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Abstract— In the political debate taken by President Suharto approximately eleven years without authorization of the legality of the exposed and exposed that, while individuals produce particular scholarly literature are broader open courts, almost particular court nationwide injunction positions. The parts. The concerned individuals have begun to which they object court decisions and a federal policy effect. At virtually paralyzing government, the use the courts greater significant issues and decisions explains how it above have intervened vis a vis the nation

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An Empirical Analysis Of The Criminal Law And Religious Perspectives Of Abortion In Nigeria

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1.0 Introduction

Abortion comes from the Latin word abortus or aborti which means "to perish something or suppress the fruit of the body."¹ Abortion is permissible in Nigeria, only when the life of the mother is at risk.² On this basis, there has been a fierce debate between a fraction of persons known as the pro-life and the pro-choice.³ While the former advocate for stringent abortion laws on the basis that abortion is like killing,⁴ the latter consider various social factors to seek for flexibility of abortion laws.⁵ On this ground, it argues vastly that the accessibility of women to procure abortions in hospitals by qualified gynecologists and obstetricians has been curtailed by restrictive laws thereby leading women to seek for clandestine means to eliminate unwanted pregnancies.⁶ Thus, because terminations of pregnancy are done clandestinely, most are unsafe.⁷ A report has shown that although unintended pregnancies occur in women of all ages; the adolescents appear to be most affected⁸ which relatively implies that adolescents are leading victims of unsafe abortions.

Instructively, the World Health Organization (WHO) defined abortion as "the discontinuation of a pregnancy before the attainment of viability, while unsafe abortion is defined as "a procedure for termination of an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking the minimal medical standards or both."⁹ Abortion is neither an alien nor a domestic concept in Nigeria; it trends globally as many women experience unwanted pregnancies. Thus, study has shown that maternal mortality rate of Nigerian women is the highest in the Sub-Sahara Africa¹⁰ as report shows that the annual number of abortions grew by almost six million from 50.4 million in 1990-1994 to 56.3 million in 2010-2014.¹¹

The issue of abortion in Nigeria, and the world remains an unending debate as it is bound by perpetual controversies because it is morally and socially inclined. Although, there is no body of law in Nigeria known as an Abortion Law, however, just like many other African countries, the procurement of abortion in Nigeria is permitted only on the ground that it is to save the life of the bearer of the pregnancy.¹² This degree of legality of abortion has been argued by so many authors to be the cause of the deaths and health complications plaguing women in Nigeria.¹³ Just as many consider the implications associated with a rigid abortion law as a menace,¹⁴ so do another category of persons

¹ O. M. Yemisi and A. I. Oluola, 'Women and Abortion: The Religious Challenges' 30(1) TJOG. 2013, pp. 75-79.

² Henshaw S.K., et al., 'Severity and Cost of Unsafe Abortion Complications Treated in Nigerian Hospitals,' (2008) 34(1) *International Family Planning Perspective* 40-50

³ Izunwa M.O. & Ifemeje S., 'Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect' p.114

⁴ Omoyefa P.S., 'Physician and Sanctity of Life: Emerging Ethical Issues.'

⁵ Ibiyeye A.A., 'Sexual and Reproductive Justice: A Need for the Flexibility of the Nigerian Abortion Law,' (LLB Thesis, University of Ilorin 2016).

⁶ Grimes D.A. et al., 'Unsafe Abortion: The Preventable Pandemic' (2006) *The Lancet, Sexual and Reproductive Health* 4, p.1

⁷ Bankole A., et al., 'The Incidence of Abortion in Nigeria.'

⁸ Oyediran B.A., et al., 'Community-Based Survey of Unwanted Pregnancy in Southwestern Nigeria' (2004) 8(3) *African Journal of Reproductive Health* 103-115, p.104

⁹ See WHO Statistics at <https://www.guttmacher.org/about/journals/ipsrh/2015/10/incidence-abortion-nigeria> (last visited December 2, 2016).

¹⁰ WHO, 'Trends in Maternal Mortality: 1990 to 2015- Estimates by WHO, UNICEF, UNFPA, World Bank Group & United Nations Population Division' (World Health Organization, 2015)

¹¹ See Guttmacher at <https://www.guttmacher.org/unwanted-pregnancy-and-associated-factors-among-nig> (last visited December 5, 2016)

¹² Bankole A., et al., 'The Incidence of Abortion in Nigeria' (2015) 41(4) *International Perspectives on Sexual and Reproductive Health* 170-181

¹³ Ibiyeye A.A., 'Sexual and Reproductive Justice: A Need for the Flexibility of the Nigerian Abortion Law.'

¹⁴ Bankole A., et al., 'Unwanted Pregnancy and Induced Abortion in Nigeria: Causes and Consequences' (New York, Guttmacher Institute, 2006); Odunsi B., 'Abortion and the Law' in Iyiola I.O. & Nwabueze R.N.(eds.), *Comparative Health Law and Policy: Critical Perspective on Nigerian and Global Health Law* (Ashgate Pub., England 2015) 197-216, pp 199-202

fiercely denounce abortion based on the moral implications associated with it.¹⁵ It is viewed by the two Federal Codes in Nigeria: the Penal and the Criminal Codes as an instantaneously forbidden act. Islam,

Christianity and sundry traditional religions in Nigeria are in firm accord with the two Codes that abortion is gravely contrary to the moral law.¹⁶

For instance, under the Islamic law, abortion is prohibited as a fertilized egg in the womb has right to develop and born alive to show respect for the right to life.¹⁷ Also, under the biblical doctrine, God has commanded that parents should "be fertile and multiply"¹⁸ and "thou shalt not kill".¹⁹ This study goes to show the perfect imperfection of these respective half-century and century laws, particularly as they affect the Nigerian society and most particularly the sexual and reproductive choice and wellbeing of Nigerian women. On the traditional aspect, most priests seek to profess that the act of abortion is diabolical, equating it to taking a person's life. Through this, it shows that the most fundamental argument on abortion is hinged on the right to life of a being- described as the right based arguments. Considering this, an empirical analysis is carried out to find a basis to the current criminal and religious spheres of abortion in Nigeria with a view of recommending for a specific law on abortion in order to reduce the maternal mortality rate in Nigeria.

The study postulated three critical research questions in order to achieve its set objective thus:

- (i) What is the relationship between criminal law and religious perspectives on the legalization of abortion in Nigeria?
- (ii) Is induced abortion a reflection of the cause of maternal mortality in Nigeria?
- (iii) If yes, can enactment of specific law on abortion reduce maternal mortality rate in Nigeria?

2.0 Methodology

The study adopts a mixed method research.²⁰ This methodology comprises of both qualitative and quantitative approaches. The study makes a content analysis to determine the extent of the adequacy or inadequacy of the existing law on abortion so as to know whether indeed there is a need for a specific law on abortion in Nigeria. A descriptive survey was carried out through close ended questionnaires and in-depth interviews to determine the incidences of abortion and how criminal law and the three religions perceived abortion with consequences of those perspectives on Nigerian women. Frequency distributions with simple percentage were employed and the study context cut across the six geo- political zones of Nigeria.²¹ Purposive sampling technique²² was adopted, and the study randomly selects the target population from the Imams, Pastors, Islamic scholars, gynecologists, public healthcare workers, nurses, sociologists, historians, Police officers, Legal practitioners, Judges who are the stakeholders on the subject under study. 15 informants each from the population were sampled from

each city of Bauchi, Enugu, Ilorin, Kaduna, Lagos and Port Harcourt for the purpose of administering questionnaires and the researcher interviews 18 informants.²³ A total of 300 informants returned the questionnaire out of the selected population of 360.

3.0 LEGAL FRAMEWORK FOR ABORTION IN NIGERIA: A CRITIQUE

The criminal law under the Nigerian legal system is multifaceted. There is no one single law in Nigeria described as the Nigerian Abortion Law, rather, there is a jurisdictional division that regulates criminal activities, including abortion, in Nigeria. There are the Criminal Code Act which is in the 17 Southern States and the Penal Code Act, applicable in the 19 Northern States of Nigeria and the Federal Capital Territory.²⁴

Arguably, abortion is morally inclined as it relates to sanctity of life. Thus, the Nigerian Constitution 1999 [as amended]²⁵ is similar relevant. The Nigerian Constitution, 1999 seeks to preserve the life of all persons and holds out such "privilege" as a fundamental human right. It protects the life of all persons against violation except for justifiable reasons.²⁶ It is this linkage to the sanctity of life that brings about a nexus between abortion and the natural law. As noted earlier, there contemporaneously exists religious perspectives to the issue of concern in which a distinct sphere of moral laws regulates them. In other words, the Constitution of Nigeria, the Criminal Code and the Penal Code remain the primary laws that regulate abortion in Nigeria in the legalistic part.

Note that matters of rights cannot be done away without reflecting the position of the Constitution. This law, being the supreme law of the land through which every other law derives its validity has by its provisions engrained some rights found relevant to this study. The relevant ones to which this study shall rely on are: Section 33 on Right to Life; Section 35 on Right to Personal Liberty; Section 37 on Right to Private Life and Family Life; and Section 38 on the Right to Freedom of Thoughts, Conscience, and Religion. Section 33 provided that: "Every person has right to life, and no one shall be deprived intentionally of his life save in execution of the sentence of a court, and in such circumstances as are permitted by law." While Section 35 provides that: "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty."

¹⁵ Omojefa P.S., 'Physician and Sanctity of Life: Emerging Ethical Issues' (2010) 4(2) *Ethno Med* 99-105. See also Izunwa M.O., 'Right to Life in Igbo Customary Law' available at <https://www.academia.edu/7929446/RIGHT_TO_LIFE_IN_IGBO_CUSTOMARY_LAW> accessed on 1 December 2016

¹⁶ Disney L. & Poston L., 'The Breath of Life: Human Perspectives on Conception and Enslavement' (2010) 92(2) *Anglican Theological Review* 271-293

¹⁷ Ibn Qudama, *Al-Kafi fi Fiqh Ibn Hambal*, vol. 4, (Egypt: Dar al-kutub al-ilmiyyah, 2010), 86; Ibn Rushd al-Qurubi, *Bidayatu al-Muttahid wa-Nihayatu al-Muqtasid*, vol. 2, (Misr: Al-halabi wa Awladahu, 1975), 416.

¹⁸ See Genesis 1:28

¹⁹ Exodus 20:13, Deuteronomy 5:17

²⁰ A mixed method research is an approach to inquiry that combines or associates both qualitative and quantitative forms. It involves philosophical assumptions, the use of qualitative and quantitative and the mixing of both approaches in the study. The study uses this method to strengthen the overall results that will be greater than either qualitative or quantitative research. See Creswell, J. W., & Plano Clark, V. L., *Designing and Conducting Mixed Methods Research*. (2007 Thousand Oaks, CA: Sage).

²¹ The cities in which the sampling was drawn include Bauchi, Enugu, Ilorin, Kaduna, Lagos and Port Harcourt. The six geo-political zones of the country excluding Federal Capital Territory, Abuja was the criterion for the selection, and the states are cosmopolitan and industrial cities compare to others in each of the zones. Significantly, the rate of abortion in these cities is likely to be higher within their geographical areas.

²² Purposive sampling technique was adopted primarily because of the non-availability of a sampling frame for the target population.

Arguably, while it is apparent without the doubt that the above provisions guarantee that a person, has a right to life, except in the circumstances authorized by law, 27liberty of a person is also guaranteed. This right to personal liberty has been explained to mean the ability to live without undue interference from government and fellows and the capacity to choose between good and evil.²⁸ However, the Constitution did not specify who a "person" in this category means. It is this unspecifiability, in this study, that has made the imputation of the right to life by some authors²⁹ to extend to an unborn entity.

However, this study argues that the right to life guaranteed in the Constitution is inextensible to an unborn entity. For instance, if the category of a "person" with a right to life or right to personal liberty comprises an unborn entity then, this would consequentially infer that such person is subject to the constitutional exceptions to those rights. The questions that will now beg for answers are: can execution of a person for committing a criminal offense extend to an unborn entity? Can an unborn entity also be arrested or seen as being capable of escaping from lawful custody? It is with an objective view that the answer to these questions will be negative. Therefore, it would be wrong based on the substance of the law to attribute personhood to an unborn entity.

Notwithstanding the above, the words of the Constitution should, in fact, be interpreted to mean that considering the combined effect of Sections 33, 35, 37 and 38: A woman who is alive should be allowed her privacy to do that which she is guided freely by her thoughts and conscience to do, to such extent that these, in turn, seek to preserve her life in so far as it does not affect the right of any other person who possesses the fundamental rights enshrined in the Constitution.

Instructively, in Nigeria, as noted earlier, abortion is criminalized with the enactment of the Criminal Code as a statutory law which is the dominant source of law on abortion in the Southern States of Nigeria. This Code used the term 'miscarriage' to described abortion which within the intendment of the Code, it means the discontinuation of pregnancy.³⁰ In the Criminal Code, the law expresses abortion in Sections 228, 229, 230 and 297. The Criminal Code under Section 228 provides that: Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other the noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Similarly, Section 229 finds any woman who tries "to procure her miscarriage guilty of a felony, and liable to imprisonment for seven years." Section 230, on the other hand, made it a criminal offense punishable with three years jail term for "any person to unlawfully supply anything whatsoever, knowing such is to be used to procure the miscarriage of a woman, whether she is or not with child." Instructively, going through the provisions above, it is evident that within the intendment of the law, it is irrelevant that the woman is pregnant or not, in so far as there is intent to cause miscarriage coupled with the actus reus,³¹ then the crime is complete. Section 297 of the Criminal Code, however, gives a leeway by permitting the termination of pregnancy for the purpose of "saving the life of the mother" – and therein lies the restrictiveness of the abortion law in Nigeria.

Therefore, within the Criminal Code, the law is that for termination of pregnancy carried out for a purpose other than saving the life of the mother, the abortionist, the client, and the merchant of the abortion instrument are all legally responsible for degrees of jail term set for the offenders. It is noteworthy that in the Criminal Code jurisdiction, the holding in *Rex v Bourne*³² is applied, which allows

²⁸ Qualitative research requires a lot of labor. Hence, analyzing a bulky sample can take a lot of time and often unrealistic. Thus, '18' is said to be the normally acceptable sample for all qualitative research. See Masou Mark, *Sampling, and Saturation in Ph.D. Studies Using Qualitative Interviews* in FORUM QUALITATIVE SOZIALFORSCHUNG-FORUM: QUALITATIVE SOCIAL RESEARCH, 11, no.3 Art 3.(2010). <http://www.qualitative-research.net/index.php/fqs/article/view/1428/502> (last visited February 23, 2012). See also, Charmz Kathy, *CONSTRUCTING GROUNDED THEORY: A PRACTICAL GUIDE THROUGH QUALITATIVE ANALYSIS* 114, (2006).

²⁹ Mwalimu C., *The Nigerian Legal System: Public Law* (Peter Publishing Inc., New York 2007) Vol. I, p. 384-386 accessible

³⁰ <https://books.google.com.ne/books?id=QWtGtYscuPIC&pg=PA384&lpg=PA384&dq=criminal-code-17-20-utem+states&source=bl&ots=Zcn4VXLak0&oeq=ZndXXZD.Vnfp6150px1ba7IFAM&hl=en&sa=X&ved=0ahUKEwipjN693XQAbXmJAKHYKnDNHChDoAQPXMAA&as=conquer&oeq=criminal%20code%2017%20southern%20state&f=false> accessed on 9 December, 2016

³¹ Constitution of the Federal Republic of Nigeria 1999 [as amended] CAP C.23 LFN, 2004

³² Section 33 of the Constitution of the Federal Republic of Nigeria 1999 [as amended]

³³ Section 33(1) and (2)(a)(b)(c) provides that except upon sentence by a court for a criminal offense found guilty of, in self-defense; in defense of property; to effect the lawful arrest or prevent the escape of persons lawfully detained; and for the purpose of suppressing riot, insurrection or mutiny.

³⁴ Okoye L & Okeyim M.O., 'Assessment of the Right to Personal Liberty Under Nigeria's Democracy: 1999-2013' (2013) 1(2) *Niger Journal of Social Sciences* 40-46

³⁵ Izunwa M.O. & Ifemeje S., 'Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect' (2011) Vol. 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 111-128.

³⁶ Adunma E., 'Unsafe Abortion and its Ethical, Sexual and Reproductive Rights Implications' (2011) 30(4) *West African Journal of Medicine* 245-249

³⁷ Actus reus means an event that happening in space and time and as such, open to observation and verification. Retrieved from Edogwawerike M.K.O., et al., 'A Philosophical Evaluation of the Jurisprudence of Actus Reus and Mens Rea and its Implications for Justice in Contemporary Nigeria' available at <http://www.transcampus.org/JORINDV13DEC2015/Joinind%20V13%20No%20Dec%20Chapter21.pdf> accessed on 9 December, 2016

³⁸ [1938] 1 K.B. 687 The Facts: A 14-year old girl was lured and supposedly gang-raped by four guardsmen. She became pregnant, and went to a crusading pro-abortion doctor (Alec Bourne), who gave her a free abortion. He

the carrying out of abortions for physical and mental health reasons.³³ This decision, therefore, appears to slacken just a needle-hole bit the restriction on abortion in the Southern States. However, it would be observed that the combined effect of Sections 228, 229 and 230 discountenances the attribution of life to a fetus. The Criminal Code finds it hard to equate the termination of one's pregnancy with murder or manslaughter. Therefore, it found it fit to categorize such termination as a distinct offense which in fact as said above rebuts the attribution of life to a fetus.

It is further argued that the Code may be faulted on the ground of the ambiguity of its provision where it used the term "unlawful." The question that follows thus is: what act then is lawful? A sociologist would be justified to interpret this provision to mean that unlawfulness means when carrying out abortion with *dolus malus*—meaning abortion is procured with bad intent. Thus, he would be justified to terminate the pregnancy for some sociological factors or to preserve her mental state. Rex's case appears to resolve the latter.

Similar to the Criminal Code in the Southern parts of Nigeria is also the enactment of the Penal Code of Northern Nigeria as another Nigerian statutory law on abortion. It operates in the 19 predominantly Muslim States of the Northern part as well as the Federal Capital Territory of Abuja.³⁴ Sections 232, 233, and 234 also trail similar path and exhibits the restrictiveness similar to the Criminal Code. Section 232 provides that:

Whoever voluntarily causes a woman with child to miscarry shall, if ... not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to 14 years or with fine or with both.

Furthermore, Section 233 took a very distinct provision wherein it similarly "penalizes anyone who had the intention to cause the miscarriage of a woman with or without a child, consequence of which amounts to the death of such woman."³⁵ In the same vein, Section 234 stipulates that "the use of force on any woman which unintentionally causes her to miscarry is also an offense which shall be punishable with a jail term which may extend to three years or with fine or both"; but if "he knows the woman was with child, then his punishment may extend to five years with fine or both."³⁶ The main difference between the Criminal and the Penal Codes is that while the former Code applies to anyone acting with the intent to procure abortion whether or not she is with child, the Penal Code applies to those cases where a woman is in fact with child.³⁷ One other distinction will appear to be that; the latter adds circumstances that may arise from procuring an abortion alongside harsher penalties.³⁸

Arguably, this study faults both the Penal and the Criminal Codes. In addition to the above criticisms on the provision of the Criminal Code, which same applies here, it is worthy to observe that since the decision in Rex's case does not extend to the Penal Code States it can be submitted that under the Penal Code, the legal position on abortion to preserve the physical and mental health of the pregnant woman is unclear.³⁹ Also, both laws are silent on who can perform abortion or the kind of facility in which then turned himself in. In the resulting case, McNaghten J. decided that it must be undesirable that a girl of such tender below the age of 15 and considering the circumstances of her conception should be made to carry in her for nine months a reminder of the dreadful scene and then go through the pangs of childbirth must suffer great mental anguish.

"lawful" abortions may take place.⁴⁰ Therefore, the law as it can be interpreted to mean that a butcher can perform an abortion if he can show that it was done bona fide and with reasonable care for the preservation of the mother's life.

In the same vein, the Codes have failed to consider the position of an unborn child with defect[s]. The law permits abortion when it is done to save the life of the mother and the mother's alone. But does not provide similarly for an unborn entity with any anomaly, detectable through Chorionic Villus Sampling [CVS],⁴¹ which may not necessarily affect the mother in any way. It could as well be argued that such unborn when born may be seen to have been deprived of his wellbeing post-birth. Therein lies the faults in the Nigerian laws.

Due to failure of the penal laws on abortion as studies have shown that despite the penal laws, at least 610,000 abortions are performed yearly in Nigeria and that 60% of these abortions are performed by non-physician providers which resulted in the high incident of post-abortion complications rate.⁴² The Campaign Against Unwanted Pregnancy (CAUP) made a national move between 1991 and 1992 to liberalize the abortion law by preparing a draft of liberalisation law which never saw the light of day.⁴³ Also, in 2006, Senator Daisy Ehanire-Danjuma (Edo-South) sponsored an abortion bill otherwise called "National Institute of Reproductive Health Bill 2006".⁴⁴ In all of these attempts, the bills and recommendations failed in each instance based on the sole rationale which is to preserve public morality.⁴⁵ Interestingly, in another move is the Nigeria being signatory to the Convention on the

³³ United Nations, 'Nigeria Abortion Policy' available at <<http://www.un.org/esa/population/publications/abortion/doc/nigeria.doc>> accessed on 15 December 2016

³⁴ Odunsi B., 'Abortion and the Law.'

³⁵ This section provides for 14 years imprisonment, but if the abortion was procured without the woman's consent and death occurs then the penalty would be life imprisonment.

³⁶ Section 234(b) of Penal Code

³⁷ Okagbue I., 'Pregnancy Termination and the Law in Nigeria' (1990) 21(4) *Studies in Family Planning* 197-208, p.197 accessible on <<http://www.jstor.org/stable/1965614>> accessed on 9 December 2016

³⁸ Where it provides for a situation whereby the woman dies as a result of the miscarriage.

³⁹ Ilobunso L.K.O., 'Policy on Abortion in the Nigerian Society: Ethical Considerations' available at <<http://www.diva-portal.org/smash/get/diva2:24130/fulltext01.pdf>> accessed on 9 December 2016

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Elimination of all forms of Discrimination Against Women [CEDAW],⁴⁶ despite that, provisions conceding reproductive health rights to women under CEDAW are inaccessible because they are to be domesticated by the Nigerian State through the Acts of Parliament.⁴⁷ Although, CEDAW does not specifically address the issue of abortion in its provisions, however, Articles 10(h),⁴⁸ 12(1)⁴⁹ and 14(2)(b)⁵⁰ have been in controversy. This controversy stems from a number of authors who have interpreted "family planning" within CEDAW to include access to abortion,⁵¹ while some others refuse to attest to such conception.⁵² However, based on the General Recommendation 24 made by the CEDAW Committee,⁵³ it is clear that discrimination can be said to occur against women when health systems refuse or neglect to provide health services that only women need, such as safe abortion services.⁵⁴

The UN reported that General Recommendations give authoritative guidance to State parties clarifying the scope of the Convention and provide detailed guidance to States on how to implement its 16 substantive articles.⁵⁵ It would seem substantive to say that since the recommendations serve as a guide on how to understand, interpret and implement the CEDAW,⁵⁶ then if the committee sees family planning to include abortion, then it is safe to assume so that it does include access to safe abortion services.

As noted earlier that the three regions in Nigeria confirmed with the existing legislation on abortion, it may need to be opined that the existence of religious laws, stricto sensu, in Nigeria is by no way through a legislated law, but are established laws found binding on persons of the respective faiths. The dictates of such laws are pronounced in the respective religious institutions, thus, guiding morality. Usually, the religious perspectives on abortion are hinging on the importance of life and when a man becomes animated. Given these, the study assesses the legal perspectives of the three predominant religions in Nigeria about abortion.

Arguably, the procreation of children in the traditional belief is a unity with the notion that human life is respected and any attempt to kill unborn human life is an abomination.⁵⁷ Thus, pregnancy is the first indication that a new member is on the way as children are valued in the society and "a woman who fails to get children becomes unhappy and her situation is worse than committing genocide."⁵⁸ The rationale is the belief that procreation of children "not only continues the physical line of life but also seen as a re-incarnation of the departed and keeping the parents in their state of personal immortality."⁵⁹ The traditional culture of having more than one wife is for the purpose of searching for children. The belief is that "he who has many descendants has the strongest possible manifestation of immortality."⁶⁰ Thus, he is reborn in the multitude of his descendants and there are many who remember him after he has died physically and entered his personal immortality.⁶¹

In the same vein, most Christians, especially the Catholics hold the strong view that life begins at conception. Therefore, abortion at any stage of pregnancy is forbidden.⁶² The view above is, however, not based on any express stipulation in the Bible that abortion is forbidden, nor does the Scripture answer when life begins.⁶³ Although, it is not a question in doubt whether life is sacrosanct or not, because the Old Testament commands that: "Thou shalt not kill."⁶⁴ The position is in tandem with the biblical verses which it read: "Cursed is he who accepts a bribe to strike down an innocent person."⁶⁵

⁴⁶ Centre for Reproductive Rights, *Women's Reproductive Rights in Nigeria: A Shadow Report* (Center for Reproductive Law and Policy, New York 1998)

⁴⁷ It is a procedure in which small sample of tissue, known as chorionic villus is obtained to test for genetic abnormalities. Explanation available at <<http://cfrrad.com/public/uploads/chorionicvillus.pdf>> accessed on 18 December 2016

⁴⁸ Mahmood, P., 2000. *What are the Defects in the Law?* Nigeria: Smap Press Ltd.

⁴⁹ Umeh, E., 1996. Abortion Bill Faces Mounting Opposition. *Daily Times Newspaper*, 61 (3): 6-9

⁵⁰ Some Ekvwonri, Nigeria: The Defeat Against DMO Abortion Bill THIRSDAY Newspaper (Nigeria) 9 June 2009) <<http://allafrica.com/stories/200906100035.html>> accessed on 18 December 2016

⁵¹ Hobson L.K.O., Policy on Abortion in the Nigerian Society: Ethical Considerations, p.27

⁵² CEDAW seeks to protect the fundamental human rights and worth of women, providing for equality between the two sexes. The Convention declares in its preamble that: "[A]ll human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

⁵³ Ughueke L., An Examination of the Nigeria's Abortion Law with Today's Realities' NBF News (28 December 2010) available at <<http://www.nigerianbestforum.com/blog/an-examination-of-nigeria%E2%80%A9s-abortion-law-with-today%E2%80%A9s-realities>> accessed on 24 May 2016

⁵⁴ It provides that States should take measures to guarantee access to educational information, health care services, counselling, and advice on family planning in rural areas.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Cook R.J., Abortion, Human Rights and the International Conference on Population and Development (ICPD) in Warner L.K. & Shah L.H.(eds.), *Preventing Unsafe Abortion and its Consequences: Priorities for Research and Action* (New York: Guttmacher Institute, 2006)

⁵⁸ Olatokun G.M., Ahmad R. & Abdul-Walab H., Making a Case for the Domestication of CEDAW in Nigeria. (2014) Vol.22 ALPG 43-58

⁵⁹ The Committee is empowered by Article 21(1) to make recommendations based on the examination of reports received from State Parties.

⁶⁰ Abortion, Human Rights and the International Conference on Population and Development (ICPD)

⁶¹ UN Women, 'Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and Security' (2015) available at <<http://www.unwomen.org/-media/headquarters/attachments/sections/library/publications/2015/guidebook-cedawgeneralrecommendation30-womenpeaceandsecurity-en.pdf>> last accessed on 24 May, 2016

⁶² Schulz P., General Recommendation 33 of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) (CEDAW COMMITTEE) <<https://m.coe.int/Coe/ERM/Public/CommonSearchServices/DisplayDCTMContent?documentId=090901500631>> accessed on 25 May 2016.

⁶³ See MBITI, J. S., *African Religions, and Philosophy*. Available at <www.humana.edu.gh/articles/vol1no1/Oct10.pdf> See also, MAGESA, L., *African Religion: the Moral Traditions of Abundant Life*. *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Yemisi O.M. and Oluosola A.L., Women and Abortion: The Religious Challenges (2013) 30(1) *Tropical Journal of Obstetrics and Gynaecology* 75-79

⁶⁹ Disney L. & Poston L., The Breath of Life: Christian Perspectives on Conception and Enslavement.

⁷⁰ Exodus 20:15 (KJV); Deuteronomy 3:17 (KJV)

⁷¹ Deuteronomy 27:25a

And "There are six things which the LORD hates, yes, seven which are an abomination to Him: haughty eyes, a lying tongue, and hands that shed innocent blood..."⁶⁶ In the book of Genesis, God said to both Adam and Eve, "Be fruitful and increase in numbers, fill the earth and subdue it."⁶⁷

Instructively, inferences are made from the biblical verses to show that life begins at conception. This view by some scholars is because the Bible does not distinguish between a person's state before and after birth.⁶⁸ One of such model verses used by Christians against abortion is Jeremiah 1:5 which says: "Before I formed thee in the belly I knew thee, and before thou camest forth out of the womb I sanctified thee, and I ordained thee a prophet unto the nations."⁶⁹ For Catholics, the issue of whether life begins at conception or not is noncontroversial as the Catechism of the Catholic Church⁷⁰ in Paragraph 2322 states thus: "From its conception, the child has the right to life." Direct abortion is gravely contrary to the moral law. The Church imposes the canonical penalty of "excommunication for this crime against human life."⁷¹ It seems to be that the Catechism tends to thread the guide of an earlier Christian guide book called the Didache which specifies abortion as a crime.⁷² In summary, therefore, the Christians believe [or are supposed to believe] that life begins at conception, based on the above directions, ergo, abortion is abhorred. Nevertheless, some scholars still hold the opinion that there exists no unified voice on abortion because no Christian Scripture provides sufficient data to help draw a consentaneous conclusion on abortion.⁷³

In the Islamic perspective, the concept of abortion is also a silent area in the Qur'an.⁷⁴ However, under the general rule of the Shari'ah (Islamic) Law, Islam has placed heavy emphasis on the sanctity of life, and base on this one fact, this study argues that Islam forbids abortion. The Quran lays prominence on the value of life when it provides: "Whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, should be as if he had slain mankind altogether."⁷⁵ Therefore, for a person who kills another person is equated to mass killing of the whole of humankind. However, this study cannot question the veracity of the dictates of the Qur'an, but same cannot be said of the interpretation of the Qur'an as made by Islamic scholars. It is in agreement that life is sacrosanct, and its desecration is haram⁷⁶ in Islam.

However, it has been noted in many existing literature that abortion "before four months of pregnancy when it leads to a fatal condition for mother is allowed," and, abortion is "allowed before four months of pregnancy in cases where the mother has an advanced disease" as such that "her life is threatened by the continuation of pregnancy provided that a specialist physician confirms it."⁷⁷ Also, although, aborting a deformed fetus is not likely allowed. However, if a trustworthy physician attests that there is a concern that the life of the mother is in danger; abortion of the fetus is allowed before breathing spirit into it (i.e. four months gestation).⁷⁸

For instance, study shows that in invoking the principles of *istislah*⁷⁹ and *istihsan*⁸⁰ in the Islamic Republic of Iran, many Shiite and Sunni scholars have allowed abortions for limited social and medical reasons because of the expanding populations in Muslim countries and constrained health

budgets. Thus, rather than considering a question in an isolated or theoretical sense as was done in the past, the Islamic Republic of Iran enacted contemporary abortion policies⁸¹ as the study observes that it is a social reality that "more than 80000 illegal abortions were performed in Iran every year under unsanitary conditions that put the life of the mother at risk" and "causes public health crisis to the country." Based on this situation, scholars reconsider the "public health ramifications of fatal congenital deformities or the financial hardships that serious, long-term congenital illnesses have on unfortunate families."

This Islamic Republic of Iran position gains credence from the Qur'an injunction which provides that "A mother should not be made to suffer because of her child."⁸² The argument therefore revolves around permissibility of abortion for whatever reason before the 120 days of conception. This is evident from the Council of Islamic Jurists of Mecca fatwa issued in 1990 which "allows abortion in cases of serious congenital malformations 'provided that the medical committee of specialist doctors agree,' and 'before 120 days computed from conception (134 days from the woman's last menstrual period) only if there is no available treatment for the foetus or baby.'"⁸³

Notwithstanding that Islam forbids abortion, the argument against this position is that although Islam upholds the sanctity of human life, but that life begins once there is blow of spirit into the fetus.⁸⁴ This position brings about the principle of ensoulment- the moment the human being gains a soul.⁸⁵ Just as the Qur'an does not mention abortion, so also does it not specify when ensoulment takes place. The Qur'an only maintain in Qur'an 23 verses 12-14 the five distinct stages of embryonic development thus:

⁶⁶ Proverbs 6:16-19

⁶⁷ Book of Genesis 1:27, 28

⁶⁸ Grisanti M.A., 'The Abortion Dilemma' (2000) 11(2) *The Master's Seminary Journal* 169-190

⁶⁹ Jeremiah 1:5 (KJV)

⁷⁰ John Paul, Catechism of the Catholic Church retrieved from <<http://www.balainstudies.net/asma/catechism.pdf>> accessed on 16 December 2016

⁷¹ *Ibid.*

⁷² Feldman D., 'Abortion: The Jewish View' <https://www.rabbinicalcouncil.org/sites/default/files/public/balabab/welshurw/19861990/feldman_abortion.pdf> accessed on 17 December 2016

⁷³ Disney L. & Poston L., 'The Breath of Life: Christian Perspectives on Conception and Ensoulment.'

⁷⁴ Denimal S., 'Abortion from an Islamic Ethical Point of View' (2011) 3(1) *International Journal of Business and Social Science* 230-237

⁷⁵ Surahat Mafidat: 32 (Qur'an 5:32)

⁷⁶ Haram is what is forbidden and punishable according to Islamic law. See Al-Jallad N., 'The Concepts of Al-Halal and Al-Haram in the Arab-Muslim Culture: A Translational and Lexicographical Study' available at <<http://www.truebanking.com.pk/img/reports/Report-2.pdf>> accessed on 17 December 2016

⁷⁷ Khomeni R. In: Alkame P, Roltani M, Noghani F, eds. *Ruling no 1*. 1st edn.

Tehran, Iran: Taymuzzadeh Cultural Publication Foundation, 1998:108 See also Khomeni R. In: Alkame P, Roltani M, Noghani F, eds. *Case no 3*. 2nd edn.

Tehran, Iran: Taymuzzadeh Cultural Publication Foundation, 1999:80

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However, the issue of ensoulment surfaces basically in the ahadith⁸⁷ of the Prophet Muhammad (SAW). Hadith 4 provides:

The above ahadith appears slightly ambiguous as to whether the stages of creation that lead to ensoulment are parallel or consecutive. Scholars hold divergent views on this. While some are of the view that the collection of the components of human creation are collected together in the first 40 days,⁸⁹ others hold that the three stages of fetal development take place over 120 days, with each stage taking forty days.⁹⁰ This study argues that "a similar period" is indeed very much controversial, but the conclusion is that the stages of creation leading to ensoulment are consecutive, based on some corroborative scientific explanations and two observations from the look at some fetal development images.⁹¹ It may, therefore, be safe to say that abortion before ensoulment is permissible contrary to after ensoulment, just as the Hanafis⁹² hold.⁹³ The position is consistent with the explanation by Imam 'Afi Zaynul Abideen, the great grandson of Prophet Mohammad. When asked about when an intentional miscarriage can be an abortion, he replied, "after the stage of nutfah"⁹⁴ In either case, the absence of an express mention of the prohibition of abortion in either of the religious scriptures have given room for diverse moral vendetta.

To find the criminal and religious perspectives of abortion in Nigeria, the survey was carried out on stakeholders using data obtained through in-depth interview and questionnaires administered to the religious authorities, women activists, healthcare professionals and experts in criminal justice in the six geo-political zones in Nigeria. The respondents were required to express their opinion on a 5-point

[illegible]

¹⁰ As Islamic law has historically been flexible and sensitive to public needs and social realities and when the logical outcome of a ruling based on shari'a principles is harsh or impractical in application, *ifta'iah* is normally adopted for "the consideration of the public good." See Yacoub A.A.A. *Islamic Fiqh in The Fiqh of medicine*. London: Ta-Ha Publishers, 2001:26.

The Islamic Republic of Iran enacted a contemporary abortion policy which has to the effect thus: Permitting therapeutic abortions can be under the following conditions. First, the fetus must be less than four months of age, that is, before breathing the spirit into it. Second, the fetus must be suffering from a fatal disease which will

¹⁴ Shiraz Bagheri and Leila Afshar, "Abortion in Different Islamic Jurisprudence: Case Commentaries," *Asian Bioethics Review* Vol.3 no. 4, (2011): 360-361.

*Khittani: B.A.B., Divergent Views on Abortion and the Period of Ensoulement' (2013) 13(1) *Sudanese Caspore University Medicine Journal* 26-31

It is the second primary source of Shariah Law. It is a report describing the words, actions or habits of the Prophet Muhammad (S.A.W).

⁴⁴ Demirel S., 'Abortion from an Islamic Ethical Point of View', *Journal of Islamic Law*, 1998, 1, 1, 1-10.

Demirel S., 'Abortion from an Islamic Ethical Point of View,'

¹Khutamy B.A.B., 'Divergent Views on Abortion and the Period of Enslavement',

*First observation is between 12 and 13 weeks (Finnegan et al. 2001).

The fetus looks like it jumps at 12 and 15 weeks (approximately to 34–58 days of conception of pregnancy, indeed the fetus looks like it, however at 12 weeks is hard to see; secondly, the fetus which has grown to about 4.3–4.6 cm is said to make its first perceived movement between 18 and 20 weeks of gestation. See Royal College of Obstetricians and Gynecologists, Reduced Fetal Movements: Green-top Guideline No. 57 available at https://www.rcog.org.uk/globalassets/documents/guidelines/gtg_57.pdf accessed on 17 December 2016. Thus, combining the state of fetus (which may also be described as lump looking) and the experience of fetal movement sometime around 18 and 20 weeks of gestation in the second observation, one may safely infer that it is around period that the fetus receives breaths of life. Reason being that fetal movement is one of the first signs of fetal life and is regarded as a manifestation of fetal well-being.

One of the four schools of thought in Islam founded by Imam Hanifah al-Nu'man al-Tha'ibi (90-148 AH). See Mousafa al-Qazwini, *When Power and Piety Collide: A Critical Analysis of Early Caliphs of Islam: Understanding the Present by Knowing the Past* (Friesens Corporation, Canada 2009) p.139

Ladan, Muhammed Tawfiq, *Islam and Permission of Abortion for Rape Victims in National Women's Court in Sexual Violence Against Women* (National Centre for Women Development, Alanya 2002)

Kulaynī M. Bab Diyāt al-Jinn. Vol.2. Hadīth no: 15, Al-usul al-kafi Al-usul al-kafi. Tehran, Dar al-Kutub al-Islamiyyah. In: Jam'i'e al-Hadith CD-ROM. 1st ed. Qom, Iran: Computer Research Centre of Islamic Sciences, 2004.

15	Respondents' views on whether induced abortion is always carried out by non-physician providers	100 (33.3%)	135 (51.7%)	15 (5%)	20 (8.7%)	10 (3.3%)	300 100
16	Respondents' views on whether induced abortion may lead to infections or and bleedings or serious complications on the mother	135 (45%)	130 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
17	Respondents' views on whether induced abortion may result to maternal mortality	100 (33.3%)	135 (51.7%)	15 (5%)	20 (8.7%)	10 (3.3%)	300 100
18	Respondents' views on whether enactment of specific law measures and policies on abortion will reduce maternal mortality	135 (45%)	130 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
19	Respondents' views on whether carrying out abortion by qualified medical practitioners is safer than quack doctors	90 (30%)	165 (55%)	18 (6%)	19 (6.3%)	08 (2.7%)	300 100
20	Respondents' views on whether carrying out abortion can be at any time of the pregnancy	20 (6.7%)	50 (16.7%)	150 (50%)	70 (23.3%)	10 (3.3%)	300 100
21	Respondents' views on whether access to free healthcare facilities by pregnant women will reduce induced abortion	135 (45%)	130 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
22	Respondents' views on whether avoiding criminal prosecution leads to induced abortion	90 (30%)	165 (55%)	18 (6%)	19 (6.3%)	08 (2.7%)	300 100

Researcher's Fieldwork 2016

The data presented in Table 1 indicates that the majority of the respondents representing 85% (255) strongly agreed and agree that abortion is a crime in Nigeria. The combination of respondents that strongly agreed and agree, representing 85% (255) demonstrated that in Nigeria, religion prohibit abortion. Similarly, 255 (85%) out of 300 respondents strongly agreed and agree that women involve in abortion in Nigeria. In the same Table 1, there is a strong correlation between low socio-economic background and women's involvement to carrying out abortion in Nigeria as 255 (85%) of the respondents strongly agreed and agree respectively.

In another interval, it was reflected in Table 1 that respondents representing 95% (285) strongly agreed and agree that abortion is carried out in a situation where the life of the mother is seriously at risk and that child spacing is not one of the causes of abortion in Nigeria as majority of the respondents representing 73.3% (220) strongly disagreed and disagree to that position. Also, as shown in Table 1 above, almost all the respondents strongly agreed and agreed that unwanted pregnancy, unmarried, refusal of the father to be responsible to the fetus, pregnancy from sexual assault such as rape/incest and fetus suffering from malformations are major factors that causes abortion in Nigeria. Their responses in affirming these questions range from 85% (255) to 95% (285) out of 300 total respondents that returned the questionnaire.

Some of the respondents interviewed⁹⁵ hold the views that "to ab those categories of pregnancies will be preferable as nobody in a society will approve and recognize those children when the eventually gave birth to them." Some of them also reacted during interviews⁹⁶ that "women do abort the fetus because they do not want to be stigmatized." Some responded during the interview⁹⁷ that "it is better to abort especially the unwanted pregnancy because the respondents' religions prohibits a child born out of wedlock. However, majority of the respondents representing 85% (255) at different intervals each strongly agreed and agreed that carrying out abortion due to the factors affirmed earlier in the questionnaire should be therapeutic abortion as it is safer than induced abortion as they responded in some intervals representing 95% (285) and 85% (255) respectively that induced abortion may result to infections or and bleedings or serious complications or maternal mortality. They strongly agreed and agreed that induced abortion is always carried out by non-physician providers because the mother indulge in this practice may intend to avoid criminal prosecution and to escape punishment. These affirmations represent the majority of 255 (85%) out of 300 respondents.

In the same Table 1, the overwhelming majority of 220 (73.3%) strongly disagreed and disagreed that abortion should be carried out at any time of the pregnancy but agreed that abortion is safer if it is carried out by a qualified medical practitioner. For example when some of the respondents were told to freely comment on their responses in an interview,⁹⁸ two of the Islamic scholars in Kaduna and Ilorin said:

"whenever abortion is to be carried out for whatever reason, it should not be at any time of the pregnancy but before the fetus clocks four months or at most before 120 days of the pregnancy otherwise, anybody that indulge in that act of abortion will pay the penalty for the death of the fetus that has passed more than these periods of gestations."

In all, majority of them representing 95% (285) at different intervals strongly agreed and agreed that availability of free access to healthcare facilities for pregnant women and enactment of specific law, policies and measures will go a long way to reduce maternal mortality rate identified as the major consequence of abortion in Nigeria.

Instructively, the major findings in Table 1 have answered the research questions. The findings show that there is a relationship between abortion and maternal mortality rate in Nigeria. These findings corroborate Sections 223 and 228 of the Penal and Criminal Codes and Henshaw S.K. et al.⁹⁹ that abortion is a crime in Nigeria except if done to save the life of the mother. The implications of the findings show the failure of the existing law on criminalizing abortion as findings in this study revealed that inability to have a specific law on abortion resulted on induced abortion as victims carried out abortion through non-physician providers to escape punishment. Their clandestine activities increase the maternal mortality rate and pose threat to public health. This pattern of findings is similar to the interview sessions at Enugu and Port Harcourt¹⁰⁰ where the respondents expressed that maternal

⁹⁵ Interviews conducted at fieldwork in Bauchi, Enugu, Ilorin, Kaduna, Lagos, and Port Harcourt, 2016

⁹⁶ Interviews conducted in Enugu and Port Harcourt dated 18th and 21st July, 2016

⁹⁷ Interviews conducted in Ilorin and Lagos dated 8th and 17th August, 2016

⁹⁸ Interviews conducted in Bauchi and Kaduna dated 12th and 19th September, 2016

⁹⁹ Henshaw S.K., et al., 'Severity and Cost of Unsafe Abortion Complications Treated in Nigerian Hospitals (2008) 34(1) *International Family Planning Perspective* 40-50

¹⁰⁰ Interviews conducted in Enugu and Port Harcourt dated 18th and 21st July 2016

¹⁰¹ Grimes D.A, et al. 'Unsafe Abortion: The Preventable Pandemic' (2006) *The Lancet, Sexual and Reproductive Health* 4, p.1

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mortality rate will reduce if abortion is permitted not only to save the life of the mother but to avoid giving birth to a deformed child. To them, non-criminalization of abortion will allow the mother to feel free to consult expert medical practitioners instead of indulging in induced abortion.

The findings are in tandem with the findings of Grimes D.A. et al.¹⁰¹ that the accessibility of women to procure abortions in hospitals by qualified gynecologists and obstetricians has been curtailed by restrictive laws thereby leading women to seek for clandestine means to eliminate unwanted pregnancies. Further, the findings from the fieldwork conformed to the study of Okonofua¹⁰² that unsafe abortion is a critical public health problem and a leading cause of maternal mortality in Nigeria. As noted earlier in this study, Prada E., et al.¹⁰³ also confirmed that about 3,000 women die each year due to complications of unsafe abortion. Similarly, the findings from the fieldwork are analogous with the study of Anate¹⁰⁴ that legal abortion means safe abortion or therapeutic abortion on the ground that if abortion is not legal in a society like Nigeria where medical services and facilities are grossly inadequate, then abortions will remain unsafe with continued high mortality and morbidity rate. The effect of the current Nigerian law is not in a vacuum, but it is something most evident. Odunsi disclosed some of the impacts of a restrictive abortion law, with particular reference to Nigeria.¹⁰⁵ He noted that the effects of the restriction are unsafe abortion and involuntarily carrying unwanted pregnancies to term.¹⁰⁶ In the former case, it has been earlier said to culminate into maternal mortality or morbidity.

5.0 Conclusion and Recommendations

From the above, the findings in this study revealed that the justification in which so many of the respondents in the fieldwork intend to drive is to reach the single conclusion that when abortion is permitted by law the incidence of maternal mortality or morbidity in Nigeria will reduce relatively. In other words, women will have access to professional health services. The findings also revealed that although abortion may not be advised to be carried out by women especially after gestation or ensoulment, it was suggested by the majority of the respondents that there should be specific law, policies, and measure that will legalize abortion to some extent. The empirical examination of the criminal and religious perspectives of abortion in Nigeria show incidence of abortion in Nigeria despite the provisions of the Criminal and Penal Codes criminalizing abortion and despite the fact that the three religions also prohibit abortion. It has been observed in this study that the situation is evident of the ineffectiveness of the law. The study observed that the major purpose for clamouring for enactment of specific law on abortion in Nigeria are to enhance the attainment of safe motherhood, to eliminate the death and complications associated with induced abortion and to enhance the dignity and sacrosanctity of human life by reducing the incidence of induced abortion.

Also, apart from agitating for a specific law on abortion, there is the need to proffer the following recommendations:

1. There should be a mass literacy campaign and improvement on the existing national health services to reduce the problems of illegal induced abortion in Nigeria. As a matter of fact, this study recommends access to free healthcare facilities for pregnant women.
2. There should be integrated family health education at both local and national levels.
3. There should be training and retraining of physicians in the management of abortion and abortion complications.
4. The Nigerian legislature should domesticate CEDAW so that the obligation imposed on member States would extend to Nigeria. This domestication will enable the government to work in line with the law when domesticated to prevent any form of discrimination against women in the country, and the legal reform would expand access to comprehensive abortion care for Nigeria women.
5. There should be monitoring mechanism as abortion should only be permitted within four months of the pregnancy unless otherwise permitted by a qualified medical practitioner.

And certainly We created man of an extract of clay, then We made him a small seed (nutfah)⁸⁶ in a firm resting-place (the uterine wall), then We made the seed a clot ('alaqah), then We made the clot a lump of flesh (mudhghah), then We made (in) the lump of flesh bones ('idham), then We clothed the bones with flesh (lahim) ...” (23:12-14).

However, the issue of ensoulment surfaces basically in the ahadith⁸⁷ of the Prophet Muhammad (SAW). Hadith 4 provides:

Verily, each of you is brought together in his mother's womb for forty days in the form of a drop of fluid. Then it is a clinging object for a similar period. Thereafter, it is a lump looking like it has been chewed for a similar period. The Angel is then sent to him, who breathes into him the ruh [spirit]. He is commanded to issue four decrees: to record his sustenance, his life span, his deeds and his fortune or misfortune.⁸⁸

¹⁰¹ Okonofua F.E., et al. 'Perceptions of Policymakers in Nigeria Toward Unsafe Abortion and Maternal Mortality.' (2009) 35(4) *International Perspectives on Sexual and Reproductive Health* 194-202

¹⁰² Prada E., et al. 'Maternal Near-Miss Due to Unsafe Abortion and Associated Short-Term Health and Socio-Economic Consequences in Nigeria' (2015) 19(2) *African Journal of Reproductive Health* 52-62, p.52

¹⁰⁴ Anate Momoh, 'Women Reproductive Health in Africa: A Continuing Tragedy.'

¹⁰⁵ Odunsi B. 'Abortion and the Law' in Iyiola I.O. & Nwabueze R.N. (eds.), *Comparative Health Law and Policy: Critical Perspective on Nigerian and Global Health Law* (Ashgate Pub., England 2015) 197-216

¹⁰⁶ *Ibid*.

The above ahadith appears slightly ambiguous as to whether the stages of creation that lead to ensoulment are parallel or consecutive. Scholars hold divergent views on this. While some are of the view that the collection of the components of human creation are collected together in the first 40 days, 89 others hold that the three stages of fetal development take place over 120 days, with each stage taking forty days.⁹⁰ This study argues that "a similar period" is indeed very much controversial, but the conclusion is that the stages of creation leading to ensoulment are consecutive, based on some corroborative scientific explanations and two observations from the look at some fetal development images.⁹¹ It may, therefore, be safe to say that abortion before ensoulment is permissible contrary to after ensoulment, just as the Hanafis⁹² hold.⁹³ The position is consistent with the explanation by Imam Ali Zaynul Abideen, the great grandson of Prophet Muhammad. When asked about when an intentional miscarriage can be an abortion, he replied, "after the stage of nutfah"⁹⁴ In either case, the absence of an express mention of the prohibition of abortion in either of the religious scriptures have given room for diverse moral vendetta.

4.0 Presentation of Data and Discussion of Findings

To find the criminal and religious perspectives of abortion in Nigeria, the survey was carried out on stakeholders using data obtained through in-depth interview and questionnaires administered to the religious authorities, women activists, healthcare Professionals and experts in criminal justice in the six geo-political zones in Nigeria. The respondents were required to express their opinion on a 5-point

Likert-type scale (5= strongly agree (SA), 4= Agree (A), 3= Disagree (D), 2= Strongly Disagree (SD) and 1= Undecided (UD)) as shown in Table 1 below.

Table 1: Respondents' views on the Criminal and Religious Perspectives on Abortion in Nigeria

S.NO	ITEMS	SA	A	D	SD	UD	TOTAL
1	Respondent: view on whether abortion is a crime in Nigeria	100 (35.3%)	155 (51.7%)	15 (4.9%)	20 (6.7%)	10 (3.3%)	300
2	Respondent: view on whether religion prohibits abortion	90 (30%)	185 (61.7%)	15 (4.9%)	6.3% (2.1%)	10 (3.3%)	300
3	Respondent: view on whether women involve in abortion in Nigeria	70 (23.3%)	180 (59.9%)	15 (4.9%)	6% (2%)	10 (3.3%)	300
4	Respondent: view on whether law/economic background it one of the causes of abortion in Nigeria	120 (40%)	135 (45%)	15 (4.9%)	15 (5%)	15 (5%)	300
5	Respondent: view on whether carrying out abortion is when the life of the mother is at stake	135 (45%)	150 (50%)	05 (1.7%)	2.3% (0.7%)	03 (1%)	300
6	Respondent: view on whether child getting it one of the causes of abortion	20 (6.7%)	50 (16.7%)	15 (4.9%)	75 (25%)	03 (1%)	300
7	Respondent: view on whether unwanted pregnancy is one of the causes of abortion	135 (45%)	150 (50%)	05 (1.7%)	2.3% (0.7%)	03 (1%)	300
8	Respondent: view on whether carrying out abortion is because the mother is not married	90 (30%)	180 (59.9%)	15 (4.9%)	6.3% (2.1%)	10 (3.3%)	300
9	Respondent: view on whether carrying out abortion is because the father to a fetus is not ready to take responsibility on the embryo	135 (45%)	150 (50%)	05 (1.7%)	2.3% (0.7%)	03 (1%)	300
10	Respondent: view on whether women who are in incest should be aborted	100 (33.3%)	155 (51.7%)	15 (4.9%)	20 (6.7%)	10 (3.3%)	300
11	Respondent: view on whether fetus suffering from profound developmental delay or deformations or malformation should be aborted	135 (45%)	150 (50%)	05 (1.7%)	2.3% (0.7%)	03 (1%)	300
12	Respondent: view on whether abortion should be therapeutic	100 (33.3%)	155 (51.7%)	15 (4.9%)	20 (6.7%)	10 (3.3%)	300
13	Respondent: view on whether abortion should be induced	36 (12%)	19 (6.3%)	135 (45%)	120 (40%)	10 (3.3%)	300
14	Respondent: view on whether therapeutic abortion is safe	90 (30%)	180 (59.9%)	15 (4.9%)	6.3% (2.1%)	10 (3.3%)	300

⁸⁶ The term "nutfah" refers to both the male sperm and the fertilized embryo and is distinguished from the context of its use. Thus the first stage, nutfah starts with conception and ends 40 days after implantation.

⁸⁷ It is the second primary source of Shari'ah Law. It is a report describing the words, actions or habits of the Prophet Muhammad (S.A.W).

⁸⁸ Hadith 4, An-Nawawi Collection reported by Abu 'Abd al-Rahman 'Abdullah ibn Mas'ud (Radiyallahu 'anhu) ⁸⁹ Demirel S., 'Abortion from an Islamic Ethical Point of View'.

⁹⁰ Khitamy B.A.B., 'Divergent Views on Abortion and the Period of Ensoulment'.

⁹¹ First observation is, between 12 and 13 weeks (Equivalent to 84-98 days of conception) of pregnancy, indeed the fetus looks like a lump as its bones begin to harden; secondly, the fetus which has grown to about 4.3 - 4.6 cm is said to make its first perceived movement between 18 and 20 weeks of gestation. See Royal College of Obstetricians and Gynecologists, 'Reduced Fetal Movements: Green-top Guideline No. 57' available at https://www.rcog.org.uk/globalassets/documents/guidelines/gtg_57.pdf accessed on 17 December 2016. Thus, combining the size of fetus [which may also be described as lump looking] and the experience of fetal movement sometime around 18 and 20 weeks of gestation in the second observation, one may safely infer that it is around period that the fetus receives breaths of life. Reason being that fetal movement is one of the first signs of fetal life and is regarded as a manifestation of fetal wellbeing.

⁹² One of the four schools of thought in Islam founded by Imam Hanifah al-Nu'man a Thabit [80-148 AH]. See Sayed Moustafa, al-Qazwini, *When Power and Piety Collide: A Critical Analysis of Early Caliphate of Islam-Understanding the Present by Knowing the Past* (Friesens Corporation, Canada 2009) p.139

⁹³ Ladan, Muhammed Tawfiq, 'Islam and Permission of Abortion for Rape Victims' in National Women's Court on Sexual Violence Against Women (National Centre for Women Development, Abuja 2002).

⁹⁴ Kulayni M. Bab Diyat al-Jinin, Vol.2. Hadith no: 15. Al-usul al-kafi Al-usul al-kafi, Tehran, Dar al-Kutub al-Islamiyyah. In: Jam'e al-Hadith CD-ROM, 2nd ed. Qom, Iran: Computer Research Centre of Islamic Sciences, 2004. GSTF © 2017.

15	Respondents' views on whether induced abortion is always carried out by non-physician providers	100 (33.3%)	155 (51.7%)	15 (5%)	20 (6.7%)	10 (3.3%)	300 100
16	Respondents' views on whether induced abortion may lead to infections or/and bleedings or serious complications on the mother	135 (45%)	150 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
17	Respondents' views on whether induced abortion may result to maternal mortality	100 (33.3%)	155 (51.7%)	15 (5%)	20 (6.7%)	10 (3.3%)	300 100
18	Respondents' views on whether enactment of specific law, measures and policies on abortion will reduce maternal mortality	135 (45%)	150 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
19	Respondents' views on whether carrying out abortion by qualified medical practitioners is safer than quack doctors	90 (30%)	165 (55%)	18 (6%)	19 (6.3%)	08 (2.7%)	300 100
20	Respondents' views on whether carrying out abortion can be at any time of the pregnancy	20 (6.7%)	50 (16.7%)	150 (50%)	70 (23.3%)	10 (3.3%)	300 100
21	Respondents' views on whether access to free healthcare facilities by pregnant women will reduce induced abortion	135 (45%)	150 (50%)	05 (1.7%)	07 (2.3%)	03 (1%)	300 100
22	Respondents' views on whether avoiding criminal prosecution leads to induced abortion	90 (30%)	165 (55%)	18 (6%)	19 (6.3%)	08 (2.7%)	300 100

Researcher's Fieldwork 2016

The data presented in Table 1 indicates that the majority of the respondents representing 85% (255) strongly agreed and agree that abortion is a crime in Nigeria. The combination of respondents that strongly agreed and agree, representing 85% (255) demonstrated that in Nigeria, religion prohibit abortion. Similarly, 255 (85%) out of 300 respondents strongly agreed and agree that women involve in abortion in Nigeria. In the same Table 1, there is a strong correlation between low socio-economic background and women's involvement to carrying out abortion in Nigeria as 255 (85%) of the respondents strongly agreed and agree respectively.

In another interval, it was reflected in Table 1 that respondents representing 95% (285) strongly agreed and agree that abortion is carried out in a situation where the life of the mother is seriously at risk and that child spacing is not one of the causes of abortion in Nigeria as majority of the respondents representing 73.3% (220) strongly disagreed and disagree to that position. Also, as shown in Table 1 above, almost all the respondents strongly agreed and agreed that unwanted pregnancy, unmarried, refusal of the father to be responsible to the fetus, pregnancy from sexual assault such as rape/incest and fetus suffering from malformations are major factors that causes abortion in Nigeria. Their responses in affirming these questions range from 85% (255) to 95% (285) out of 300 total respondents that returned the questionnaire.

Some of the respondents interviewed⁹⁵ hold the views that "to abort those categories of pregnancies will be preferable as nobody in the society will approve and recognize those children when they eventually gave birth to them." Some of them also reacted during interviews⁹⁶ that "women do abort the fetus because they do not want to be stigmatized." Some responded during the interview⁹⁷ that "it is better to abort especially the unwanted pregnancy because the respondents' religions prohibits a child born out of wedlock." However, majority of the respondents representing 85% (255) at different intervals: each strongly agreed and agreed that carrying out abortion due to the factors affirmed earlier in the questionnaire should be therapeutic abortion as it is safer than induced abortion as they responded in some intervals representing 95% (285) and 85% (255) respectively that induced abortion may result to infections or/and bleedings or serious complications or maternal mortality. They strongly agreed and agreed that induced abortion is always carried out by non-physician providers because the mother indulge in this practice may intend to avoid criminal prosecution and to escape punishment. These affirmations represent the majority of 255 (85%) out of 300 respondents.

In the same Table 1, the overwhelming majority of 220 (73.3%) strongly disagreed and disagreed that abortion should be carried out at any time of the pregnancy but agreed that abortion is safer if it is carried out by a qualified medical practitioner. For example when some of the respondents were told to freely comment on their responses in an interview,⁹⁸ two of the Islamic scholars in Kaduna and Ilorin said:

"whenever abortion is to be carried out for whatever reason, it should not be at any time of the pregnancy but before the fetus clocks four months or at most before 120 days of the pregnancy otherwise, anybody that indulge in that act of abortion will pay tort penalty for the death of the fetus that has passed more than these periods of gestations."

In all, majority of them representing 95% (285) at different intervals strongly agreed and agreed that availability of free access to healthcare facilities for pregnant women and enactment of specific law, policies and measures will go a long way to reduce maternal mortality rate identified as the major consequence of abortion in Nigeria. Instructively, the major findings in Table 1 have answered the research questions. The findings show that there is a relationship between abortion and maternal mortality rate in Nigeria. These findings corroborate Sections 223 and 228 of the Penal and Criminal Codes and Henshaw S.K. et al.⁹⁹ that abortion is a crime in Nigeria except if done to save the life of the mother. The implications of the findings show the failure of the existing law on criminalizing abortion as findings in this study revealed that inability to have a specific law on abortion resulted on induced abortion as victims carried out abortion through non-physician providers to escape punishment. Their clandestine activities increase the maternal mortality rate and posit threat to public health. This pattern of findings is similar to the interview sessions at Enugu and Port Harcourt¹⁰⁰ where the respondents expressed that maternal mortality rate will reduce if abortion is permitted not only to save the life of the mother but to avoid giving birth to a deformed child. To them, non-criminalization of abortion will allow the mother to feel free to consult expert medical practitioners instead of indulging in induced abortion. The findings are in tandem with the findings of Grimes D.A. et al.¹⁰¹ that the accessibility of women to procure abortions in hospitals by qualified gynecologists and obstetricians has been curtailed by restrictive laws thereby leading women to seek for clandestine means to eliminate unwanted

pregnancies. Further, the findings from the fieldwork conformed to the study of Okonofua¹⁰² that unsafe abortion is a critical public health problem and a leading cause of maternal mortality in Nigeria. As noted earlier in this study, Prada E. et al.¹⁰³ also confirmed that about 3,000 women die each year due to complications of unsafe abortion. Similarly, the findings from the fieldwork are analogous with the study of Anateh¹⁰⁴ that legal abortion means safe abortion or therapeutic abortion on the ground that if abortion is not legal in a society like Nigeria where medical services and facilities are grossly inadequate, then abortions will remain unsafe with continued high mortality and morbidity rate. The effect of the current Nigerian law is not in a vacuum, but it is something more evident. Odunsi disclosed some of the impacts of a restrictive abortion law, with particular reference to Nigeria.¹⁰⁵ He noted that the effects of the restriction are unsafe abortion and involuntarily carrying unwanted pregnancies to term.¹⁰⁶ In the former case, it has been earlier said to culminate into maternal mortality or morbidity.

5.0 Conclusion and Recommendation

From the above, the findings in this study revealed that the justification in which so many of the respondents in the fieldwork intend to drive is to reach the single conclusion that when abortion is permitted by law the incidence of maternal mortality or morbidity in Nigeria will reduce relatively. In other words, women will have access to professional health services. The findings also revealed that although abortion may not be advised to be carried out by women especially after gestation of ensoulment, it was suggested by the majority of the respondents that there should be specific law, policies, and measure that will legalize abortion to some extent. The empirical examination of the criminal and religion perspectives of abortion in Nigeria show incidence of abortion in Nigeria despite the provisions of the Criminal and Penal Codes criminalizing abortion and despite the fact that the three religions also prohibit abortion. It has been observed in this study that the situation is evident of the ineffectiveness of the law. The study observed that the major purpose for clamouring for enactment of specific law on abortion in Nigeria are to enhance the attainment of safe motherhood, to eliminate the death and complications associated with induced abortion and to enhance the dignity and sacrosanctity of human life by reducing the incidence of induced abortion.

⁹⁵ Interviews conducted at fieldwork in Bauchi, Enugu, Ilorin, Kaduna, Lagos, and Port Harcourt, 2016

⁹⁶ Interviews conducted in Enugu and Port Harcourt dated 18th and 21st July, 2016

⁹⁷ Interviews conducted in Ilorin and Lagos dated 8th and 17th August, 2016

⁹⁸ Interviews conducted in Bauchi and Kaduna dated 12th and 19th September, 2016

⁹⁹ Henshaw S.K., et al., 'Severity and Cost of Unsafe Abortion Complications Treated in Nigerian Hospitals,' (2008) 34(1) *International Family Planning Perspective* 40-50

¹⁰⁰ Interviews conducted in Enugu and Port Harcourt dated 18th and 21st July 2016

¹⁰¹ Grimes D.A. et al. 'Unsafe Abortion: The Preventable Pandemic' (2006) *The Lancet, Sexual and Reproductive Health* 4, p.1

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Also, apart from agitating for a specific law on abortion, there is the need to proffer the following recommendations:

1. There should be a mass literacy campaign and improvement on the existing national health services to reduce the problems of illegal induced abortion in Nigeria. As a matter of fact, this study recommends access to free healthcare facilities for pregnant women.
2. There should be integrated family health education at both local and national levels.
3. There should be training and retraining of physicians in the management of abortion and abortion complications.
4. The Nigerian legislature should domesticate CEDAW so that the obligation imposed on member States would extend to Nigeria. This domestication will enable the government to work in line with the law when domesticated to prevent any form of discrimination against women in the country, and the legal reform would expand access to comprehensive abortion care for Nigeria women.
5. There should be monitoring mechanism as abortion should only be permitted within four months of the pregnancy unless otherwise permitted by a qualified medical practitioner.

¹⁰² Okonofua F.E., et al. 'Perceptions of Policymakers in Nigeria Toward Unsafe Abortion and Maternal Mortality.' (2009) 35(4) *International Perspectives on Sexual and Reproductive Health* 191-202.

¹⁰³ Prada E., et al. 'Maternal Near-Miss Due to Unsafe Abortion and Associated Short-Term Health and Socio-Economic Consequences in Nigeria' (2015) 19(2) *African Journal of Reproductive Health* 52-62, p.52.

¹⁰⁴ Anate Momoh, 'Women Reproductive Health in Africa: A Continuing Tragedy.'

¹⁰⁵ Odunsi B. 'Abortion and the Law' in Iyiola I.O., & Nwabueze R.N (eds.), *Comparative Health Law and Policy: Critical Perspective on Nigerian and Global Health Law* (Ashgate Pub., England 2015) 197-216.

¹⁰⁶ *ibid.*