been discovered that the major reason

survivors do not report is that they think that people will believe them and that various authorities, particularly legal and medical authorities, will be aggressive to them^[55].

Sexual violence remained extremely stigmatized in all settings, thus levels of the admission differ among regions but precisely it is a widely under-reported phenomenon^[56]. Sexual violence is under reported by sufferer for horror of stigmatisation and rejection by colleagues and the society^[57]. Nobody wants to be professed as a victim of sexual terrorism and other forms of sexual violence. The assumed dishonor connected with rape may promote silence. For example, the social stigma associated with rape in Nigeria forces victims to cover up rape and other violent sexual assault in order to save self from shame and communal humiliation^[58].

To aggravate the issue, the social stigma associated with rape makes it hard for victim and the family to reveal the rapists. The victims of sexual violence in most cases reported stigmatization experiences in their environment^[59]. On the other hand, knowing the perpetrator by the assailant could make reporting of sexual violence complicated as this may cause conflicting emotions such as fear and loyalty. In cases which the rapist is the father of the victim the possibility of reporting the sexual violence will be low. Also, relatives, family, friends or relations who take the advantage of their closeness or relationship to prey upon vulnerable girls may do alike with impunity because it is doubtful that such cases will be reported.

Kareem Haruna, who is a Leadership Newspaper Correspondent, argued that “there may be hundreds of more women out there that have been raped in their homes or in various camps of the Boko Haram; some may have been inflicted with HIV/AIDS, or left with undesirable pregnancies or children which they have to care of alone, or even claim it belongs to their husbands. So many of them have been affected psychologically and may not be able to get remedy till they die”^[60].

Unfortunately, Northeastern Nigerian women’s value is still so closely associated with virginity, wifehood, and bearing children, rape can and often does result in “social murder”^[61]. Unmarried girls who are raped have little prospect for getting married and the married women are often prone to stigmatization as survivors of sexual crime. Therefore most of the victims of rape prefer to remain silent since they would be stigmatized.

1.4 Legal framework on rape in Nigeria

It is important to note that sexual violence in armed conflict is only a part of the wider problem of sexual violence against women. Although in Nigeria there is no single Act that addresses sexual violence against women and girls during conflict. The closest Acts that can be said to tackle the issue of rape in Nigeria is The Violence against Persons (Prohibition) Act, 2015, The Criminal Code Act and The Penal Code Act.

1.5 The Violence against Persons (Prohibition) Act, 2015

The Act was signed into law on the 25th of May 2015 after over ten years in legislative process. It is a combination of diverse bills which sought to eradicate all outdated laws relating to matters such as rape, assault and so on^[62]. It aims to improve upon similar provisions on violence as contained in Nigeria’s Criminal and Penal Code. Exclusively, The VAPP Act comprehensively dealt with one of the most vexed forms of

sexual violence, rape, from which existing penal laws protected only females and limited to vaginal penetration. The VAPP Act is the first criminal legislation in Nigeria to enlarge the idea of rape beyond penetration of the vaginal and anus by the penis and to include penetration of the mouth by the penis.

Section 1(1) of the VAPP Act provides a narrative description of Rape. A person commits rape at any time he or she intentionally uses any part of his/her body or thing to penetrate the vagina, anus or mouth of another person, provided the other person did not assent or the consent was obtained by deceit or by any other unlawful means^[63].

Furthermore, Section 2 of the VAPP Act states that a person if found culpable of rape is punishable with life imprisonment. However, this is not a binding sentence. This is born out of paragraphs (a)–(c) of Section 1(2)6 which give the judge discretion to enforce sentences less than life imprisonment. In situation where the offender is below 14 years, he may be sentenced to a maximum of 14 years imprisonment. Offenders, who are 14 years and above are liable to a minimum of imprisonment for 12 years. In situation of gang rape, the offenders are jointly and severally liable to a minimum of 20 years imprisonment^[64].

There is no hesitation that the VAPP Act has expanded the Nigerian Criminal Jurisprudence on Rape. The Act imposes severe punishment for rape than the existing Criminal Code Act and Penal Code Act. Under the VAPP Act, apart from cases of children below 14 years, the minimum sentence for rape is 12 years imprisonment^[65]. Although the penalty for rape under the criminal Code Act is life imprisonment, the Courts have not interpreted it to mean a fixed sentence. For example, in *Popoola v. State*,^[66] the complainant was charged under Section 358 of the Criminal Code Law, Laws of Ogun State 1978, which is parallel to Section 358 of the Criminal Code Act^[67]. The complainant was alleged to have raped a student of Abeokuta Grammar School, Ogun State. He was sentenced to 5 years imprisonment, which sentence was affirmed by both the Court of Appeal and the Supreme Court^[68].

Also in *Iko v. The State*, the plaintiff was sentenced to seven (7) years imprisonment for rape of a school girl. However, the ruling was disallowed by the Supreme Court for want of validation^[69]. In all cases of rape, the prosecution must prove that there was penetration.

The Supreme Court has held that penetration is the most important ingredient of the offence of rape, and penetration no matter how slight is sufficient. It is not necessary to prove that there was a rupture of the hymen or an injury to constitute the offence of rape^[70].

Another key element of rape is corroboration. Corroboration is not an obligation of law but a rule of practice^[71]. But, it is usually required. In the same case, *Kalgo JSC* referred with endorsement to the explanation of corroboration by Lord Reading in *R v. Baskerville*^[72], to wit: “...evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime.” In other words, it must be evidence which incriminate the accused and validated in some material particular not only the commission of the crime but also that the accused committed it.

In *D.P.P v. Hester*^[73], Lord Diplock observed the risk which the rule on corroboration is intended to hinder. In the view of his Lordship, the danger is that the story told by the witness

may be inaccurate. Whether the danger is of intentional inaccuracy, as in the cases of accomplices or unintentional inaccuracy as in the case of children and some complainants in cases of sexual offences ^[74]. Another reason for the rule requiring validation is to keep a person from being framed up for rape.

It is essential to point out that neither a husband nor a male person below the age of 12 years under Section 6 and 30 of the criminal code Act respectively could not be guilty of rape. Section 30 provides an indisputable presumption of law that such a male person is incapable of having carnal knowledge. But, a husband will be culpable of rape where the marriage has been divorced ^[75] or as was held in *R v. Clarke* ^[76] where there is a disconnection order which contains a clause that a woman is no longer bound to live together with the husband and as long as the order is in force, it is rape to have carnal knowledge of the woman without her approval. In other words, the separation order amounts to an extraction by the wife of the approval implied by the marriage. However, under section 357 of the criminal code act, a woman could not be culpable of rape since this offence can only be committed by a man ^[77].

Unlike Section 30 of the criminal code act, Section 1(2) (a) of the VAPP Act accentuates the fact that a male person below 12 years may have reached the full state of puberty and thus capable of having carnal knowledge ^[78]. Therefore, the Act provides that a person below the age of 14 years who breaches provisions of Section 1(2) (a) of the VAPP Act will be liable to a term of imprisonment up to 14 years. These provisions were buttressed by a case in New Zealand in which an 11 years old boy impregnated a woman of 36 years ^[79].

1.6 The Penal Code

The Penal Code (Nigerian Laws Cap 89), which is applicable in the north of Nigeria, criminalizes both rape and defilement. Section 282(1) of the Penal Code defines rape as:

"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 –

- (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 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 another 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 ^[80]."

The clarification to Section 282(1) states that "*mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape*" ^[81]. It is assumed in this definition that only penetration of a vagina by a penis is what constitutes rape, but this discriminates against women and girls who may have been raped by use of a foreign object or who have been penetrated orally anally by the penis.

The unlawful offence of rape is punishable by imprisonment of up to 14 years, which can be combined with a fine ^[81]. The Penal Code also makes stipulation as regards to children less than 16 years who are sexually assaulted by those in positions of power.

Section 285 on acts of gross indecency provides a punishment of imprisonment for up to seven years and a fine:

"Provided that a consent given by a person below the age of sixteen years to such an act when done by his teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section ^[82]."

1.7 The Criminal Code

Section 357 of the Criminal Code Act (Nigerian Laws Cap 38), which is applicable in the southern part of Nigeria, defines rape as:

"Any 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 and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape ^[84]."

"Carnal knowledge", as clarified in Chapter 1 of the Criminal Code, implies penetration. This could be interpreted as including penetration by a foreign object and therefore the Criminal Code presents a broader definition of rape than the Penal Code, which uses 'sexual intercourse' rather than 'carnal knowledge'.

Under Section 358, rape is punishable by life imprisonment, with the possible addition of caning ^[85]. Rape of a girl under 13 years is referred to as "defilement" and is grouped as an offence against morality in the Criminal Code.

Section 218 provides:

"Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life, with or without caning ^[86]."

The law sets a limit of two months within which charges must be brought in a case of 'defilement'. This restricts the number of prosecutions of "defilement" cases according to many human rights defenders, prosecutors and others whom Amnesty International interviewed. This limitation imposed therefore discriminate young girls who are raped on bringing a case before the courts and by the definition of the crime.

The crime of rape is considered a crime against morality rather than a form of child abuse or assault. While violence against women is not a specific criminal offence within the Criminal Code, it does include other relevant offences such as common assault or indecent assault. Provisions for these offences, however, discriminate against women and girls, including those who have been raped. For example, Section 360 of the Criminal Code defines indecent assault against a woman as a transgression punishable by up to two years' imprisonment, whereas if the victim is a man a sentence of up to three years' imprisonment applies ^[87].

Under Section 222, a person who "*unlawfully or indecently deals with a girl under 16 years of age is guilty of a misdemeanour and is liable to imprisonment for two years, with or without caning*" ^[88]. If the victim is a boy under 14 years of age, however, the sentence is seven years' imprisonment ^[89].

1.8 International Human Rights Law

Nigeria is a signatory to The Convention on the Elimination of all Forms of Discrimination against women,^[90] which sets out a thorough command to encourage fairness between women and men and to forbid unfairness against women.

Rape of women and girls is an act of gender-based violence and represents "discrimination" as forbidden by CEDAW.

The Committee on the Elimination of All Forms of Discrimination against Women has established that the definition of discrimination against women contained in Article 1 of CEDAW includes violence against women:

"The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty^[91]."

The Optional Protocol to CEDAW presents women a direct way for seeking remedy at the international level for violations of their rights under CEDAW. Nigeria approved CEDAW with no doubts on 13 June 1985, as well as the Optional Protocol on 22 November 2004. On 22 August 2006, a bill for the Domestication of CEDAW had its first reading in the Nigerian Senate, following long-term and continuous demonstration by NGOs in Nigeria. By ratifying CEDAW, Nigeria has undertaken to:

"condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women^[92]."

Article 5(a) of CEDAW is also particularly important:

"States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority

or the superiority of either of the sexes or on stereotyped roles for men and women^[93]."

Brutality against women reveals the unequal power relations between men and women. The right not to be differentiated against on the grounds of race, sex, sexual orientation, gender expression and identity, age, birth, or religion, is an inherent human right of every woman, man and child. Articles 2(1) and 3 of the ICCPR, ratified by Nigeria in 1993, provide that:

"2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." 3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant^[94]."

Though the Convention against Torture, which Nigeria ratified on 28 June 2001, does not particularly include rape, it has become established that rape is a form of torture^[95]. The UN Special Rapporteur on torture and other cruel, ruthless or degrading treatment or punishment stated in 1992 that;

"since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture"^[96].

Rape can sum up to torture where it is intentionally imposed for purposes such as obtaining information or an admission from the victim or a third person; punishing the victim; intimidating or coercing the victim or a third person; or for any reason based on discrimination of any kind. The veto of torture and other cruel, brutal or degrading treatment or punishment under international law obligates states to study and act against such violations^[97].

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified by Nigeria on 18 February 2005, specifically necessitates states to accept suitable and efficient measures to ratify and impose laws to forbid all forms of violence against women, including unwanted or mandatory sex, to penalize the perpetrators of violence against women, and put into practice programmes for the rehabilitation of women victims.

In Article 1, the protocol defines violence against women as:

"all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflict or of war^[98]."

Article 4 of the Protocol states that "*Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited*", and requires states to prohibit, prevent and punish "*all forms of*

violence against women including unwanted or forced sex whether the violence takes place in private or public^[99]." The Protocol also compels states to "prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards^[100]"

The Rome Statute of the International Criminal Court (Rome Statute), adopted in 1998 and approved by Nigeria in 2001, recognizes a wide range of sexual and gender-based violence as crimes against humanity and war crimes. These include rape, sexual slavery, imposed prostitution, forced pregnancy, imposed sterilization, or any other form of sexual violence of equivalent gravity^[101]. The Rome Statute also criminalizes gender-based maltreatment^[102] and 'rage upon personal pride, in particular embarrassing and degrading treatment^[103].

1.9 Can a pardoned terrorist still be prosecuted?

There are new developments to acts of terrorism in Nigeria. In the past few weeks, news of members of Boko Haram Islamic Sect surrendering to the military in large numbers filled the dailies.

As reported by The Punch newspaper, the Director, Defence Information, Brig. Gen Rabe Abubakar reveals that the military authority has announced the establishment of a rehabilitation camp for repentant Boko Haram members^[104]. The rehabilitation camp is established under Operation Safe Corridor which was created as a platform to rehabilitate and integrate repentant members of the sect to the society where they would be made to go through vocational training under the programme and empowered for reintegration into the society.

Although this is a very good initiative but a lot of things need to be put into consideration because this is the first time Nigerians will be faced with this kind of terror.

Amnesty is an official pardon for people who have been or ought to be convicted. The question of the genuineness of the terrorists surrendering is a very important factor that must be put into consideration taking a lesson from the Niger Delta amnesty programme which was just used to enrich kidnappers and oil pipeline vandals. Unfortunately, the Niger Delta Militants are fully back, vandalizing gas and pipelines thereby, drastically cutting down Nigeria's crude oil output by 1 million barrels per day.

More so, let us imagine what will happen in this scenario; a woman who was a victim of sexual terrorism sees the man/men who used her body as a weapon of terrorism going through rehabilitation in the so called Operation Safe Corridor, while she is going through emotional and psychological trauma, stigmatization, and silence or nursing a baby with an unknown father at an IDP camp. Is she to be happy or sad that these terrorists are pardoned? Has the Nigerian Government created awareness and enlightened the victims of Boko Haram sexual terrorism on this new development of rehabilitation for the terrorists? What happens if these Boko Haram members later engage in terrorism, just as Niger Delta militants are back to militancy after being granted amnesty? Another factor that needs to be considered is how do the victims of the numerous Boko Haram attacks who are left to fend for themselves in IDPs without government helping them to restore their livelihoods or women and girls that were raped, kidnap, and forced into marriage forgive and accept these terrorist back to the society? There is need for victims of the various Boko Haram attacks to be adequately catered for and livelihoods and

properties destroyed restored before the act of granting amnesty to Boko Haram terrorist can be seen as just to the people of North Eastern Nigeria.

Impliedly, terrorists who are pardoned and rehabilitated cannot be prosecuted and they are free from all the crimes (rape, kidnapping, arson, murder, abduction, etc), committed while the armed conflict persisted. On the other hand, if a terrorist after being granted amnesty commits any act of sexual terrorism again, he can be prosecuted.

If amnesty is not granted to repentant terrorists, they can be prosecuted for sexual terrorism and other offences.

1.10 Trials after armed conflict

There is no doubt that the most serious events concerning human rights and international peace and security, particularly in the twentieth century, are armed conflicts^[105]. It has been estimated that internal conflicts during the twentieth century have resulted in more than 170 million deaths^[106]. Despite the fact that the idea of prosecutions after armed conflicts by international tribunals gained hold, very few of them were established^[107].

In considering whether prosecutions after an armed conflict are essential, some important points should be known. Firstly, from a legal point of view, even though in the situations where prosecutions and trials have been established, they often do not provide the necessary guarantees for a due process of justice. In such prosecution, if they are decided to be established "Justice must not only be fair, but must also be seen to be fair^[108]."

Secondly, only certain individuals often prosecuted after an armed conflict if tribunals are established. For instance, Tokyo was limited in trying to prosecute war criminals representing the enemy powers for crimes committed by them during the conflict. Such a tribunal had no power to prosecute war crimes committed by any member of the related armed forces. Thus, it was criticized as representing more than "victor's justice^[109]." The International Humanitarian Law and International Criminal Law prohibits the infliction of sexual violence, upon enemy civilians, members of the armed forces and persons accompanying them, prisoners of war, during international armed conflict, and, upon persons no longer engaged in combat during non-international armed conflict^[110].

Rape, as an explicit prohibition was articulated, in Article 27 of the Fourth Geneva Convention Relative to Civilians under the prohibitions aimed to protect civilians who were under enemy occupation. Article 27 stated, *inter alia*, that,

"women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault..."^[111]

Nevertheless, common articles 12 of the First and Second Geneva Convention and article 14 of the Third Geneva Convention, reprise the language of the Article 3 prohibition found in the 1929 Geneva Convention, namely, that "(w)omen shall be treated with all consideration due to their sex^[112]." Most importantly, Article 3, common to the First, Second, Third and Fourth Geneva Conventions of 1949, regulated conflict of a non-international character and used the phrase "outrages upon personal dignity, in particular humiliating and degrading treatment^[113]".

2. Recommendations

There is need for government to enact an Act that will explicitly deal with the crime of rape during and after armed conflicts in Nigeria especially so as to take care of emerging and unforeseen circumstances. The VAPP Act, the Penal Code and the Criminal Code do not have provisions for sexual terrorism during armed conflict.

The education of youths should be made a priority by government as this is the key tool to break the cycle of poverty in the northern region of Nigeria. Education equips the youths with prerequisite skill whether in agriculture, entrepreneurship and other fields of human endeavours.

There should be round-the-clock security in schools to protect school girls from abduction, rape and forced marriage by Boko Haram terrorist group.

Community policing strategy should be strengthened to provide public safety and the needed intelligence to government security apparatus involved in the fight against Boko Haram. This owes to the fact that community members know their own people and can easily identify "strangers" in their midst. Children of Boko Haram members should not be treated like outcast as it is being done presently in IDP's where they are discriminated and stigmatized by separating them from the rest of the people making them to have no sense of belonging. They should not be made to pay for the sins of their fathers because they are not responsible for the evil actions of their fathers.

There shall be collaboration between the Nigeria government and the international communities especially Nigerian neighbouring countries (Chad, Cameroon and Niger) in the fight against Boko Haram. Religious leaders should propagate the message of peace and respect for women's right in their communities. Also, there should be sanctions against religious cleric that incites violence against women or any minority religious group in the communities.

The government (state and national) should collaborate with international donor agency to provide cash transfer grants to assist mothers and their kids (girls) who are in internally displaced homes in the north eastern part of Nigeria. This will go a long way in building confidence and encouragement on indigent mothers to send back their children to schools.

3. Conclusion

Rape is the most frequent type of violence used against women during violent conflicts and often occurs next to state terrorism as a strategy to disgrace, ethnically cleanse, or silence opponents. Rape is a plague with wide-reaching and lasting effects for its victims. It is without doubt a practice which needs intensive consideration aimed at prevention, prosecution and healing for survivors.

The prosecution of rape in war in some ways marks a radical departure from previous responses, but must also be scrutinised for inadvertent effects such as the potential for reinforcing unhelpful gendered ideals and its approach to rape in war as exceptional, thereby reinforcing a delinking from sexual violence in peace and from other types of violence that women experience. If rape, during war and peace, is to be efficiently addressed we require a thorough restructuring of gender relations in society. Women need to be freed from the trouble of honour and recognised legally, politically and socially as independent rights bearing human beings in their own right. This task requires a more holistic approach engaging

prosecutions, health, reparations, long term attitudinal change programs and community development approaches.

Boko Haram has abducted many women and girls in north-eastern Nigeria and has perpetrated numerous physical and psychological abuses against them in custody.

Although government is adequately responding to prevent attacks and protect victims as the government is presently winning the battle against Boko Haram and weeks by weeks news of government troops rescuing scores of abducted women and girls but a lot still needs to be done by the government to provide mental and medical care for victims of sexual terrorism or other violations as apart from the Chibok girls that escaped from Boko Haram captivity, none of the other victims of abduction or other violations had received any government-supported mental health or medical care. Like other forms of sexual assault, responding to sexual terrorism requires criminal justice, medical, psychological and social initiatives.

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