ABORTION LAW IN NIGERIA: A COMPARATIVE ANALYSIS*

Abstract
Abortion is a topical issue in every society. It is a topic that has generated and continues to generate controversies and strong oppositions due to its criminal intent and the human life that is involved. Arguments on abortion usually centre on its legalisation or otherwise. For this reason, it is seen from various perspectives ranging from moral or religion grounds to social, political, medical and feminist interest etc. This paper undertakes a comparative analysis of Nigerian abortion law vis-a-vis some other jurisdictions. The objective is to contribute to the discourses on the agitation for legalisation of abortion in Nigeria. The paper relies on data collected from primary and secondary sources of information, which are subjected to content analysis. The paper finds that despite restrictive statutory provisions on abortion in Nigeria, it is done on daily basis with the assistant of quack physicians resulting into death and other problems like perforation of the uterus, infection, hemorrhage requiring gynecological care and hospitalisation. The paper concludes with recommendation among others for the enactment of abortion statute in Nigeria rather than relying on the restrictive provisions in Penal or Criminal Codes where the intent is for serious therapeutic reasons and for population control.

Keywords: Abortion, Law, Comparative, Analysis

1. Introduction
The term ‘abortion’ is derived from the Latin infinitive ‘aboriri’, which means perish, but literally means taking away a human life which would in the normal course of events be born.\(^1\) Abortion, in its most common usage, refers to the voluntary or induced termination of pregnancy, generally through the use of surgical procedures or drugs and as a result of that, birth does not take place.\(^2\) Abortion do occurs spontaneously as miscarriage, which occurs without human intervention and mostly within the first three months of pregnancy or be artificially induced by chemical, surgical or other means.\(^3\) Abortion could be deliberately procured at any point during pregnancy with the intention to terminate the pregnancy and leading to killing of the unborn child most especially when it is considered to be non-viable. In this wise, it is legal and would be medically induced to terminate the pregnancy before twenty weeks of gestation if the pregnancy poses a threat to the life of the woman.\(^4\) According to Clarke et al,\(^5\) abortion is a deliberate choice to terminate a pregnancy through an action which either directly destroys the foetus or causes its expulsion from the uterus before viability’.

\(^1\) A Dutt, ‘Abortion: Intent of Miscarriage’ <https://www.academia.edu/12824686/ABORTION_INTENT_OF_MISCARRIAGE> accessed on 11 October, 2019
\(^2\) Dictionary by Labour Law Talk, 2004

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Abortion is not a new phenomenon the world over, as it is commonly practiced even where there is a law criminalizing it. However, it is a subject that has generated so much controversy due to its criminal intent and sometimes inherent abuse. In the word of Dutt, it raises fundamental question about human existence, such as when life begins and what it is that makes us human? Abortion is at the heart of such contentious issues such as the right of women to control their own bodies, the state duty to protect the unborn, the tension between secular and religious views of human life and the individual and conflicting rights of the mother and the foetus. While abortion is viewed in advance climes with less condemnation, it is otherwise in religious circles and African societies due to its numerous consequences such as perforations of the uterus, infection and hemorrhage requiring gynecological care and hospitalization.

In spite of different approaches to abortion, it is still a complex and volatile issue the world over. For instance, in Nigeria, where abortion law is restrictive, it still goes on daily in hospitals and clinics and even in the hands of backstreet abortionists. It goes on unchallenged, undocumented and unprosecuted. In the United States, where abortion is legalised, barriers of access, ranging from economic constraints to the relentless efforts by anti-choice forces to deny women access to abortion have limited the gains of legalisation. Nevertheless, one should not conclude from these situations that legalisation is unimportant. Premise on the above background, this paper undertakes comparative analysis of Nigerian abortion law. The objective of which is to contribute to the discourses on the agitation for legalisation of abortion in Nigeria. The paper is divided into five sections. Following this introduction, the paper highlights types of abortion. In section three, the paper discus the legal frameworks for abortion in Nigeria. Section three dovetails into section four which does comparative analysis of abortion law in other jurisdictions. Section five concludes with recommendations for the review and enactment of abortion statute in Nigeria to allow abortion where the intent is for serious therapeutic reasons and for population control.

2. Types of Abortion
Basically, abortion is of two types namely: ‘non-induced abortion’ and ‘induced abortion’. Abortion is non-induced when it occurs spontaneously without interference of any kind. A good example is miscarriage, which may occur due to a disease or some defects or mal-functioning in the woman’s physiological system. Such an abortion is neither intended nor is it aided in any way. Unless due to culpable neglect, this would not be a human act and therefore would not attract moral sanctions. In induced abortion, one purposely decides to interfere with the life of the conceptus. One does not only intend but takes effective measures to ensure the expulsion of the conceptus. According to Higgins, an abortion is induced when it is the result of intentional interference with the foetus. Induced abortion is normally classified into two; ‘therapeutic’ and ‘non-therapeutic abortions’. An abortion is said to be therapeutic when there are medical indications why it should be procured and is non-therapeutic when such is not evident. For some, once an abortion is advised

7 A Dutt (n.1)
8LO Ilobinso (n 3)p. 14
by two or more medical doctors, it is therapeutic and legal.\textsuperscript{10} In other words, its purpose is to save the mother’s life or health.\textsuperscript{11} Therapeutic abortion is therefore an intentional removal of the foetus from the uterus on medical grounds. Induced abortion is increasing and is considered to be a major cause of maternal mortality, which is quite high in Nigeria. Reports from several surveys, principally from university teaching hospitals, indicate that the highest risk groups are young girls between the ages of 15 and 29 years.\textsuperscript{12} The fear of interruptions in education, the risk of unemployment and the social stigma of raising a child born out of wedlock are the principal reasons for seeking an abortion and not to control population. For example, a significant number of incomplete abortions are regularly treated in hospitals in Nigeria, indicating a high incidence of illegal and poorly performed abortions. Moreover, abortion is reported to be widely available in the private sector.\textsuperscript{13}

3. Overview of Legal Framework and Agitations for liberalization of Abortion in Nigeria

Abortion in Nigeria is governed by two different laws. In the predominantly Muslim states of Northern Nigeria, the Penal Code Law,\textsuperscript{14} held sway, while in the Southern part of the country, which is largely Christian religion, the Criminal Code Act of 1916\textsuperscript{15} is effective.\textsuperscript{16} The two Codes generally prohibit the performance of abortions. Under the Penal Code, which is similar to the criminal law of India and Pakistan, an abortion may be legally performed only to save the life of the pregnant woman. Except for this purpose, a person who voluntarily causes a woman with child to miscarry is subject to up to fourteen years’ imprisonment and/or payment of a fine. Similarly, a woman who causes her own miscarriage is subject to the same penalty. A very harsh penalty is applied if the woman dies as a result of the miscarriage.\textsuperscript{17} Under the Criminal Code Act, which is modeled after the English Offences against the Person Act of 1861, abortion is legally permitted only to save the life of the woman. Section 297 of the Act provides \textit{inter alia} that ‘a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation...upon an unborn child for the preservation of the mother’s life, if the performance of the operation is reasonable, having regard to the patient’s state at the time and all the circumstances of the case’. Furthermore, section 228 of the Criminal Code Act specifically prohibits the procurement of abortion in the following terms: ‘[a]ny person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for seven years. A woman who undertakes the same act with respect to herself or consents to it is subject to

\textsuperscript{10}LO Ilobinso (n 3)p. 14. See also Obelu, ‘Studies in Ethics’, A moderated Research Work, St. Joseph’s Seminary, Ikot Ekpene, p 45
\textsuperscript{11}J. Okoye, \textit{Abortion and Euthanasia the Crime of Our Day}, (Awka: Kecena Damian press, 1987) p.18
\textsuperscript{12}A Bankole \textit{et al., The Incidence of Abortion in Nigeria} (International Perspectives on Sexual and Reproductive Health, 2015) p. 20.
\textsuperscript{13}LO Ilobinso (n 3)p. 14
\textsuperscript{14}No. 18 of 1959 now Cap. P3, LFN, 2004
\textsuperscript{15}Promulgated 1\textsuperscript{st} June, 1916 but now Cap C38, LFN, 2004
\textsuperscript{17}Population Policy Data Bank maintained by the Population Division of the Department for Economic and Social Affairs of the United Nations Secretariat; See Penal Code Act ss. 232, 233 and 234.
seven years imprisonment.\(^{18}\) The section further provides that any person who supplies anything knowing that it is intended to be unlawfully used to procure a miscarriage is subject to three years’ imprisonment.\(^{19}\)

Premised on the foregoing, abortion is legal and allowed, under the Criminal\(^{20}\) and Penal\(^{21}\) Code Acts if performed in good faith and for the purpose of preserving the life of the mother.\(^{22}\) In the English case of *R v Bourne*,\(^{23}\) a physician was acquitted of the offence of performing an abortion in the case of a woman who had been raped. The court ruled that the abortion was lawful because it had been performed to prevent the woman from becoming ‘a physical and mental wreck’. This case set the precedent for future abortion cases performed on the grounds of preserving the pregnant woman’s physical and mental health.\(^{24}\)

In Nigeria, there have been a number of national moves to liberalise abortion. The first attempt in this context was at the Annual General Conference of the Nigerian Medical Association (NMA) in 1972. However, this initiative fizzled out either due to lack of sufficient commitment or lack of popular support. In 1975, the National Population Council recommended that women should have access to abortion on request for health and welfare reasons. This recommendation was supported by NMA and the Society of Gynecologists and Obstetricians of Nigeria (SOGON). The issue generated controversy in 1976 as a result of an address by the then Federal Minister of Health to the ninth yearly conference of SOGON to the effect that the Federal Government was considering a decree to reform the national law on abortion.\(^{25}\) In 1981, SOGON initiated a bill on termination of pregnancy. The bill was tabled in the House of Representatives of the National Assembly in that year. The bill would have permitted abortion if two physicians certify that the continuation of a pregnancy would involve risk to the life of a pregnant woman, or injury to her physical and mental health or to any existing children in her family greater than if the pregnancy were terminated. The bill would also have allowed abortion if ‘there was a substantial risk that the child, if born, would suffer such physical and mental abnormalities as to be seriously handicapped’. The bill also would have permitted physicians to refuse to perform an abortion on grounds of conscience. The bill was strongly opposed by religious leaders and by the Nigerian National Council of Women’s Societies of Nigeria who feared that its passage would promote sexual promiscuity. Some newspaper headlines of the Daily and Sunday Times of May 1981 captured the mood of the controversy: ‘MPS denounce abortion bill’, ‘abortion bill condemned’, ‘abortion bill faces mounting opposition’.\(^{26}\) The last caption of May 20 1981 reported as fellows: ‘More and more Nigerians are rejecting the controversial abortion bill, it was revealed on Monday’. The then Speaker of the House of Representatives, Mr. Edwin UmehEzeoke said the National Assembly, had received more than 1,000 petitions in the form of letters, telephone calls, telegrams and threats from citizens and organizations—all of them against the bill. Mr. UmehEzeoke, speaking at a press briefing in Lagos said not a single letter had been received in favour of the bill. Again, between 1991 and 1992, the Campaign Against Unwanted Pregnancy (CAUP) and officials of the Ministries of Health and Justice organised a law reform meeting. This meeting prepared a draft liberalisation law for the country which was

\(^{18}\) Criminal Code Act s.229

\(^{19}\) *Ibid*.

\(^{20}\) *Ibid s. 297*

\(^{21}\) Penal Code Act s.232

\(^{22}\) *I Okagbue (n 4)*

\(^{23}\) (1939) 1 K.B 687.

\(^{24}\) The case is a precedent in Nigeria and has persuasive effect in Nigerian courts.


submitted to the Federal Minister of Health. The Ministry slightly modified this draft law and submitted it to the presidency for approval. This law never saw the light of day. However, the comments of the then Minister of Health that the Federal Government was considering a review of the abortion law in view of the unacceptable high morbidity and mortality associated with abortion sparked fresh debate on reformation of abortion law in Nigeria. This fresh controversy was only forestalled when the Minister made a public statement that the idea was being deferred until the size of the problem was known and the proposal acceptable to many more people. Hence, the abortion law remained unchanged till date.

Although abortion is generally illegal in Nigeria, however, there appears to be a large discrepancy between the law and the practice of abortion in Nigeria. A survey of hospitals in Nigeria conducted in 1984 by the Population Division of the Department for Economic and Social Affairs of the United Nations Secretariat indicated that a majority (55 per cent) of abortion cases in Nigeria involved young girls under age 20, for whom illegal abortion is currently the leading cause of death; some 85 per cent of those having an abortion were unmarried and 60 per cent of the women had at least a secondary-school education. In 1980, a Ministerial Committee of Inquiry estimated that there were 500,000 illegal abortions performed during that year. The truth is that, in Nigeria, the risk of the death following complications of unsafe abortion procedures is several hundred times higher than that of an abortion performed professionally under safe condition. The SOGON estimated that about 20,000 Nigerian women die from unsafe abortions each year. Additionally, the CEDAW report in 2005 stated that unsafe abortions lead to about 34,000 deaths each year. A 2006 Federal Ministry of Health report estimated that for every unsafe abortion that results in death, a further thirty women suffer long-term injury and disability. Lack of contraceptive access is thus a primary cause for the prevalence of unsafe abortions, with the usage rate of modern contraceptives estimated to be between 18.9% and 21.6%. Also as at 2006 a study found that 60% of women who have had abortions reported that they were not using family planning methods when they became pregnant. The direct connection between unsafe abortion and high mortality rates has led the Human Rights Committee, which interprets the Civil and Political Rights Covenant, to require that states issuing reports on the right to life must inform the Committee of ‘any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life threatening clandestine abortions’.

27LO Ilobinso (n 3)pp. 26-27
29CEDAW, Consideration of Reports, Nigeria 82 (2006).
In 2015, a report conducted by Guttmacher Institute further revealed that unsafe abortion is a major contributor to the country’s high levels of maternal death, ill health and disability. The report asserted that Nigeria has one of the highest maternal mortality ratios in the world, and little improvement has occurred in recent years. It is observed that while many African countries including Nigeria are suffering from this social menace due to restrictive legislation on abortion, the same is not the case in advance climes thus the need to liberalise abortion law as done in advanced countries like in the United States of America and other European countries. For instance, in the United States of America, greater latitude is given to choice of abortion. Factors contributing to abortion in advanced climes include advance in medical technology, women’s enhanced awareness about their rights, and concerns about population growth. Thus, in the United States, such factors as best interest of the patient, sound clinical judgment, informed patient consent, avoiding harm to the woman’s physical or mental health, avoiding birth of a foetus which will be born with serious mental or physical handicap, pregnancy resulting from rape, incest, and illicit intercourse with a minor girl contributed to the liberalisation of abortion law.

4. Comparative Analysis of Nigerian Abortion Law and Some Other Jurisdictions

The issue of abortion over the years is a sensitive and divisive subject. It is an issue that evokes very strong feelings, judgments and heated incriminations. At the centre of controversies is the issue of rights of women to procure abortion, a foetus’ right to life and the duty of the state to protect the unborn, the tension between secular and religious views of human life and the individual and conflicting rights of the mother and the foetus. For these reasons, abortion is seen from the perspectives of criminal or constitutional laws and sometimes both depending on the country and subject involve. In between this divergence was the emergence of pro-choice movement that contends that a woman’s right is absolute and the pro-life movement that asserts that a foetus’s right to life is undisputable. The pro-life advocates further argued

35Ibid p.9
38In some quarters, it is seen as violation of right to life which is one of the inherent fundamental rights of every person and constitutional protected in many countries. See section 33 of 1999 Constitution (as amended).
39For full discussion on pro-choice group see Scientists for life, eds., ‘The Positions of Modern Science on the Beginning of Human Life and Why a Human Embryo is Not a Parasite Virginia’, (Sunlife Grestone Pub., 1984) p. 5 and McSweeny, Sex and Conception(Ibadan: African University Press, 1979) p. 15. In summary, pro-choice (pro-abortion) advocates variously aver that life begins at viability, at birth, or until there is capacity for social interaction. A variant of the argument is that the “human being does not begin to exist until the embryo is fully implanted in the uterus…” see the case of Paton v. British Pregnancy Advisory Service Trustees (1979) QB 276, which affirmed that “the foetus cannot, in English law have a right of its own at least until it is born and has separate existence from its mother.”
that human life begins when the ovum of the mother and the sperm of the father unite. And at that point the whole genetic plan and code of that individual is there. In the midst of the debates on abortion the case of Roe v Wade was decided by the American Supreme Court. The case brought about a radical change in the American abortion laws and established a federal constitutional right to abortion. In arriving at its decision, the court considered the following factors: that during the first trimester of pregnancy, the state cannot bar any woman from obtaining an abortion from a licensed physician. During the second trimester, the state can regulate the abortion procedure only to protect the woman’s health. In the third trimester, the state may regulate to protect fetal life, but not at the expense of the woman’s life or health.

The said decision was seen as enormous victory to women and to some extent led to liberalisation of abortion law despite different approaches from one country to another. The case radically influenced change of the hitherto restrictive abortion policy to permissive abortion policy upon the considerations of factors such as: the move to save the life of the woman or best interest of the patient and sound clinical judgment among others. However, it is noted that in spite of initial positive reaction to the decision in Roe v. Wade, efforts have been made especially in the United States to challenge the decisions on the issue of whether life does not begin at conception and/or fertilization. For this reason, an amendment to United States constitution was proposed which purports to recognise that life begins at conception from when any abortion will be criminal. These amendments are: (a) The National Right to Life Committee (NRLC) Human Life Amendment of 1974 (b) The Paramount Right to Life Amendment and (c) The NRLC Unity Human Life Amendment of 1981. The substance of these amendments is that: ‘...right to life is vested in each human being from the moment of fertilization without regard to age, health, or condition of dependency.’

The conclusion to be drawn from the above principle is that the laws on abortion in many countries have shifted from restrictive policy to a more liberal approach in Europe and other jurisdictions, African countries inclusive. However, there is no uniform global provision on abortion laws till date. Hence, abortion laws in few selected jurisdictions are highlighted hereunder as prelude to pave way for charting a new direction for abortion law in Nigeria.

**Austria**

Abortion in Austria is governed by the Federal Law of 23 January 1974 through which provisions on abortion were adopted in the Criminal Code. In Austria, abortions are available on request by a pregnant woman for up to three months from completed implantation. However, they must be performed in public hospitals by a physician after a medical consultation with the patient, following the completion of examinations and certain required tests—namely, a blood group and Rhesus factor test, ultrasound examination, HIV test, and hepatitis test.

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42410 US 113(1973)
44WW. Watters (n 36) p. 108. See also H Shalluf, Abortion in Bosnia and Herzegovina Comparative with Abortion Legislation in Europe’,<https://www.academia.edu> accessed on 21 November, 2016
45supra
47The law became operative in January 1, 1975.
48H Shalluf (n 44) p. 6
Abortions may also be performed without criminal liability after that period in order to avert serious danger to the life, physical health, or mental health of the pregnant woman; if serious danger exists such as physical or mental impairment to the fetus; if the woman is under fourteen years of age; or if an abortion is the only way of averting immediate danger to the woman’s life and no medical aid is available at the time.\(^{49}\)

**Belgium**

The principal rules on abortion in Belgium are found in the Penal Code, which was premised on the Napoleonic Code of 1810 as reformulated in 1867.\(^{50}\) The law, therefore, prohibit abortion. Belgium, however, amended its law in 1990 to allow abortion for a variety of reasons. According to Wada,\(^{51}\) the changes made in the 1990 legislation are very similar to the 1975 law of France. The Belgian law authorises women to obtain an abortion when they are feeling ‘distress’ because of their pregnancy. Also abortions in Belgium must be done before the end of the twelfth week after conception, and must be done by a medical doctor. Before performing the abortion, the doctor must inform the patient of the medical risks related to abortion, and must also inform her of options that would be available to her if she chose not to have an abortion, such as adoption. Furthermore, Belgian law requires a six-day waiting period after the first consultation, before an abortion may be legally performed.\(^{52}\)

**Germany**

Abortion law in Germany has a chequered history and different approach in the territories that now constitutes Germany. For instance, in pre-World War II Germany and in particular under the Weimar Republic, public awareness towards birth control was steadily growing until the early 1930s. In 1933, birth control centres were closed and advertising of contraceptives were prohibited. While the Nazi Party was in power in Germany, abortion was strictly forbidden, as ‘Aryan’ women were to reproduce to increase the ‘master race’.\(^{53}\) Abortion was declared an act against the state and the death penalty was introduced in 1943. East Germany enacted a law in 1972 that allowed abortion for a variety of reasons; West Germany also enacted a similar law in 1976. After reunification, a 1992 law permitted first trimester abortions on request after mandatory counseling and three-day waiting period. A follow-up law allowing abortions during the first twelve weeks of pregnancy, provided that the woman undergoes counseling by a doctor, was narrowly approved by Germany’s parliament in 1995.\(^{54}\) The present position of law in Germany is that abortion may be performed by a physician at the request of a pregnant woman if she presents to the physician a certificate indicating that she obtained counseling at least three days before the operation and


\(^{50}\) R Boland & K Teklehaimanot, ‘Abortion Law and Practice in Africa’ (2002)<Eudora/attach/Africa/paper6.5.02doc> accessed on 10 October, 2019, pp 5-10

\(^{51}\) T Wada (n 6) p. 12


\(^{53}\) T Wada (n 6) p. 4

not more than twelve weeks have elapsed since conception. However, the Penal Code also provides for an upper limit of twenty-two weeks for an abortion when the pregnant woman has had counseling and a court order discharges the person who terminates the pregnancy because the woman was ‘in exceptional distress at the time of the operation.’

An abortion may be performed on criminal grounds with the pregnant woman’s consent, within twelve weeks following conception, where, based on medical opinion, ‘there is strong reason to support the assumption that the pregnancy was caused by [a criminal] act’ (e.g., child abuse, sexual assault, rape). In the case of medical or criminal grounds for an abortion, an independent doctor must verify that such grounds exist and provide a medical certificate to that effect, and the certifying doctor may not perform the operation.55

Great Britain
In Great Britain and before the promulgation of Abortion Law in 1967, the Offences Against the Person Act 1861 provides that it is a criminal offence to unlawfully cause a miscarriage. The Infant Life (Preservation) Act 1929 further provides for the offence of intentionally killing a foetus that is capable of being born alive.56 However, the 1967 Act substantially liberalised abortion laws by allowing the range of justifications for therapeutic abortion to include almost any aspect of the pregnant woman’s circumstances, including the impact on existing children. It was believed that the reduced influence of religions at this time enhanced a secular and pragmatic mindset regarding the issue of abortion.57

African Countries
As noted earlier, England was the first colonial power to liberalise its abortion law in 1967, thus paving way for her former colonies to follow. Therefore, the laws of Zambia in 1972, Zimbabwe in 1977, Seychelles in 1981, Ghana in 1985, Nigeria and Botswana were based on the 1967 Act of England. In Zambia, abortion can be carried out on broad indications, such as threat to life, physical or mental health and socio-economic indications. The law of Seychelles permits abortions to be performed on the ground of pregnancy resulting from rape, incest, or defilement, and in cases of serious mental disorder. The laws of Ghana and Botswana allow abortions to be carried out: when the pregnancy is the result of rape, defilement, or incest; when the continuation of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

57WW Watters (n 36) pp.10-11
woman or injury to her physical or mental health; or, when there is substantial risk that if the child were born, it may suffer from, or later develop, a serious physical abnormality or disease. Before 1975, the South African common law prohibited abortion under any circumstances except when the life of the mother was endangered. Nevertheless, illegal abortion was a roaring trade for the medical profession by the late sixties. Decades later, the South Africa has gone a long way and has one of the most liberal laws in the world regarding freedom to abortion.

5. Conclusion

As shown in this paper, illegal abortion has adverse effects on pregnancy women because most of the abortion providers are not only non-physicians but quacks. According to Henshaw, each year, Nigerian women obtain approximately 610,000 abortions, a rate of 25 abortions per 1,000 women aged 15-44. The rate is much lower in the poor, rural regions of Northern Nigeria than in the more economically developed Southern regions. An estimated 40% of abortions are performed by physicians in established health facilities, while the rest are performed by non-physician providers. Thus, the proposed but failed attempts to legalise abortion in Nigeria are predicated on the motive to save the life of pregnant woman where the pregnancy is considered unsafe and the attendant social consideration such as stigma, moral and religion grounds etc. One major argument in favour of legalising abortion is that abortion has always been a significant factor affecting numbers of births and population growth rates. Again, women have used abortion to deal with a personal problem that the state often ignored and occasionally penalised. In the twentieth century when states began to formulate explicit population policies, the demographic significance of abortion made it more difficult for the state to ignore. However, when populations faced stagnant growth or the prospect of population growth declines, concerned policy-makers often see abortion as a harmful act for both society and the individual. In view of the foregoing, it is submitted that the time has ripe to legalise abortion in Nigeria to prevent unwanted or unplanned pregnancy. It is therefore recommended that abortion law in Nigeria should take cue from the United States of America which liberalise abortion to allow abortions when it is in the best interest of the patient, sound clinical judgment, informed patient consent, avoiding harm to the woman’s physical or mental health, avoiding birth of a foetus which will be born with serious mental or physical handicap, pregnancy resulting from rape, incest, and illicit intercourse with a minor girl. The law, when enacted, should be used to control population growth once it is shown that the couple concerned has had the number of children prescribed by law.

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58 R Boland & K Teklehaimanot (n 50) pp.5-10