

Forced Pregnancy in the Boko Haram Armed Conflict: A Legal and Human Rights Appraisal

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Abstract: Forced pregnancy has emerged as a systematic weapon in the Boko Haram armed conflict in northeastern Nigeria. Abducted women and girls from communities are subjected to repeated sexual violence, forced marriages, and coerced pregnancies intended to enforce compliance, indoctrinate children, and destabilize communities. This article provides a comprehensive legal and human rights appraisal of forced pregnancy in this context. Using a doctrinal methodology, it analyses international law, domestic Nigerian law, and comparative jurisprudence, situating Boko Haram's conduct within the frameworks of war crimes, crimes against humanity, and gender-based violations of human rights. The study concludes that forced pregnancy constitutes serious international crimes, demanding enhanced legal accountability, reparations, and policy interventions.

Keywords: forced pregnancy, Boko Haram, Nigeria, IHL, Rome Statute etc.

1. INTRODUCTION

The *Boko Haram* insurgency in Nigeria, beginning in 2009, has had devastating consequences for civilian populations, particularly women and girls.¹ Among the gravest violations are abductions followed by sexual slavery, forced marriage, and forced pregnancy.² These practices are systematic, deliberate, and ideologically driven, forming part of *Boko Haram's* strategy to control territory and populations.³

Forced pregnancy is particularly pernicious, representing both a physical and symbolic violation of women's autonomy, with profound social, psychological, and legal consequences. International law recognises forced pregnancy as a crime against humanity and a war crime under the Rome Statute, and in some circumstances as a genocidal act.⁴

Forced marriage by non-state armed groups can vary in type, mode of coercion, and institutionalization.⁵ non-state armed groups might force civilian women to marry fighters, force fighters to marry one another, or force civilians to marry each

¹ Human Rights Watch, *Those Terrible Weeks in Their Camp: Boko Haram Violence Against Women and Girls in Northeast Nigeria* (HRW 2014).

² Amnesty International, *Our Job is to Shoot, Slaughter and Kill: Boko Haram's Reign of Terror in North-East Nigeria* (AI 2015).

³ Zenn J, *Boko Haram: The History of an African Jihadist Movement* (Hurst 2020).

⁴ Prosecutor v Jean-Paul Akayesu (Trial Chamber) ICTR-96-4-T (2 September 1998).

⁵ Phoebe Donnelly and Emily Myers, 'Forced Marriage by Non-State Armed Groups: Frequency, Forms, And Impact' (2023) *International Peace Institute*, 1

other. They might also force marriage through violence and abduction or more “indirect” coercion like economic extortion or extreme social pressure.⁶

In the context of conflict and post-conflict scenarios, States remain bound by their international humanitarian and human rights (IHL IHRL) obligations, which protect the rights of women and girls and are supplemented by other international laws, such as the Customary international law and international criminal law, the latter two being binding for the parties in a conflict.⁷ Although IHL and IHRL have different focuses, they share the objectives of protecting dignity, life, and health, and prohibiting discrimination and torture or other cruel, inhuman, and degrading treatment.⁸ The obligations of States to guarantee the reproductive health of girls and women apply to those affected by conflicts. During and after conflicts, States must ensure the availability of, acceptable and good quality reproductive health information, services, materials and facilities for all women, as well as free from discrimination and any other form of violence or coercion.⁹ They must provide appropriate reparations whenever violation of reproductive rights occurs, including compensation, restitution, rehabilitation, measures of non-repetition, and measures to promote their physical and psychological recovery.¹⁰

What is Forced Pregnancy?

Forced pregnancy is defined as when someone becomes pregnant against their will and cannot easily access abortion care. Forced pregnancy constitute war crime punishable by the Rome Statute of the ICC.¹¹ The crime has the following elements;

1. The perpetrator confined one or more individuals who were forcibly made pregnant, with the intent of affecting the ethnic composition of the population or otherwise violating international law,
2. The conduct was associated with an armed conflict.¹²

In some official documents, forced marriage is listed as a form of CRSV. For example, the UN secretary-general’s annual report on conflict related sexual violence defines CRSV as “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity.”¹³ While this definition is useful in recognizing that CRSV is a broad phenomenon, the report does not define each of the forms of violence listed. The Office of the UN High Commissioner for Human Rights (OHCHR) defines forced marriage as “a marriage in which one and/or both parties have not personally expressed their full and free consent to the union.”¹⁴ This definition is valuable but does not necessarily account for the complicated nature of forced marriage perpetrated by armed actors in conflict-affected contexts. Conflict-related forced marriage requires a specific definition and dedicated attention because armed conflict disrupts existing societal norms, and armed actors are often seeking to exert authority over civilians’ lives and affairs.¹⁵ Conflict thus complicates what constitutes a marriage. During conflict, moreover, the parties

⁶ Ibid

⁷Centre For Reproductive Rights, ‘An examination of Reproductive Violence against women and girls during the Armed Conflict in Colombia’ (2020) *Centre for Reproductive Rights Report*, 10; Center for Reproductive Rights, ensuring sexual and reproductive health and rights of women and girls affected by conflict (2017), available at: <https://bit.ly/301Jwy7> [hereinafter Center for Reproductive Rights, Ensuring sexual and reproductive health].

⁸ Ibid; Center for Reproductive Rights, Fact sheet: Sexual and Reproductive Health and Rights in Conflict, pg. 4 (2017), available at: <https://bit.ly/301Jwy7>

⁹ Ibid

¹⁰ Ibid

¹¹ Cornell Law School, available at < <http://www.law.cornell.edu> > accessed on 02/10/2023

¹² Ibid

¹³ Phoebe Donnelly And Emily Myers, Ibid (n 5)

¹⁴ Ibid, This definition of forced marriage includes all child marriages, as children are unable to consent to marriage. OHCHR, “Child and Forced Marriage, Including in Humanitarian Settings,” available at <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> .

¹⁵ Ibid, For a more detailed discussion on the definition of forced marriage in conflict and its distinction from arranged marriage, see: Annie Bunting, Benjamin M. Lawrance, and Richard L. Roberts, “Something Old, Something New? Conceptualizing Forced Marriage

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responsible for conducting marriage ceremonies and keeping marriage records may shift. For this reason, the Appeals Chamber of the Special Court for Sierra Leone adopted a definition during the civil war in Sierra Leone, defining forced marriage as follows:

a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental, or psychological injury to the victim¹⁶

This definition does not use the term “marriage,” which does not have a universal definition given cultural variation. Instead, it uses the term “conjugal partner,” which implies a relationship that extends beyond a sexual relationship.¹⁷ Additionally, the diverse types of force included in this definition demonstrate that forced marriage not only happens through physical abduction but can also involve other forms of force and coercion. Some academic experts also use this legal definition of forced marriage in their research.¹⁸

Other types of gender-based violence in armed conflicts which remain largely invisible in the study and the practice of international criminal law is violence which involves a violation of reproductive autonomy or which is directed at people because of their reproductive capacity, otherwise known as ‘reproductive violence’, is one example.¹⁹ Incidents of reproductive violence have been documented in numerous twentieth and twenty-first century conflicts, including those where international criminal law has been applied. For example, there is evidence that thousands of women were forcibly impregnated during conflicts in Rwanda and the former Yugoslavia. There have also been reports of forced sterilization, forced abortion, forced miscarriage and forced pregnancy in numerous conflicts, in the ongoing conflict with the so called ‘Islamic State of Iraq and Syria’ (ISIS).²⁰

Reproductive violence has long been a feature of war. For example, the Nazis committed various types of reproductive violence during the Second World War, including the forced sterilization of Jewish and Roma people, and experiments on pregnant Jewish women. They were also responsible for what might be called ‘collateral’ reproductive violence, such as causing women to miscarry as a result of torture, and causing forced impregnation through rape.²¹ Reproductive violence was also rife in the Asia-Pacific during the Second World War. For example, there were multiple incidents of reproductive violence at the so-called ‘comfort stations’ operated by the Japanese Imperial Army during the war.²² Acts of reproductive violence can also cause grave and sometimes fatal physical injuries, as well as serious psychological harm.

The Rome Statute of the International Criminal Court became the first international instrument to expressly list forced pregnancy as a crime against humanity and a war crime when committed as part of a widespread or systematic attack against a civilian population, and as a war crime when committed in an international and non-international armed conflict.²³ The Statute enumerates two other forms of reproductive violence as war crimes and crimes against humanity within the jurisdiction of the ICC. The first of these crimes is ‘forced pregnancy’ which is defined to mean ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out

in Africa,” in *Marriage by Force Contestation over Consent and Coercion in Africa*, Annie Bunting, Benjamin M. Lawrance, and Richard L. Roberts, eds. (Athens, OH: Ohio University Press, 2016).

¹⁶ Ibid, Morten Bergsmo, Alf Butenschøn Skre, and Elisabeth J. Wood, eds., *Understanding and Proving International Sex Crimes* (Beijing: Torkel Opsahl Academic EPublisher, 2012), p. 242., Prosecutor V Dominic (2021) ICC -02/04-01/15 A

¹⁷ Ibid

¹⁸ Ibid, Erin Baines, ‘Forced Marriage as a Political Project: Sexual Rules and Relations in the Lord’s Resistance Army’ (2014) *Journal of Peace Research* 51, no. 3, p. 407.

¹⁹ Grey, R, ‘The ICC’s First ‘Forced Pregnancy ‘Case in Historical Perspective’ (2017) *Journal of International Criminal Justice* (15) at P.906

²⁰ Ibid at P.907

²¹ Ibid, at P.910

²² Ibid at P.914

²³ Amnesty International, ‘Forced Pregnancy : A Commentary On The Crime In International Criminal Law’ (2020) available at <<https://www.amnesty.org/en/wp-content/uploads/2021/05/IOR5327112020ENGLISH.pdf>> at P.5 accessed on 4/10/2023

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other grave violations of international law'.²⁴ The second is 'forced sterilization' which occurs where the perpetrator 'deprived one or more persons of biological reproductive capacity' on a permanent basis, in circumstances which were 'neither justified by the medical or hospital treatment' of the victim(s), 'nor carried out with their genuine consent.'²⁵ Forced pregnancy also means:

The unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy'.²⁶

The definition contains three cumulative requirements: (1) the victim must be unlawfully confined by the perpetrator; (2) the victim must have been forcibly made pregnant (albeit not necessarily by the perpetrator); and (3) the perpetrator acted with one of two specific intents (to affect the ethnic composition of a population, or to carry out other grave violations of international law). When read together, these requirements restrict the scope of the crime of forced pregnancy to a subset of violations of sexual and reproductive rights committed during armed conflicts or during other human rights crises involving widespread and systematic attacks against civilian populations.²⁷

The definition of forced pregnancy in the ICC Statute, as confirmed by the ICC Elements of Crimes 31 and ICC Pre-Trial Chamber II in the *Ongwen case*²⁸, focuses specifically on the act of "unlawfully confining a woman who has been forcibly made pregnant". The actus reus of the crime is therefore the unlawful confinement of the victim.²⁹ In the accused, Dominic *Ongwen*, is a former commander in the Lord's Resistance Army (LRA), an armed group which is reportedly responsible for numerous war crimes and crimes against humanity in Uganda. The crime of 'forced pregnancy' was not charged in the case in 2005, when the (then) ICC Prosecutor applied for arrest warrants against *Ongwen* and other senior leaders of the LRA.³⁰ However, following *Ongwen's* arrest and surrender to the ICC in 2015, Prosecutor then applied for confirmation of a wider range of charges in the case, including 'forced pregnancy' as a war crime and crime against humanity. The victims of this crime, according to the prosecution, are women and girls who had been abducted by the LRA and forced to become *Ongwen's* personal sexual and domestic slaves: a role described in the LRA as a 'wife'. *Ongwen* is alleged to have forcibly impregnated these women through rape, and then confined them by preventing them from leaving the LRA with a view to carrying out 'grave violations of international law': namely, to continue using them as 'wives', and to rape, torture and sexually enslave them.³¹

Three main elements of the crime of forced pregnancy are addressed as follows:

1. The material element of the crime of forced pregnancy

The material element of the crime is the act by the perpetrator of confining one or more women who were forcibly made pregnant—that is, the material existence of any coercive circumstance that can undermine a person's ability to give genuine and voluntary consent.³² It does not matter if the alleged perpetrator is involved in the pregnancy, nor does it matter whether

²⁴ Ibid at P.918, Articles 6, 7(1)(g)-4, 8(2)(b)(xxii)-4, 8(2)(e)(vi)-4 and 7(2)(f)

²⁵ Ibid, Articles 7(1)(g)-5, 8(2)(b)(xxii)-5, 8(2)(e)(vi)-5 ICC and 7(2)(f)

²⁶ Amnesty International, Ibid (n 7) at, P.7

²⁷ Ibid, 8 ; Christine Chinkin, 'Gender-related Violence and International Criminal Law and Justice' in Antonio Cassese (ed) *The Oxford Companion to International Criminal Justice* (Oxford University Press, 2009), at 77 notes: "Nowhere else is an additional intent or motive required for an offence to constitute a crime against humanity.

²⁸ Ibid, Prosecutor v. Dominic Ongwen, (2016) ICC-02/04-01/15-422

²⁹ Ibid

³⁰ Grey, R, Ibid, (n 15), at P.924

³¹ Ibid at P.925

³² Julia Tétrault-Provencher, 'Replicating the Definition of 'Forced Pregnancy' from the Rome Statute in a Future Convention on Crimes Against Humanity: A Tough Pill to Swallow' (2022) *Hastings Journal on Gender and The Law* (33) (2) 114

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the pregnancy³³ is the result of a rape or artificial insemination against the woman's will—forcible under the Court's construction means the existence of any coercive circumstances that can undermine a person's ability to give genuine and voluntary consent.³⁴

2. The two mental elements of the crime of forced pregnancy

The Rome Statute envisages two mental elements for the crime of forced pregnancy. The first one, which is present in all other crimes against humanity, requires that the “perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack intent further, as it is already widely analyzed and understood.³⁵ The second mental element requires that the perpetrator have confined one or more women with either “the intent of affecting the ethnic composition of any population” (first intent alternative) or with the intent of “carrying out other grave violations of international law” (the second intent alternative) – together referred to as “the additional intention.” This article will examine the two separately, as they are both specific to the crime of forced pregnancy and found under Article 7(2)(f) of the Rome Statute.³⁶

3. The caveat to national law

The last sentence of the definition of the crime of forced pregnancy specifies that “[t]his definition shall not in any way be interpreted as affecting national laws relating to pregnancy.” While this caveat is an exceptional addition to the definition of this international crime, the drafting history of the crime of forced pregnancy—and the fact that it was one of the most difficult to reach an agreement on—adds to our understanding of why it was added by the drafters.³⁷ This exception was a political compromise to reassure states with national laws criminalizing abortion (including those which criminalize survivors of rape) that they could not be prosecuted for the crime of forced pregnancy.³⁸

Forced Pregnancy and Forced Sterilization

Forced marriage in armed conflict refers to situations in which individuals—predominantly women and girls—are compelled to enter marital unions through coercion, threat, or violence, without their free and genuine consent. In conflicts involving non-state armed groups, forced marriage functions less as a culturally legitimate institution and more as a mechanism of control, sexual exploitation, and social domination.³⁹

In the *Boko Haram* armed conflict, forced marriage has been widely documented through the abduction of women and girls who are compelled to become the “wives” of fighters. These unions are characterised by repeated rape, sexual slavery, forced domestic labour, and the denial of autonomy.⁴⁰ International criminal jurisprudence has increasingly recognised forced marriage as a distinct crime, separate from rape or sexual slavery, because it imposes ongoing obligations of exclusivity, submission, and conjugal association on victims.⁴¹ The harm caused by forced marriage extends beyond sexual violence to include long-term psychological trauma, social stigma, and exclusion upon reintegration.⁴²

³³ Ibid; Ongwen Trial Judgment, Supra Note 43, At ¶ 2723; Michael Cottier, Et Al., Article 8, In Commentary on The Rome Statute of The International Criminal Court 275, 450 (Otto Triffterer Ed., 2008).

³⁴ Ibid; Rome Statute, Supra Note 14, At Art. 7(2)(F)

³⁵ Ibid

³⁶ Ibid; Section 7 (2) (f) of the Rome Statute of the ICC

³⁷ Ibid

³⁸ Ibid

³⁹ Susan M Akram, ‘Forced Marriage, Forced Sex: The Persecution of Women in Armed Conflict’ (2015) 44 *Columbia Human Rights Law Review* 1.

⁴⁰ Amnesty International, *They Betrayed Us: Women Who Survived Boko Haram Raped, Starved and Detained in Nigeria* (AFR 44/8415/2018) 25–32

⁴¹ Prosecutor v Brima, Kamara and Kanu (AFRC Case) (Judgment) SCSL-2004-16-A (22 February 2008) paras 195–202.

⁴² Human Rights Watch, “*Those Terrible Weeks in Their Camp*”: *Boko Haram Violence against Women and Girls in Northeast Nigeria* (2014) 41–45.

Forced sterilisation on the other hand, involves the deprivation of an individual's reproductive capacity without free and informed consent. Under international criminal law, forced sterilisation constitutes a crime against humanity when committed as part of a widespread or systematic attack against a civilian population.⁴³ It represents a grave violation of bodily integrity, reproductive autonomy, and human dignity.

Although forced sterilisation is less frequently documented than forced marriage or rape in the *Boko Haram* conflict, it remains analytically relevant as part of the broader spectrum of reproductive violence. Practices such as coercive contraception, denial of reproductive choice, or medical interventions imposed on women without consent may amount to forced sterilisation under international law.⁴⁴ These acts reflect attempts to control reproduction and reshape communities, reinforcing gendered patterns of domination in armed conflict.⁴⁵

Together, forced marriage and forced sterilisation illustrate how armed groups deploy gendered and reproductive violence to exert control over women's bodies and identities. Both crimes involve continuing harm, deny women agency over their reproductive and social lives, and generate long-term consequences that persist beyond the cessation of hostilities.⁴⁶

The persistent marginalisation of these crimes within domestic accountability and reparations frameworks underscores the need for explicit legal recognition, survivor-centred justice mechanisms, and gender-sensitive reparations that address both sexual and reproductive harm.

2. THEORETICAL FRAMEWORK

This article adopts an integrated theoretical approach drawing on feminist legal theory, human rights-based theory, and international criminal justice theory.

Feminist Legal Theory

Feminist legal theory provides a critical lens for examining forced pregnancy by exposing the gendered nature of violence in armed conflict and the historical marginalisation of women's experiences within legal frameworks.⁴⁷ It challenges the tendency of international law to prioritise combat-related harms while relegating sexual and reproductive violence to the periphery.

Applied to the *Boko Haram* context, feminist legal theory reveals how forced pregnancy operates as a mechanism of gendered control and collective punishment, and why domestic legal responses often fail to recognise reproductive violence as a distinct and serious harm.⁴⁸

Human Rights-Based Approach

The human rights-based approach frames forced pregnancy as a violation of non-derogable rights, including freedom from torture, the right to dignity, and reproductive autonomy.⁴⁹ This approach shifts the focus from humanitarian assistance to state responsibility, emphasising Nigeria's obligations to prevent violations, investigate abuses, and provide effective remedies to survivors.⁵⁰

By adopting this framework, the article highlights the inadequacy of existing responses that treat survivors primarily as beneficiaries of welfare programmes rather than rights-holders entitled to justice and reparations.

⁴³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 7(1)(g).

⁴⁴ Office of the Prosecutor, ICC, *Policy Paper on Sexual and Gender-Based Crimes* (2014) 14–15.

⁴⁵ Catharine A MacKinnon, *Are Women Human?* (Harvard University Press 2006) 261–263.

⁴⁶ Radhika Coomaraswamy, *Sexual Violence during War* (International IDEA 2015) 52–54.

⁴⁷ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) *AJIL* (85) 613.

⁴⁸ Catharine A MacKinnon, *Are Women Human?* (Harvard University Press 2006) 261–263.

⁴⁹ Human Rights Committee, *General Comment No 31* (2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 11.

⁵⁰ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation* GA Res 60/147 (2005)

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International Criminal Justice Theory

International criminal justice theory underpins the classification of forced pregnancy as an international crime attracting individual criminal responsibility.⁵¹ It emphasises accountability, deterrence, and the development of jurisprudence addressing sexual and gender-based crimes committed by non-state armed groups.

This theory is particularly relevant given the limited domestic prosecutions for *Boko Haram*-related sexual violence and Nigeria's reliance on administrative and security-focused responses rather than criminal accountability.⁵²

Forced Pregnancy in the Boko Haram Armed Conflict

Boko Haram has embarked on the deliberate use of sexual violence against women as one of its tactics in the terror campaign against the Nigerian state. One of such is forced pregnancy. *Boko Haram* had abducted and subject many young girls and women to various forms of sexual violence such as forced. Women and young girls are forcefully married and impregnated. The idea behind this is that the women and young girls produce offspring that will continue the insurgency.⁵³

In non-international armed conflict such as the *Boko Haram* insurgency, both human rights law and humanitarian law are applicable. It follows therefore, that the Nigerian state remains bound by its obligations under international human rights law, while all parties to the conflict, including the *Boko Haram* sect as a non-state armed group, are bound by the rules of international humanitarian law. Thus, both parties to the conflict are responsible for violations of international humanitarian law. Serious violations of international humanitarian law constitute war crimes and entail individual criminal responsibility.⁵⁴ Victims of forced pregnancy therefore, have a right to full and effective reparation to address the harm they have suffered, which should include transformative measures to guarantee non-repetition of the crimes by addressing pre-existing structures of inequality and discrimination that contributed to the crime. Forced pregnancy typically causes serious and complex harm to the persons whose rights are violated and to children born as a result. Courts and other reparation mechanisms should consult with victims and relevant experts to determine the full extent of the harm caused, including specific gendered harms, in order to identify the most appropriate measures of reparation that should be adopted towards addressing them.⁵⁵

Legal and Human Rights Perspective of Forced Pregnancy

Forced Pregnancy under International Criminal Law

Forced pregnancy is expressly recognised as a serious violation of international criminal law. Article 7(2)(f) of the Rome Statute of the International Criminal Court (ICC) defines forced pregnancy as the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of a population or committing other grave violations of international law.⁵⁶ When committed as part of a widespread or systematic attack directed against a civilian population, forced pregnancy constitutes a crime against humanity.⁵⁷

The recognition of forced pregnancy as a distinct crime reflects an important evolution in international criminal law, acknowledging reproductive violence as more than an incidental consequence of rape. Unlike rape or sexual slavery, forced

⁵¹ Antonio Cassese, *International Criminal Law* 3rd edn, (Oxford University Press, 2013) 156–158.

⁵² Rosemary Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court* (Cambridge University Press, 2019) 208–210.

⁵³ Usman, A, R, and Abubakar, I, 'Sexual Violence Against Women in Armed Conflicts: A Case Study of *Boko Haram* Insurgency in Nigeria' at P.2 available at <<http://www.researchgate.net> > accessed on 11/09/2023, at P.2

⁵⁴ Samuel, O, O, and Emmanuel, A, Y, 'Boko Haram Insurgency And Its Implications On The Rights Of The Female Gender In Nigeria' (2017) (1) *AGORA International Journal of Juridical Sciences*, at P.49

⁵⁵ Amnesty international, 'They Betrayed Us' Women Who Survived *Boko Haram* Raped, Starved And Detained In Nigeria' (2018) *Amnesty International Publication* AFR 44/8415/2018 at P.24; Maria Lobato, Forced Pregnancy during the Khmer Rouge Regime: Acknowledging Forced Pregnancy as a Distinct Crime in the ECCC Proceedings (2016) *Cambodian Human Rights Action Coalition* 19.

⁵⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 7(2)(f).

⁵⁷ *ibid* art 7(1).

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pregnancy captures the continuing nature of harm, including the denial of reproductive autonomy, coercion to carry pregnancies to term, and the imposition of forced motherhood.⁵⁸

In armed conflict settings such as the *Boko Haram* insurgency, the abduction of women and girls, repeated rape, and coercive confinement of pregnant victims satisfy the constitutive elements of forced pregnancy. These acts demonstrate the intentional control of women's reproductive capacities, thereby engaging international criminal responsibility.

Forced Pregnancy under International Humanitarian Law

International humanitarian law (IHL) prohibits forced pregnancy through its broader protection of civilians and its prohibition of sexual violence in armed conflict. Common Article 3 of the Geneva Conventions prohibits violence to life and person, cruel treatment, and outrages upon personal dignity, including rape, in non-international armed conflicts.⁵⁹

Although forced pregnancy is not expressly mentioned in the Geneva Conventions, it is implicitly prohibited through the protection afforded to women against sexual violence, inhuman treatment, and unlawful confinement.⁶⁰ Customary international humanitarian law further reinforces this protection by prohibiting rape and other forms of sexual violence against civilians, regardless of the status of the perpetrator.⁶¹

Given that the *Boko Haram* conflict qualifies as a non-international armed conflict, these IHL obligations apply to both state and non-state actors. Forced pregnancy committed by *Boko Haram* therefore constitutes a violation of international humanitarian law.

Forced Pregnancy under International Human Rights Law

From a human rights perspective, forced pregnancy violates multiple fundamental and non-derogable rights. These include the right to dignity, the right to freedom from torture and cruel, inhuman or degrading treatment, the right to health, and the right to reproductive autonomy.⁶²

International human rights instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) impose obligations on states to eliminate gender-based violence and discrimination against women, including in situations of armed conflict.⁶³ Forced pregnancy constitutes a form of gender-based violence that disproportionately affects women and girls and entrenches structural inequality.

Importantly, international human rights law continues to apply during armed conflict alongside international humanitarian law.⁶⁴ Nigeria therefore bears a positive obligation to prevent forced pregnancy, investigate violations, prosecute perpetrators, and provide effective remedies to survivors, even where the violations are committed by non-state armed groups.

State Responsibility and the Right to Remedy

Human rights law emphasises that victims of forced pregnancy are entitled to an effective remedy. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation recognise victims' rights to restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁶⁵

⁵⁸ Rosemary Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court* (Cambridge University Press 2019) 208–210.

⁵⁹ Geneva Conventions (1949) Common Article 3.

⁶⁰ ICRC, *Commentary on the Geneva Conventions* (2016) para 703.

⁶¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press, 2005) Rule 93

⁶² International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171 arts 7 and 17.

⁶³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979) 1249 UNTS 13 arts 1 and 12.

⁶⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 para 106.

⁶⁵ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation* GA Res 60/147 (2005).

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In the Nigerian context, survivors of forced pregnancy linked to the *Boko Haram* conflict have faced significant barriers to justice, including stigma, inadequate investigations, and the absence of specialised reparations programmes. The failure to recognise forced pregnancy as a distinct legal harm has further marginalised survivors and undermined their access to remedies.

3. CONCLUSION

This article has demonstrated that forced pregnancy in the Boko Haram armed conflict constitutes a grave violation of international law and meets the threshold of a crime against humanity under the Rome Statute. It has shown that forced pregnancy is not merely an incidental consequence of rape but a distinct form of sexual and reproductive violence characterised by coercive confinement, denial of reproductive autonomy, and long-term psychological and social harm.

The analysis reveals significant gaps in Nigeria's legal and institutional responses, particularly the failure to recognise forced pregnancy as a separate legal harm and the absence of effective accountability and reparations mechanisms. Existing responses have prioritised security and humanitarian assistance while marginalising justice, truth, and survivor-centred remedies. As a result, survivors of forced pregnancy remain largely invisible within Nigeria's transitional justice and post-conflict frameworks.

The article concludes that addressing forced pregnancy requires a holistic approach grounded in international criminal law, human rights law, and gender-sensitive justice. Without explicit legal recognition, accountability, and reparative measures, forced pregnancy will continue to be under-prosecuted and inadequately remedied.

4. RECOMMENDATIONS

1. First, Nigeria should expressly recognise forced pregnancy as a distinct international crime within its domestic legal framework, in line with the Rome Statute.
2. Second, specialised and survivor-centred investigative and prosecutorial mechanisms should be strengthened to address conflict-related sexual and reproductive crimes committed by Boko Haram.
3. Third, reparations programmes must be expanded to address reproductive harm, including medical care, psychosocial support, and social reintegration for survivors and children born of forced pregnancy.
4. Fourth, transitional justice and reintegration policies should adopt a gender-sensitive and trauma-informed approach that recognises survivors primarily as victims of international crimes rather than security threats.
5. Finally, Nigeria should enhance cooperation with international and regional accountability mechanisms to close domestic enforcement gaps and align post-conflict responses with international legal standards.

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