

DILEMMAS REGARDING THE PREGNANT VICTIMS OF THE BOKO HARAM ATROCITIES AND POSSIBLE SOLUTIONS: AN ISLAMIC PERSPECTIVE ¹

PREAMBLE

Following the good news of the rescue of some of the women who were abducted by Boko Haram members, it soon became known that many of them had been raped and are currently in different stages of pregnancy. Varying opinions have been expressed regarding what the women should do about their situation i.e. whether or not to terminate the pregnancies; whether or not to raise the children themselves if they carry the pregnancies to term.

While these women have been victims of Boko Haram, they are really ‘survivors’ and that is how they will be referred to in this paper.

The paper was written with two objectives in mind.

- To discuss the alternatives available to the women who have gotten pregnant as a result of being raped by Boko Haram members
- Using the principles and objectives of Islamic jurisprudence as guidelines, make some suggestions on how the government, Muslim community and the society in general should respond to the situation

This focus is in no way intended to belittle the suffering of those others who have been killed, injured, violated or displaced by the Boko Haram.

We pray for Allah’s guidance, mercy and forgiveness where we might be wrong.

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SUMMARY AND OUTLINE

The Boko Haram tragedy has affected a large number of people in diverse ways. This paper focuses on the dilemma faced by women who were abducted by the Boko Haram members and are currently pregnant as a result of having been raped by Boko Haram members.

From the opinions expressed by various individuals, opinion leaders, organised groups and government, it is clear that the dilemma faced by these women on how to handle their situation is of concern to many. It is hoped that this paper would add clarity to the issue.

The aim of this paper is two-fold

- (1) To discuss the alternatives available to the women
- (2) make some suggestions on how the government, Muslim community and the society in general should respond to the situation

As Muslims, we should always be guided by the divine values of compassion, fairness and wisdom. The fundamental objectives (*maqasid*) of Islamic law are the promotion and enhancement of the common good (*jalb al-masalih*) and removal of harm and vice (*dar' al-mafasid*).

At least three possible options may be considered by the survivors i.e. the pregnant women.

- a. To consider having an abortion if the pregnancy is still within the first 120 days (4 months). This is based mainly on the position of the Hanafi School of Islamic jurisprudence (*madhhab*). It was also the basis of a religious verdict (*fatwah*) issued in the 1990's by the late Sheikh Imam Ibn Uthaimen of Saudi Arabia in response to a case in Algeria where women who had been raped by members of a violent extremist sect (similar to Boko Haram) became pregnant as a result.
- b. If the pregnancy is older than 120 days old, the woman would be advised to deliver her child. She may however, for a number of reasons want to give it up for foster care. A woman may therefore decide not to abort the pregnancy, even when it is less than 120 days old, but would prefer to give it up for foster care rather than raise it herself.
- c. The woman may also choose to keep the pregnancy and raise her child herself with the support of her family.

Irrespective of the choice made by the survivor, she should have the support of her family

and members of the community. The women are the wronged ones, and their children will also be born innocent of the crimes committed by their fathers. Neither the women nor the children should be treated in any discriminatory way or stigmatized.

“No person with a burden shall bear the burden of another” (Qur’an 53: 38)

“A person can have nothing but what he does (of good or bad)” (Qur’an 53: 39)

Therefore they should be given all the necessary social, emotional and economic support needed to ease their situation.

One of the major objectives of Islamic law (*maqasid al-Shari’ah*) is the protection of human dignity and honor (*’ird*). With this in mind, it is important for all those offering support and care to the victims to respect the privacy of the victims and their family, and be sensitive to their religious and cultural preferences and norms.

Islamic organisations and other concerned groups and institutions should be foremost in showing compassion and kindness to the victims, their families and those supporting them.

The challenges facing the survivors are a challenge to us all. Their challenges are a test of our compassion, humanity, and faith in God. It is our prayer that God continues to support us all in bringing an end to the Boko Haram tragedy; that He continues to give strength and faith to all the survivors and bless their families and care-givers.

Allah’s Messenger said *“The Merciful One shows mercy to those who are themselves merciful (to others). So show mercy to whatever is on earth, then He Who is in the heavens will show mercy to you”*. (Abu Dawud and Tirmidhi)

May He guide us and forgive us where we go wrong.

HANDLING THE SITUATION FACED BY SURVIVORS OF BOKO HARAM ACTIVITIES

Many people within and outside Nigeria have been direct or indirect victims of the atrocities committed by Boko Haram. The focus of this paper is the women who

became pregnant after having been raped by Boko Haram members during their period of captivity. The conditions of these women should call for our compassion and empathy. Their situation should not be turned into an opportunity for politicizing ethnic, political or religious alliances. It should not be converted into an arena for fault-finding and playing a blame game. Rather, the effort of all interested parties should be concentrated on articulating creative ways of bringing relief to them and facilitating more effective ways of providing genuine support.

OUR GUIDING VALUES AND PRINCIPLES

The divine guidance for the conduct of Muslims is derived from the Qur'an and tradition (Sunnah) of Prophet Muhammad, peace be upon him (pbuh).

The distinguished jurist, Ibn Qayyim al-Jawziyyah, summarized the major values of the Qur'an and Sunnah that guide Islamic jurisprudence when he said:

The foundation of the Shari'ah is wisdom and the safeguarding of people's welfare in this life and the next. In its entirety it is about **justice, mercy, wisdom, and good**. Every rule which replaces justice with injustice, mercy with its opposite, the common good with mischief, and wisdom with folly, is a ruling that does not belong to the Shari'ah, even though it might have been claimed to be according to some interpretation..." (See Muhammad bin Abubakr Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqi'in*, Dar al-fikr, Beirut, 1977, Vol.3, p.14)

In addressing the dilemma presented by the plight of the women raped by Boko Haram members, we should bear in mind the saying of Prophet Muhammad (pbuh): *"None of you is (true) believer unless he loves for his brother (or sister) what he loves for himself"*. Consequently, we should dislike for others any proposition, or policy that we would dislike for ourselves if we were in their situation.

It is in such times of trial where honour and emotional wellbeing are at stake that divine values of godliness, selflessness, love and sacrifice are needed the most. All forms of intervention should try and achieve the twin objectives (*maqasid*) of

bringing relief and removing suffering, of promoting the common good (*jalb al-masalih*) and removing harm and vice (*dar' al-mafasid*).

The tragedy faced by our pregnant sisters should be handled with the utmost level of compassion, fairness, wisdom and sensitivity irrespective of their faith or ethnicity. Our primary concern should be their emotional and mental wellbeing.

THE PROHIBITION OF STIGMATIZATION

Allah says in the Qur'an:

"No person with a burden shall bear the burden of another" (Qur'an 53:38)

"A person can have nothing but what he does (of good or bad)" (Qur'an 53:39)

"...They were people who have gone before. They shall have the fruits of what they earned and you shall have the fruits of what you earn, and you will not be asked about what they did." (Qur'an 2:134 and 141)

Consequently the person who does wrong, not the victim, bears the blame of the wrong action. In the case of the raped women, the blame lies upon the rapist, not on the victim of rape and certainly not on the child who is conceived thereby. The women should not be mocked, stigmatized or given any label which would further increase their difficulty.

"O ye who believe! Let not some men among you laugh at others: it may be that they (the latter) are better than them (the former): nor let some women laugh at others: it may be that they (the latter) are better than them (the former): nor defame, nor be sarcastic to each other, nor call each other by (offensive) nicknames: Ill-seeming is a name connoting wickedness, (to be used of one) after he has believed: And those who do not desist are (indeed) doing wrong." (Qur'an 49:11)

Regarding the innocence of a child born out of wedlock or in circumstances such as the ones under consideration, Aisha the wife of the Prophet Muhammad (pbuh) said:

“He shares in nothing of the sin of his parents, for Allah says 'No soul shall bear the burden of another’ ” (Ahmad bin Husain Al-Baihaqi, *Al-Sunan Al-Kubra*, Maktabat Dar al-Baz, 1994, hadith number: 19777, Vol.10, p.58).

The great scholar, Ibn Taymiyyah, said:

"If an illegitimate child believes and does righteous deeds, he will enter Paradise; otherwise he will be punished for his deeds just like anyone else. The punishment is for the deeds, not for the lineage". (Ahmad bin Abd al-Halim bin Taimiyyah, *al-Fataawa al-Kubra*, Dar al-Marifa, Beirut, Lebanon, 1386 AH, 5/83).

Muslims should therefore also beware of fabricated hadith on this subject, such as the one which states that, *"The child of illicit sexual intercourse shall not enter Paradise"*. Scholars of hadith such as Ibn Jawzi, Imam Dhahabi, Imam Suyuti and Ibn Arraq, all said that the above hadith is fabricated and hence carries no legal weight. (See Abu al-Faraj ibn Jawzi, *Al-Maudu'at*, 1386 AH, Vol.3, p.110; Shamsudeen Al-Dhahabi, *Talkhis al-Maudu'at*, Maktabat al-Rushdi, p.291; Abdul-Rahman Suyuti, *Alail al-Masnua fi al-Ahadith al-Maudu'a*, Dar al-Kutub al-Ilmiyyah, Vol.3, p.163, Abu al-Hasan bin Arraq, *Tanzih al-Shari'ah al-Marfu'a*, Dar al-Kutub al-Ilmiyyah, 1981AH, Vol.2, p.228)

The fact that Islam does not recognize any inherited sin or virtue should make it clear that it is unacceptable to blame a child or anyone else for the crimes of their parents or forefathers. Consequently, the child of a rapist does not in any way share in the blame of his or her father. Each individual human being is independently responsible for his or her own beliefs and deeds.

We should also beware of backbiting, slander and creating suspicion. Allah says in the Qur'an:

"O you who believe! Avoid much suspicion; indeed suspicion in some cases is a sin. And neither spy on, nor backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is The One Who accepts repentance, Most Merciful" (Qur'an 49: 12)

Abu Hurairah reported that the Prophet (pbuh) said: *"The Muslim is the one from whose tongue and hands all people are safe; and the believer is the one who is trusted with the lives and wealth of people."* (Sunan Al-Nasa'i, no. 4998; Musnad Imam Ahmad, no. 8931)

In another hadith narrated in Tirmidhi, Abu Hurairah relates that the Prophet (pbuh) said: *"Whoever believes in Allah and the Last Day let him say what is good, or keep silent"*.

MOVING FORWARD: THREE POSSIBLE ALTERNATIVES

There are at least three options that may be considered by the woman who is pregnant as a result of having been raped.

1. The Option Of Abortion Before The Lapse Of 4 Months (Or 120 Days)

In the 1990's in Algeria, about 200 women who were raped by members of a violent extremist sect became pregnant. The prominent Saudi scholar Sheikh Muhammad bin Salih bin al-Uthaimen was asked about the options available for the women under Islamic jurisprudence. In his *fatwah* (religious verdict), he responded that abortion was permissible if done before the end of the first 120 days. (See Saleem bin Eid Al-Hilai, *Qurat al-Uyun*, Maktabat al-Furqan, Ajman, 1422AH, p.234-235).

This *fatwah* is based on an interpretation of an authentic hadith of the Prophet (pbuh) reported in Bukhari and Muslim which indicates that while the foetus is a living being, the soul or spirit (*ruh*) is breathed into it only after the end of this period. Scholars of the Hanafi School of Islamic Jurisprudence (*madhhab*) along with a few others have therefore regarded abortion before the 120 days period as not prohibited by any clear explicit text of the Qur'an or Sunnah. This also so

because the foetus at that very early stage of pregnancy has not yet reached the age of being referred to in the terminology of the Qur'an and Sunnah, as a "child" (*walad*) whose life is sacred. (See Alah al-Deen al-Kasani, *Badai' al-Sannai' fi Tartib al-Sharai'*, Dar al-Kitab al-Arabi, Beirut, 1982, Vol.7, p.325)

There is a general consensus among Muslim scholars on the prohibition of abortion after this 120 day period - except for reasons such as a threat to the life of the mother. Scholars however have differed in their opinions about the permissibility of abortion before the end of 120 days. (See *al-Mawsu'ah al-Fiqhiyyah*, Dar Salasil, Kuwait, 1414AH, Vol.2, p.57)

Sanity or the "preservation of the mind" (*hifz al-'aql*) is one of the fundamental objectives (*maqasid*) of Islamic law. The difference of opinion on the matter of abortion is presented here also because the mental and emotional health of the pregnant mother is of vital importance to Shari'ah and all concerned. A woman who has been a survivor of rape could go insane or into deep depression if forced to keep a pregnancy from a rapist.

In the opinion of some scholars it is therefore entirely up to the pregnant mother to decide whether or not to terminate her pregnancy before the lapse of 120 days. (See Ibn 'Abideen, *Hashiyah Radi al-Mukhtar*, Vol. 3, p.192, cited in Al-Maktabah al-Shamilah, 3.13)

The very existence of a legitimate difference of opinions among reputable scholars on an issue is itself a reason for leniency and for issuing a verdict or ruling that facilitates ease for the victim of hardship or suffering (*mashaqqah/ haraj/ haajah/ darurah/ etc.*). Giving concessions for such victims when distinguished jurists (*mujtahids*) or their Schools of Jurisprudence (*madhahib*) differ is a basic principle in the application of concessions and licenses (*rukhsa*) in the field of the Principles of Jurisprudence (*Usul al-Fiqh*) and the maxims of jurisprudence (*Qawa'id al-Fiqhiyyah*).

Choosing the more appropriate or easier option (*taysir*) from alternative scholarly opinions (*talfiq*) so as to facilitate the living conditions or circumstances

of someone in a situation of dire necessity, suffering, difficulty or hardship is itself based on numerous texts of the Qur'an and Sunnah. These include:

“God intends for you ease and He does not intend to put you in hardship.” (Qur'an 2:185); *“God does not intend to inflict hardship on you.”* (Qur'an 5:6); A'isha the blessed wife of the Prophet (pbuh) is reported to have said: *“Whenever the Messenger of Allah was given a choice between two things, he chose the easier one unless it was a sin.”* (Sahih al-Bukhari and Muslim); *“You have been sent to make things easy (for the people) and you have not been sent to make things difficult for them.”* (Bukhari). The Prophet (pbuh) also once said to his Companions, *“You have not been sent as those who have been given hardship. Rather, you have been sent as those who have been given ease or facility.”* (Sahih al-Bukhari and Muslim)

(On the application of these principles see Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabbi al-'Alamin*, Egypt: Maktabah al-Kulliyat al-Azhariyyah, 1968, vol.3, p.164; al-Qarafi, *al-Furuq*, vol.2, p.33; Abdullah bin Mahfuz bin Bayyah, *Sina'at al-Fatwa wa Fiqh al-Aqalliyat*, Dar al-Minhaj, Beirut, 2007, p.193-231; Muhammad Abu Zahrah, *Ibn Hanbal: Hayatuhu wa 'Asruhu, Arauhu wa Fiqhuhu*, Dar al-Fiqr al-Arabi, Beirut, p.370.)

2. The Option Of Foster Care

If the pregnancy is more than 120 days old, or the woman chooses not to abort the pregnancy before the 120 days have elapsed, she can decide to send the child into foster care or to be raised by someone ready to take on the responsibilities of a child who is effectively an orphan.

This is especially so if the woman cannot or does not want to bear the psychological or social challenges associated with raising the child.

The decision regarding an alternative home for such a child must be based on what is in the best interest of the child, as the child did not choose to be in that situation.

The prophet Muhammad (pbuh) said: *“I and whoever takes charge of an orphan, whether his own or of others shall be in paradise like this (pointing with his four fingers and the middle finger)”* (Sahih al-Bukhari).

The prophet Muhammad (pbuh) also said: *“The best house of the Muslims is the house in which there is an orphan who is treated in the best manner; and the worst house of the Muslims is the house in which an orphan is badly treated”* (Ibn Majah).

3. The Option Of Motherhood And Child-Upbringing

The mother may choose to keep the pregnancy and raise the child to the best of her ability. In the absence of the father, the hadith in Bukhari regarding caring for orphans also applies to this situation - *“I and whoever takes charge of an orphan, whether his own or of others shall be in paradise...”*

SOCIAL, EMOTIONAL AND ECONOMIC SUPPORT, EMPOWERMENT AND COUNSELING

The decision of what to do about the pregnancy is primarily that of the woman in question. Each of the three options mentioned in this paper has challenges that are peculiar to it. None of the three choices is an easy one to make. The effect of each choice will be felt primarily by one person – the woman concerned. More than anyone else, she will bear the difficulty of undergoing an abortion, or carrying to term a baby conceived in circumstances that are traumatic to her, giving birth to that child and, if she chooses, raising the child. Should she choose to give it up for fostering or adoption, she would still feel the effect of such a choice. Therefore, it would be insensitive to force any choice upon her, or deny her an option which may be the lesser evil as far as she is concerned. Human beings are all different and respond to trauma in diverse ways. It would be wrong to dictate how all the rape victims should handle the resulting pregnancy.

Whatever option the women may choose, the role of their families, care-givers, the community, leaders and the government is to provide necessary counseling, social,

emotional and economic support and empowerment opportunities. She should be shown empathy and compassion. If social stigmatization is unavoidable in a particular community, the option of relocation of the family to a friendlier environment should be considered and facilitated, while efforts at preventing and eliminating stigmatization continue.

When the children are born, they should receive the same treatment as any other child and should not suffer any form of discrimination or ill-treatment – they will be born blameless as all human beings are.

Allah's Messenger said *"The Merciful One shows mercy to those who are themselves merciful (to others). So show mercy to whatever is on earth, then He Who is in the heavens will show mercy to you"*. (Abu Dawud and Tirmidhi)

He is also reported to have said in a hadith narrated by Bukhari and Muslim that *"Allah is not be merciful to he who is not merciful to people"*.

Islamic organizations and other concerned groups and institutions should be foremost in showing greater compassion, sensitivity and empathy to the victims and their families. They could consider proactively preparing to welcome and care for the soon-to-be-born members of the society.

Better networking and greater online presence would help those from distant places give their support. Some of the apex Islamic organisations in the country and especially in the region could circulate a list of credible organisations that donors could work with. Concerned telecom service providers could also play a more significant and deliberate role by facilitating fund raising and transfer as is done in raising funds for political parties.

PROTECTION OF HUMAN DIGNITY AND HONOR ('IRD)

One of the major objectives of Islamic law is the protection of human dignity and honor (*'ird*). With this in mind, all those offering support and care should show respect for the survivors' privacy, dignity and safety. They should also show

sensitivity to the religious and cultural preferences and norms of the victims. This is particularly important for politicians and people working with the media.

THE CHALLENGE TO OUR HUMANITY, COMPASSION AND FAITH

The litmus test and criteria for true piety and faith in Allah is the extent to which we show sincere compassion towards others. The challenges facing all the survivors of the Boko Haram atrocities are a challenge to us all.

It is our prayer that though the government and national leadership were unable to stop the tragedy from befalling our sisters, civil organisations, the government and Muslim leadership will be able and willing to bring an end to their ordeal. We pray that Allah continues to support all those striving to end the Boko Haram tragedy; that He gives strength and faith to all the survivors; that He blesses and protects all their care-givers; and that He continues to guide and forgive us all where we go wrong.