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AN EXPOSITORY DISCOURSE ON TACKLING THE DEBACLE OF FEMALE KIDNAP IN CONTEMPORARY NIGERIA

By

Raji Barakat* and Aladokiye E. Gabriel-Whyte**

Abstract

The liberty of a person is a fundamental human right as far as Nigerian legal jurisprudence is concerned. It is of utmost importance in the law that a breach of a person's liberty could trigger judicial action in either civil or criminal law. This paper is concerned with the various legal instruments aimed at curbing kidnapping resurgence pursuant to the attainment of its cardinal goal of international peace and security of women. This paper acknowledges the inadequacy of statutory instruments, which have inhibited the efficacy of the law against this unwholesome (kidnapping) act from achieving its goal, thus the need to expand and review by policy makers. It is the writers' view that governmental efforts to curb this unwholesome act have not yielded the desired results with the provisions of the law. This paper concludes, with the need to protect and preserve lives especially of women from these undesirable elements and further suggests that imprisonment is not adequate for curbing this criminal act, government should look inward by providing jobs and improve its amenities for the benefit of all and sundry. Death penalty, which has been proposed by some State Houses of Assembly, is not altogether an aberration.

Keywords: *Kidnap, Abduction, Personal Liberty, Hostage Taking*

1.1 Introduction

There is no doubt that women contribute largely in the economic development in Nigeria. Women are found virtually in all facets of life working to ensure the survival of their family. Some even go to the extent of travelling to neighbouring states or countries to do business and bring the proceeds to maintain their family members. In the course of achieving this goal, some women lose their lives in the hands of kidnappers who disguise as transporters helping them to get to their destinations. Right to life is one of the cardinal aspects of fundamental human rights as enshrined in the Constitution of the Federal Republic of Nigeria. Unfortunately, this right is being violated virtually on daily basis and without impunity.

Kidnapping business has been on the increase and almost become a daily affair. This has caused a lot of unrest and insecurity such that right to life can no longer be guaranteed which is contrary to the law as provided for in the 1999 Constitution of the Federal Republic of Nigeria (as amended) over the quarter covering the three months of February to April 2016, there were 223 reported incidents of Violence Against Women and Girls (VAWG) across the eight states: namely Bayelsa, Borno, Delta, Kaduna, Kano, Plateau, Yobe and Rivers States

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⁷ Ibid.

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coming from all deployments of the online platform.¹ Lives and properties are being shortened and sometimes brutalized by these hoodlums. Women are mostly targeted including the pregnant ones.

1.2 History, Definition and Types of Kidnapping

The Black's Law Dictionary defines kidnapping as the crime of seizing and taking away a person by force or fraud.² It means to seize and detain or carry away by unlawful force or fraud and often with a demand for ransom.³ In Criminal Law, kidnapping is the unlawful asportation and confinement of a person against his or her will.⁴ It is provided for as an offence in Section 364 Criminal Code Act in Nigeria.⁵ Legal definitions of kidnapping traditionally have embraced a wide and ill-defined range of behaviour. The legal basis of kidnapping is the taking or detention of a person against his will and without lawful authority.⁶

1.2.1 History of Kidnap

Historically, the label "kidnapping" has been applied to a variety of unlawful takings ranging from man stealing under colonial law to the contemporary practice of a divorced parent taking their offspring from the spouse in violation of a custody decree.⁷ Osumah and Aghedo citing Goldberg define kidnapping as acts involving the seizure of a person or groups of persons by force with the intention of collecting ransom or forcing concessions on the person or on another person or group.⁸

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¹ *Violence Affecting Women and Girls in Select Nigerian States*, available at: www.fundforpeace.org (accessed on 17 November 2017).

² *Black's Law Dictionary*, 8th ed. (Thompson Publishing 2004).

³ *Merriam Webster Dictionary*, available at: <https://www.merriam-webster.com/dictionary/kidnap> (accessed on 4 December, 2017).

⁴ Ibrahim, B., and Mukhtar, J.I., "An analysis of the causes and consequences of kidnapping in Nigeria," *African Research Review* 8, (2017).

⁵ Criminal Code Act, Cap. 77, Laws of the Federation of Nigeria (LFN) 1990.

⁶ Alix, E.K., *Ransom Kidnapping in America 1874-1974: The Creation of a Capital Crime* available at: <https://www.questia.com/read/49031124/ransom-kidnapping-in-america-1874-1974-the-creation> (accessed on 26 December, 2017).

⁷ *Ibid.*

⁸ Osumah, O., and Aghedo, I., 'Who wants to be a Millionaire? Nigerian Youths and the Commodification of Kidnapping,' *Review of African Political Economy* 2011 38 (128).

Turner defines kidnap as a situation whereby a person or group of persons are forcibly seized and transported to a destination where they are held against their will in unlawful confinement.⁹

Kidnapping for ransom is not a new phenomenon,¹⁰ it is not a new crime and is found in folklore and myth and is roundly condemned in the Bible as well as in the Holy Qur'an.¹¹ The term "kidnapping" originated in the 17th Century England where children were "kid-napped" and often sold as slaves or agricultural workers to colonial farmers.¹² Hence, 'kid' meaning 'child', and 'nap' or 'nab' meaning 'to snatch'.¹³ Kidnappings of foreign nationals globally have increased by 275% over the past 10 years.¹⁴ Economically, motivated crime groups perpetrate high portions of kidnappings.¹⁵

Kidnapping is not new in history, as the earliest records have shown that individuals, a part or whole of society have been taken by force, sold, traded or enslaved.¹⁶ The oldest commodification of criminal law ever discovered in human history- the Code of Hammurabi prescribed death as punishment for kidnapping,¹⁷ meaning that kidnapping had existed from then.

From Biblical history, there is the account of Joseph being kidnapped by his brothers and sold to slavery.¹⁸ Again, there is the kidnap of Lot, Abraham's nephew.¹⁹ In medieval times, there was the kidnap of Julius Caesar and Richard the Lion Hart. Again, one of the earliest was the kidnapping on 1 March 1932 by Bruno Hauptmann, a German carpenter, of Colonel Charles Lindbergh's son for ransom. The suffering of the child's parents, and the difficulties of the police enquiry, were exacerbated by widespread speculation and misinformation, and serial random notes. The mutilated body of the child was found and the

⁹ Turner, M., 'Kidnapping and Politics' *International Journal of the Sociology of Law*, 1998, available at: <http://www.sciencedirect.com/science/article/pii/S0194659898000612/first-page.pdf> (accessed on 26 December, 2017).

¹⁰ Mohammed, M.K.N., 'Kidnap for Ransom in South East Asia', *Asian Journal of Criminology*, 2008, 3 (1) available at: <https://link.springer.com/article/10.1007/s11417-007-9040-1> (accessed on 26 December, 2017).

¹¹ Turner, *op. cit.*; see Qur'an 4 v29, Q 5 v 32 and Q 6v 151.

¹² *Ibid.*

¹³ Alexander, D. A., and Klein, S., 'Kidnapping and Hostage Taking: A Review of Effects, Coping and Resilience', *Journal of the Royal Society of Medicine*, 2009 102(1)

¹⁴ Mohammed, *op. cit.*

¹⁵ *Ibid.*

¹⁶ Sabeed, O. B., 'Kidnapping in Pre and Post-Amnesty Niger Delta, Nigeria', *International Journal of Peace and Conflict Studies*, 2016 3 (2), 64.

¹⁷ *Ibid.* 64-5.

¹⁸ *The Holy Bible*, King James Version, Genesis Chapter 37.

¹⁹ *Ibid.* Chapters 13 and 14.

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perpetrator was executed on 3 April 1936. This event caused public revulsion, and the revision of the authorities' bargaining and investigating methods, particularly by the FBI, and even the suicide of a waitress to the family, who was cleared in the enquiries.

In 1972, the 'Black September' group (an auxiliary faction of the Palestinian Liberation Organisation) took hostage the Israeli wrestling team at the Munich Olympics. The unsuccessful negotiations, and the tragic deaths of the whole team during an abortive rescue effort by the German Border Police, were relayed throughout the world by the international media. Also, after this tragedy, many international authorities revised their strategies for dealing with hostage incidents and sieges.²⁰ These are evidences of the fact that kidnap is a very old crime and in no way recent. However, there are about fifteen types of kidnap as listed below:

- a. *White Slavery* which involves women kidnapped for commercial prostitution
- b. *Hostage situation* which involves victim taken to facilitate the escape or protection of an offender during the commission of another crime
- c. *Child Stealing* which involves child taken from parent or lawful guardian without authority for reasons not covered in other types of kidnapping
- d. *Domestic Relations Kidnapping* which involves child taken by divorced or separated parent or agent of parent in violation of a custody decree or unlawful taking of an adult family member to gain an advantage usually financial
- e. *Kidnapping for Rape or other Sexual Assault* which involves taking victim for sexual purpose or commercial prostitution
- f. *Kidnapping for Murder or Non-Sexual Assault* which involves kidnapping victim for the purpose of killing or coercing some action from the victim or associates
- g. *Kidnapping for Robbery* which involves kidnapping the victim for the purpose of depriving the victim of property other than by ransom
- h. *Romantic Kidnapping* which involves a minor voluntarily eloping with a lover against the wishes of his or her parents

²⁰ Alexander and Klein, *op. cit.*

- i. **Ransom Skyjacking** which involves kidnapping for the purpose of ransom and sometimes political motivation as well
- j. **Ransom Kidnapping Hoax** which involves a situation where a ransom kidnapping is alleged to cover a variety of acts such as extorting money from one's own family or associates, runaways by minors
- k. **Plot or Abortive Ransom Kidnapping** which involves a ransom kidnapping plot uncovered prior to the taking of the victim or an actual attempt aborted before a ransom demand is made
- l. **Ransom Threat for Extortion** which involves a situation in which ransom kidnapping is threatened to extort money
- m. **Developmental Ransom Kidnapping** which involves a ransoming which evolves out of another crime already in process such as an adjunct to an armed robbery
- n. **Classic Ransom Kidnapping** which involves a situation in which the exclusive or primary motivation is the collection of ransom, the victim is taken and sequestered, the ransom demand is made, the ransom is collected or not collected, the victim is or is not released unharmed and the offender does or not escape with ransom
- o. **Miscellaneous Kidnappings** that are rare cases involving the unlawful taking of persons not falling within another.²¹

1.2.2. History of Kidnap in Nigeria

Kidnapping people for ritual has been on in Nigeria from time immemorial. This act is mostly traceable to the ruling kingdom who offer ritual sacrifice to appease the deities, which occasionally involve human sacrifice. Unfortunately, human kidnapping for ritual has been taken advantage of by individuals in the society who believe that the use of charms and the performance of ritual sacrifice is the only path through which they can attain spirituality, heighten their fortunes in business, assist in winning elections, or protect them against any kinds of diseases and misfortune, poverty and death.²² The strategies used for selecting victims is usually dictated by the nature of sacrifice involve. Sometimes, victim's private part is target and once this is taken the remains of the

²¹ Alix, *op. cit.*

²² Osawe, C.O. "Increase Wave of Violent Crime and Insecurity: A Threat to Socio-Economic Development in Nigeria," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 20 (1): (2015): 123-13.

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²⁴ *Ibid.*

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²⁶ *Ibid.* Seco

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body is disposed of.²³ In most cases, victims do not live to seek redress in court or that their family members fear spiritual attack²⁴. Cemetery is also not exempted by these hoodlums who likened dead bodies to spare parts to support their intent.

1.3 Basis for Criminalizing Kidnap

There is behind every existing law an underlying philosophy. The law relating to criminalizing the offence of kidnap is arguably hinged on the constitutionally guaranteed right to personal liberty²⁵ which itself exists as a fundamental human right. The law at all times except as otherwise provided guarantees the personal liberty and freedom from wrongful arrest, false imprisonment and physical restraint.²⁶

It is however important to state that if an action is procedurally brought under Section 35 of the 1999 Constitution it would be a civil action under Fundamental Rights Enforcement Procedure Rules applicable in the High Courts²⁷ and the liability of the wrong doer in this case would not lead to punishment of imprisonment or fine but to damages or injunctions for/from continuing the wrongful conduct of restraining the movement or liberty of another.

The arguable difference that exists between restricting a person's right to personal liberty and the offence of kidnap lies in the manner the wrongdoer or defendant performed the act. Whilst in the earlier instance, a lawful authority permitted to effect arrest and restrict the movement of people by the law may in certain circumstances be held liable as well as the person who set the authority in motion,²⁸ in the offence of kidnap on the other hand, the wrongdoers are usually faceless, carry out their actions by means of force and arms or in the best bet by tricks or deceit usually for a ransom.

1.4 Kidnap and Similar Offences Distinguished

Kidnap as a term has been used interchangeably to mean abduction, hostage taking, hijacking and such similar concepts. It is a given that in normal

²³ Omoareloje, E., "Rage of Ritualists - Corpses without Genitals, Eyes and other Organs litter the Streets as Ritualists run Rampant. Observers blame the new 1000 naira note for the Upsurge of Kidnapping and Ritual Killing," *The News*, October 2005, pp 23-25.

²⁴ *Ibid.*

²⁵ See Section 35 of the 1999 Constitution of the Federal Republic of Nigeria.

²⁶ *Ibid.* Section 45. The restriction may be based on Public Defence, Public Safety and Public Morality.

²⁷ *Ibid.* Section 46.

²⁸ This is the context in which we see the Tortious Action of False Imprisonment for wrongfully restraining the Liberty of a Person. See *Bird vs. Jones* (1845) 115 ER 668; *Aigoro vs. Anenbuwa* (1966) NNLR 87; *Union Bank of Nigeria Ltd vs. Ajaku* (1990) 1 NWLR Pl. 120, 328.

English parlance, this could be permitted but for the purposes of an academic documentation as this paper, it would be apposite to draw differences between kidnap and such similar offences.

1.4.1 Kidnap and Abduction

Abduction is the unlawful interference with a family relationship such as taking of a child from his parents irrespective of whether the person abducted consents or not.²⁹ It is also the criminal taking away of a person by persuasion, fraud or by open force or violence.³⁰

The key difference between kidnap and abduction is that in the latter a person uses deceit or force in order to take a person or a child away from their home or relative whilst kidnapping is taking away or forcefully transporting a person against their will and holding them in false imprisonment, a confinement without legal authority usually for a motive or for ransom.³¹

The offence of abduction does appear to be one that seeks to protect family relations and is quite different from kidnap. For instance, Section 272 of the Penal Code applicable in Northern Nigeria provides that: "Whoever by force compels or by deceitful means induces any person to go from any place is said to abduct that person." The law provides punishment of up to ten years imprisonment and a fine.³² The Criminal Code applicable in Southern Nigeria appears to have provided double standards for the offence of abduction. The sections involved would be reproduced viz:

Any person who with intent to marry or carnally know a female of any age, or cause her to be married or carnally known by any other person, takes her away or detains her against her will is guilty of a felony and is liable to imprisonment for seven years.³³

Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful charge of her and against the will

²⁹ The Oracle, *Kidnapping and Abduction*, available at: <http://oraclednews.ng/kidnapping-and-abduction/> (accessed on 27 December, 2017).

³⁰ *Ibid.*

³¹ *Ibid.*

³² Section 273, Penal Code.

³³ Section 361, Criminal Code.

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³⁴ *Ibid.* See

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³⁶ *Ibid.*

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of such father or mother or other person is guilty of a misdemeanour and is liable to imprisonment for two years.³⁴

Legally speaking therefore, one could safely submit according to extant Nigerian laws that kidnap at all times is a felony attracting grave punishment whilst abduction may be a felony or misdemeanour depending on factors ranging from the age of the victim to the *locus criminis* (crime scene which affects jurisdiction), hence the need to use the most appropriate terms in every circumstance.

1.4.2 Kidnap and Hostage Taking

The word hostage has etymological connection with the Latin word *Hostis* meaning a "stranger" or "enemy".³⁵ The word hostage refers to a person or entity, which is held by a captor as security. Hostages are held generally for forcing a state, a unit of government or community to meet certain conditions.

The captor threatens to harm the hostage in case of non-fulfilment of the captor's condition. Most times, hostages are not ordinary people, they are usually very important people that would not want to be lost, this the captor properly targets to ensure that the conditions demanded get fulfilled.

The major underlying difference between kidnapping and hostage taking is that whilst kidnapping is usually done for a ransom, hostages are kept in order to fulfil certain conditions.³⁶ Again, it is our fair opinion that the target or affected persons by the act of hostage taking is usually a government or institution that is a wider range of persons are adversely affected in hostage taking than kidnap, making hostage taking more or less an international law concern.

1.4.3 Kidnap and Hijacking

To hijack is to stop and take a means of conveyance by force.³⁷ Conveyance refers to a vehicle or means of transportation such as airplane, car, boat, truck etc. 'Hijack' never, though, refers to a person taken from a vehicle. It also never refers to things that are stolen from a stationary place, like a bank, a

³⁴ *Ibid.* Section 362.

³⁵ *Difference between Kidnap and Hostage*, available at: <http://www.differencebetween.info/difference-between-kidnap-and-hostage> (accessed on 27 December, 2017).

³⁶ *Ibid.*

³⁷ *DifferenceBetween.Net, Difference between Hijack and Kidnap*, available at: <http://www.differencebetween.net/language/words-language/difference-between-hijack-and-kidnap/> (accessed on 27 December, 2017).

house or a store. Hijacking specifically has to involve a mobile form of transportation for people or things.³⁸

It would be reasonable to state that a person cannot be hijacked, only a means of conveyance can be hijacked and where persons are in that means of conveyance which is hijacked, it would be safest to state that they have been kidnapped or taken hostage of which would be most reasonable to so state.

1.5 States approach to the Offence of Kidnap

Nigeria is currently caught in the net of kidnapping. The act is spreading a climate of fears and worry to public safety. This throe of crime is traceable to poverty, poor parental upbringing, and greed amongst the youths get rich quick mentality, inadequate crime control model of national security among others. This unwholesome act is becoming unbearable and requires the intervention of policy makers. Crime, according to Osawe, portrays the failure of government to provide a secure and safe environment for lives, properties considering the alarming increase in criminal activities in Nigeria such as kidnapping and other related criminal offences.³⁹ The government of Nigeria at the federal level and in some states have come up with legalistic criminalization to address this torment attitude and general policing. The police and the civil defence efforts cannot be underscored to wage war against ritualists in Nigeria.⁴⁰ A series of arrests and trials had been made on the suspected ritualists as well as the kidnapping syndicates.

However, the threat of kidnapping for rituals remain resolute in Nigeria. The police had assisted a lot in this regard to stop and counter the threat. However, there is little commitment to investigate incidents and rescues victims by police through search and destroy of dens of ritualists and kidnapping syndicates in Nigeria.⁴¹ Even when suspects are charged to court, the cases are often unnecessarily protracted with a series of appealing. Most especially where

³⁸ Osawe, C. O., "Increase Wave of Violent Crime and Insecurity: A Threat to Socio-Economic Development in Nigeria," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 20 Issue 1, Ver. IV, (2015): 123-133.

³⁹ *Op. cit.*

⁴⁰ Oyewole, S., "Boko Haram: Insurgency and the War against Terrorism in the Lake Chad Region," *Strategic Analysis* 39(4), (2015a): 428-432.

⁴¹ Oyewole, S., "The Fate of Hostages: Nigeria's Conflict Theatres in Comparative Perspective," *African Security Review*, 25(2), (2016a): 193-207.

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⁴³ Emeh, O.

⁴⁴ Ojukwu, E.
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⁴⁵ *Ibid.*

⁴⁶ *The Sun*.

⁴⁷ Agbo, D.

⁴⁸ Oyewole,
41(1), (2016)

politicians and their associates are indicted, such cases often die natural deaths.⁴² Kidnapping for ritual has constituted a great challenge to security in Nigeria.

This criminal act has remained insurmountable through policing, given the inadequate knowledge of the hotspot, and the concerned perpetrators and the victims. Lack of manpower at the point of awareness and inadequate commitments to policing has undermined state response to this threat.⁴³ This has made it difficult to delimit the threat given the challenges of investigating the spiritual dimension of the crime by police or prosecute a suspect under the conventional legal system.⁴⁴ Worse still, it is often quite difficult to prove to a court that someone was made unconscious with a charm or there is a ghost that is working for a suspected ritualist.⁴⁵ The current situation of the security in Nigeria shows that the threat of kidnapping for ritual is yet to receive proper attention needed to arrest this unwholesome act.

1.6 Kidnap of Females and Implications

The phenomenon of kidnapping of females for ritual has occasioned more apprehension in Nigeria than the attention given to it by journalists, scholars and policy makers within and outside Nigeria. A report by The Sun pointed out that about 90 per cent of recent cases of missing persons were not found and the bodies of a negligible number that were eventually seen were dumped either on the roadsides, bush paths or inside gutters, mutilated and their vital organs removed.⁴⁶ In Enugu-Ezike community, hundreds of women went on rampage in a protest at the Enugu State Government House on the allegation that no fewer than 11 women were killed for ritual by suspected ritualists and chief priests of different deities in quick succession.⁴⁷ Over 276 female students were kidnapped by the so called Boko Haram and efforts geared towards their returns back home to their parents was not fully achieved.⁴⁸ Some of them died while in captive.

Another hideout of ritual operators was discovered in Soka, an evil forest that serve as den of kidnappers and ritualists in Ibadan metropolis, one of the

⁴² Osaghae, E., 'Amoral Politics and Democratic Instability in Africa: A Theoretical Exploration', *Nordic Journal of African Studies* 4(1), 62-78.

⁴³ Eneh, O., 'Analyzing Nigeria's current crime surge' *Vanguard Newspaper*, 5 January 2011.

⁴⁴ Ojukwu, E., '4 people die in Kebbi after Police rescue Foreign National suspected of being a Ritualist', *Police Press Release, Abuja: Force Headquarters*, 17 September, 2014.

⁴⁵ *Ibid.*

⁴⁶ *The Sun*, 'Murder for Money... Victims of Ritual Murders tell their Stories', 17 February, 2013.

⁴⁷ Agbo, D., 'Ritualists Kill 11 Women in Enugu-Ezike', *National Mirror*, 10 December, 2013.

⁴⁸ Oyewole, S., 'Rescuing Boko Haram's Schoolgirl Victims', *New Zealand International Review*, 41(1), (2016b): 25-28.

notorious places associated with kidnapping for ritual in Nigeria since 2014.⁴⁹ More than 20 human skulls and decomposing bodies were reportedly found at Kilometre 15 on the Aba/Azumini Highway, Abia State.⁵⁰ The effect of this unwholesome act is a negative impact on the economy and a scarecrow to the foreign investors. It is a negative stigma and a violation of right to life and human dignity as the lives of women who are supposed to be nation builders are being shortened.

1.7 Conclusion

The rate at which women are being kidnapped for rituals increases daily and government must find a way of putting an end to this. It is on this backdrop that the following recommendations are made. One, there is an urgent need to provide employment for all and sundry, empower the housewives and improve the standard of education in the country. Secondly, there is a need to promulgate a law prohibiting a politician who is found guilty of having hand in this kind of business.

Thirdly, government should find a way of keeping all the law enforcement agents in good employment condition to enable them serve meritoriously and put an end to this worrisome attitude. Fourthly, anybody found guilty of this grievous offence should be paraded around the state before punishment is meted on his person. Lastly, our legal system should be revisited to recognize the use of juju to gain peoples' consent wrongfully. This will enable the police to know how to control situation in order to break the bone of these hoodlums. This will also enable our women to enjoy the right to life and human dignity as provided by the constitution of the Federal Republic of Nigeria.

⁴⁹ Waheed, A., 'Fake Preacher Arrested with Human Skull in Ibadan,' *Leadership*, 28 March, 2014.

⁵⁰ *The Sun*, 'Ritualists' Den Uncovered in Lagos Church,' 26 June, 2014.