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Articles

- | | Pages |
|--|-----------|
| Appraisal of the Rights of Refugees' under International Humanitarian Law
Akintunde Adebayo | 1 - 20 |
| Constitutional Responsibility for Creating New Local Government Areas in Lagos State
Oluwaseyi Leigh | 21 - 35 |
| Legal Framework for the Protection of Consumers in On-Line Sale of Goods
Madaki, A.M. & Paul Abraham | 37 - 52 |
| Addressing the Menace of Child Marriage in Nigeria through the Law
Ibijoke Patricia Byron | 53 - 73 |
| Evaluation of the Legal Framework for Environmental Infection Control in Nigeria
Damilola S. Olawuyi | 75 - 97 |
| An Appraisal of the Mechanisms of Enforcement of Environmental Laws in Nigeria
Lawrence A. Atsegbua & Irene Airen Aigbe | 99 - 119 |
| A Rights-Based Approach for Right to Education in Nigeria
Osifunke Ekundayo | 121 - 144 |
| Jurisdictional Issues in Electronic Banking
Adeola A. Oluwabiyi | 145 - 160 |
| Imperatives of Access to Health Care in Nigeria under the National Health Act, 2014
Smaranda Olarinde, E., Ifeoluwayimika Bamidele & Oyenyi Ajigboye | 161 - 182 |
| State and Justice System as Frameworks for Human Development
Obutte, P.C. | 183 - 206 |

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Addressing the Menace of Child Marriage in Nigeria through the Law

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Abstract

Child marriage creates problems for the girl-child. It is a problem that affects the anatomy of the child and it diminishes global development efforts focused on creating more educated, healthier and economically stable populations. It is a topical issue that has pervaded our society. Child marriage occurs most often in poor rural communities. It often occurs where parents arrange their daughter's marriage unknown to the girl, that is, without the consent or the knowledge of the child. This simply means that the girl-child may be at home playing with her siblings and suddenly, she is married off and sent to live in another village with her husband and his family—strangers, essentially. She is pulled out of school. She is separated from her peers. Once the girl-child is married, she is more likely to be a victim of domestic violence and suffer health complications associated with early sexual activity and childbearing. This article therefore examines the phenomenon of child marriages in Nigeria, its causes and effects and how such can be addressed through the law.

Introduction

Child marriage is a phenomenon that violates millions of girls' rights, disrupts their education, jeopardizes their health, and denies them their childhood, limiting their opportunities and impacting all aspects of a girl's life.¹ The demoralizing impact of child marriages continues to be ignored in the developing world and the incidences of child marriages are climbing at a fast pace, despite the introduction of human rights based legislation and public denunciation of the act. This disturbing impact still exists despite the existence of numerous international, regional human rights, national laws and conventions against the practice. Violations of

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¹Anuforo, E. (2012) Grievous harm in Child-girl marriage, Retrieved through www.nrguardiannews.com/index.php?option=com_content... On December 16, 2012.

the rights of children represent a common occurrence in many parts of the world.² Nigeria is party to several international treaties that protect the rights of women and minors, including the United Nations (UN) Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination, and the African Charter on Human and Peoples' Rights.³

Nigeria is a Federal Republic with thirty-six (36) states, and each state adopts distinct Federal and State laws. Nigeria has a tripartite legal system consisting of statutory, customary, as well as, in the northern states, Sharia laws. The three bodies of law create contradictions and inconsistencies, and discriminatory provisions are widespread within each source of law particularly in the areas of family and property law.⁴ To date, the Child Rights Act has been promulgated into Law in the following States: Abia, Anambra, Bayelsa, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers and Taraba⁵. The incidences of child marriage may be based on a mix of cultural, social, economic and religious factors. Poverty is observed to be at the core of decisions and practices related to early marriage and it has been observed to be more rampant in low-income societies

² The Convention on the Rights of the Child states that, in all countries of the world, there are children living in exceptionally difficult conditions. Preamble to the Convention on the Rights of the Child (1989)

³ On 20th November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC), whilst the OAU Assembly of Heads of States and Governments adopted the African Union Charter on the Rights and Welfare of the Child (CRCW) in July 1990. Nigeria signed both instruments and ratified them in 1991 and 2000 respectively. In 2003, Nigeria domesticated the UN Convention on the Rights of the Child with the Child Rights Act (2003). See Agary, K. (2012) Rights of the Child. Retrieved through www.punchng.com > Columnists > Pocket Lawyer on 29 November, 2014

⁴ See Nigeria: Africa for Women's Rights, www.africa4womensrights.org on December 1, 2012

⁵ Nigeria UNICEF: Protection and Participation. Retrieved from www.unicef.org/wcaro/WCARO_Nigeria_FactSheets_CRA.pdf on December 2, 2012

than in their high-income counterparts. There is lack of the resources to support healthy alternatives for girls, such as prolonged schooling or skill acquisition to secure their future.⁶ The government on the other hand, is often unable to enforce existing laws or rectify discrepancies between national laws on marriage age and entrenched customary and religious laws. This could be as a result of the "official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life."⁷

The victims of child marriage are overwhelmingly young, poor and female, and their voices are seldom heard, or not heard at all, by the government. Their concerns do not register on the agenda of global summits. Child marriage is a public health concern that violates international human rights laws and seriously compromises the health and development of the affected girl child. The resultant effect is that child brides are pressured to initiate sexual activity and become mothers too early and too soon.⁸ Prior to the CRA⁹, there was no minimum age for marriage in Nigeria¹⁰. The age of marriage is a highly controversial issue in Nigeria and varies from place to place. It is disturbing that despite the promulgation of the CRA, major parts of the population are still not aware of the negative effects early marriage can have on the girl child. In most cases, it limits the opportunities for girls to the right of education, putting them in a disadvantaged position.¹¹

⁶ Adedokun Olaide A. et al. Population "Child Marriage and Maternal Health Risks among Young Mothers in Gombi, Adamawa State, Nigeria: Implications for Mortality, Entitlements and Freedoms.

⁷ Centre for Reproductive Rights (2000) *Reproductive Rights 2000: Moving Forward*. New York: Centre for Reproductive Rights, p. 52

⁸ Ending Child Marriage: A Global Policy. Retrieved from www.unfpa.org/public/op/edit/cache/... on February 3, 2013

⁹ Child Rights Act, Cap. C50, 2003

¹⁰ The Child Rights Act represents a vital component for the protection of children in Nigeria as it domesticates the obligations of the Convention on the Rights of the Child and consolidates all laws relating to children into a single legislation. The Act specifies the rights and responsibilities of children and the duties and obligations of government, parents and other authorities, organisations and bodies

¹¹ For more information, see Alemika, E.E.O. et al. (2005) *Rights of a Child in Nigeria: Report on the implementation of the Convention on the Rights of the Child in Nigeria*. A report prepared for the Committee on the Rights of the Child, 38th Session, Geneva. See generally, Section 15 of the CRA which states that every child has a right to free, compulsory and universal primary education,

Early marriage is one of the ills that have eaten deep into the marrows of the third world countries, of which Nigeria is not an exception. Early child marriage means that childhood is cut short and fundamental rights are compromised.¹² This has become a societal problem that can hardly *and should not* be overlooked by parents, counsellors and other scholars. It is destroying human potential and reinforcing gender inequalities on a global scale. It jeopardizes education, is harmful to health and turns millions of girls into second class citizens, locking them and their children into cycles of poverty. Child marriage in the Nigerian society has grave challenges for the children who are violated. It has been termed "a global problematic phenomenon". International agencies including UNICEF and CEDAW have been relentless in their condemnation of child marriages in Nigeria but it appears that Nigerians consider the practice of having children as brides, a part of their heritage and culture, and are hence unwilling to eradicate the practice. This is particularly rampant in Northern Nigeria.¹³ This paper examines in perspective, the issue of child marriages in Nigeria. The moral, religious and legal consequences will be examined with particular reference to health consequences. It analyses the provisions of the Child Rights Act, the Criminal Code and other International Instruments on Child Marriages.

Who is a Child?

The UN Convention on the Rights of the Child (CRC) defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."¹⁴ The Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) in its General Recommendation 21, explicitly dealing with equality in marriage and family relations, outlaws child marriage, and stipulates 18 years as the minimum age for marriage for males and females. This

etc. See Cap C50 Laws of the Federation, 2004. Retrieved from www.placng.org/laws/nigeria/files/C50.pdf on December 13, 2012.

¹² Tamunoimama, J. (2012) *A Discourse on the Developmental Effects of Child Marriage*, *African Journal of Social Sciences* Volume 2 Number 3, 135-144

¹³ For more information, see Tamunoimama, J. (2012) "A Discourse on the Developmental Effects of Child Marriage" *African Journal of Social Sciences*. Volume 2; Retrieved from sachajournals.com/documents/JAMABO2012AJSS002.pdf on 16 December, 2012.

¹⁴ Article 1, UN Convention on the Rights of the Child adopted by the UN General Assembly in Resolution 44/25 November 1989.

is the minimum age when young people attain "full maturity and capacity to act."¹⁵ This acknowledges that, from a child rights and equity perspective, marriage should not be permissible before 18 years of age. The African Charter on the Rights and Welfare of the Child defined a child as: "every human being below the age of 18."¹⁶ Under the Child's Rights Act, a child has been defined as a person below the age of 18 years.¹⁷

Child Marriage

Child marriage should be differentiated from early marriage. Child marriage is defined as "[A]ny marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing. Marriage is an institution and a contract that is a binding partnership between two consenting adults, which sanctions sexual relations and gives legitimacy to any offspring. It is a respected and valued social institution throughout the world, and may take different forms in different cultures."¹⁸ Child marriage involves either one or both spouses being children and may take place with or without formal registration, and is performed under civil, religious or customary laws. In many societies in developing countries, child marriage is believed to build or strengthen alliances between families. This may even include the betrothal of young children or babies.¹⁹ Despite the legislation, there are still incidences of betrothal of children.²⁰ One of the preliminaries for

¹⁵ United Nations (2000) *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women*. General Recommendation 21. New York: United Nations

¹⁶ Article 2 of the African Charter on the Rights and Welfare of the Child 1989

¹⁷ Section 21 of the Child's Rights Act provides that no person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever.

¹⁸ The Inter-African Committee (IAC) on traditional practices affecting the health of women and children (1993) *Newsletter*, December 2003.

¹⁹ It should be noted that there is prohibition of child betrothal under section 22 of the Child Rights' Act, Cap C50. In the section, it states that no parent, guardian or any other person shall betroth a child to any person. In sub-section (2). A betrothal that is conducted will be null and void and of no effect.

²⁰ It is pertinent to note that Section 22 of the CRA prohibits Child Betrothal and in Section 23 of the same Act provides for punishment for anyone involved in child marriage and betrothal. A person who commits the offence of child betrothal will be liable on conviction to a fine of ₦500,000 or imprisonment for a term of five years or both such fine and imprisonment.

marriage is that there must be consent by both parties to the marriage.²¹ In child marriages, the possibility that consent is not full and fair is very high. There is often an element of coercion involved: parents, guardians or families pressurize, collude or force children into marriage. Girls are socialized into accepting child marriage as the norm, a 'given', and many give their consent as a duty and sign of respect. However, where one of the parties in a marriage is under 18 years, consent to marry in such cases cannot always be assumed to be of 'free and full consent' and may also not always be in the best interest of the child.²²

Child Marriage Practices under Customary and Islamic Laws *Child Marriages under Customary Law*

There are essential and formal requirements for the celebration of valid customary-law marriages in Nigeria. These requirements must be followed for there to be a valid marriage. They include: capacity to marry; age of the parties; full consent (both the parents and the parties); prohibited degrees of consanguinity and affinity and payment of bride price must be observed. Most systems in a customary-law marriage do not prescribe any age for the solemnization of customary-law marriage. It has to a large extent encouraged a high incidence of child marriage in all its ramifications.²³ The peculiarity of our laws at times may create problems. For instance, the marriage of girls below the age of eleven, or above eleven, who marry under customary laws²⁴ and who thereby, consummate the marriage does not constitute sexual offence under the Criminal Code Act.²⁵ This is because Section 6 of the Code defines "unlawful carnal knowledge" to exclude sexual relations between husband and wife.²⁶ This shows that our laws are archaic and do not protect children. This is a lacuna which must be addressed in our laws and it is yet to be addressed. It was as a result of the rampant incidence of child marriages under customary law that the Age of Marriage Law was introduced. The Age of Marriage under customary law is governed in the three

²¹ This exists for all the systems of marriage in Nigeria: Statutory, Customary and Islamic marriages. See Nwogugu, *Ibid.*

²² *End Marriage: A Global Policy*, *op. cit.*

²³ Nwogugu, *Ibid.*

²⁴ Nwogugu, *E.I. op. cit.* at page 43

²⁵ Section 218 of the Criminal Code Act, Cap C38, Laws of the Federation 2004

²⁶ *Ibid.*

Eastern States of Nigeria by the Age of Marriage Law 1956.²⁷ Section 3(1) of the Law provides that:

A marriage...between or in respect of persons either of whom is under the age of sixteen shall be void.

It is however uncertain whether these laws existed or exist, as child marriages still continue at an alarming rate. The law regarding age of marriage or marriageable age in Yoruba law of Western Nigeria is not laid down in any legislation.²⁸ As afore-mentioned, in most customary law systems in Nigeria, there is no minimum age for marriage.²⁹ Nigeria is a multi-ethnic country and customs differ from one community to the other; thereby, creating no uniform age for marriage under customary laws. Another challenge is that customary law is unwritten and it is a mirror of accepted usage.³⁰ In addition, the concept of puberty is vague and seems to be the accepted standard that is used as an umbrella to perpetrate child marriages.³¹

Child Marriages under Islamic Law

Islam is predominant in Northern Nigeria. The Northern Nigerian government enacted the Native Authority Laws of Northern Nigeria which prescribe twelve (12) years for girls and fourteen

²⁷ Cap. 6 of the Laws of Eastern Nigeria 1963

²⁸ Ibid.

²⁹ Immigration and Refugee Board of Canada, *Nigeria: Forced marriage among the Yoruba, Igbo, and Hausa-Fulani; prevalence, consequences for a woman or minor who refuses to participate in the marriage; availability of state protection (February 2006)*, 3 March 2006, NGA101044.E, available at: <http://www.unhcr.org/refworld/docid/45f1478a11.html> on 27 November 2012]

³⁰ In the case of *Omoniyin v. Omoniyin* (1961) 1 All N.L.R., Bairamian, F.J. described customary law as 'a mirror of accepted usage'. Customary law therefore emerges from the traditional usage or practice of a people in a given community, which, by common adoption and acquiescence on their part, and by the long use, it has acquired to some extent, the force of law in relation with the community. See generally Tobi, N. *Sources of Nigerian Law*. MIJ Professional Publishers Ltd.

³¹ It is unacceptable that a child's puberty is used to calculate how matured a child really is. To use puberty to gauge a child's age is rather extreme and unacceptable. The truth is that children do not mature at the same time as each person's body differs from other children.

(14) for boys as the marriageable age.³² The court in *Labinjo v. Labake*,³³ stated inter alia that the contractual capacity begins at puberty under customary law. The question that arises here is on how to determine when a child has reached puberty.³⁴ Under Islamic marriage, there are requirements of a valid marriage which must be followed. The most important requirement is the consent of the parties and parental consent. The parties to Islamic law marriage must freely consent to the union. This requirement is however, not followed absolutely. The reason being that a child is not capable of giving his/her full consent to what they do not know or understand. For instance, under the Maliki School of Islamic law, a father has the right to conclude marriage on behalf of his infant sons and virgin daughters.³⁵ This practice results in child marriage which is fraught with the danger of facilitating slave trade.³⁶ Islamic jurists tackle the age of marriage based on the interpretations of the Quran.³⁷ Under the Islamic law, it is lawful for a girl who has not attained the age of puberty to enter into marriage. The Islamic jurists cite the precedence of the Prophet Mohammed's marriage to Aisha, a 12 year old girl and it has been unanimously agreed that there is no limit to the number of years that a girl must reach before the age of marriage.³⁸

Thus Islamic law does not fix any age for marriage, and this explains the higher incidence of child marriages in Northern Nigeria including the Sharia implementing states.³⁹

³² See Section 2 (1) (a) Native Authority (Declaration of Idoma Native Marriage and Custom) Order NALN 63 of 1959

³³ 5 NLR 3

³⁴ Children do not mature at the same time as each person's body differs from other children. Therefore, to use a child's puberty to calculate whether the child is matured enough is clearly unacceptable.

³⁵ This is referred to as *Ijbar* and it is at the discretion of the father of the girl.

³⁶ Nwogugu, E.I., *Ibid* at p. 59

³⁷ Ambali, M.A. (2003) *The Practice of Muslim Family Law in Nigeria*. Tamaza Publishing Co. Ltd, Zaria, p. 154-155

³⁸ "Promoting Women's Rights through Sharia in Northern Nigeria", a publication of the Centre for Islamic Studies, Ahmadu Bello University, Zaria, 2004.

³⁹ In addition, since there are no prescribed and laid down ages of marriage for girl, this creates multiple problems for the girl child. The Northern states have also refused to adopt the Child's Rights Act on the premise that it is against the dictates of the Holy Quran.

Child Marriages under Statutory Marriages

The Marriage Act and the Matrimonial Causes Act do not set down any marriageable age. However, a marriage is null and void if either of the parties is not of marriageable age.⁴⁰ In the absence of any defined age-limit, and owing to this lacuna in the law, it was submitted that Section 3 has no effect whatsoever until the age limit has been fixed by law.⁴¹ In addition, therefore, the lacuna in Nigerian laws is fraught with hidden problems as there are no laid down rules to ensure that the incidences of child marriage do not occur.

Incidence of Child Marriages in Nigeria

The issue of child marriage involves both boys and girls in Nigeria but the girl child is inexplicably more affected. A practice is that of marrying a young child, below the age of fifteen to an adult.⁴² This usually happens through arrangement or parental consent.⁴³ According to the Population Council, prospective husbands are selected based on social, religious and monetary factors and age is not considered as an important factor, as husbands are on the average 12 years older than the child brides in monogamous unions and up to 15-20 years older in polygynous unions.⁴⁴

Early marriage has been defended in Nigeria as clearly permissible by the Islamic religion, but with the cautionary measure that such marriages can only be consummated when the bride is mature enough.⁴⁵ However, these decisions are often made without the consent of the child and with no recourse to the consequences of the actions.⁴⁶ Nigeria has diverse ethnic groups and therefore, different states have cultural practices that shape their communities. As such, the practice of child marriage is deeply entrenched in tradition, culture and religion. The country

⁴⁰ Section 3(1)(c) of the Matrimonial Causes Act 1970

⁴¹ Nwogugu, E.I., *Ibid* at p.139-140

⁴² *Ibid*.

⁴³ Population Council (2004) *Child Marriage Briefing: Nigeria*. Retrieved April 22, 2008 from <http://www.popcouncil.org/pdfs/briefingsheets/NIGERIA.pdf>

⁴⁴ Population Council: Retrieved from www.populationcouncil.org/pdfs/briefingsheets/NIGERIA.pdf on December 12, 2012

⁴⁵ Bamgbose, O. (2002) Customary Law Practice and Violence against Women: The Position under the Nigeria Legal System in Proceedings of the Women's World 2002, Kampala.

⁴⁶ Child bride pregnancies may lead to death as these children are too young to have children.

has one of the highest rates of child marriages in the world, with an estimated 42% of girls married before 18 years; and while this is found among many ethnic groups across the country, its predominance is clearly in the northern part of the country⁴⁷. Child marriages are commonly practised in many Islamic countries.⁴⁸ Among the Yorubas, which are made up of a mixture of Christians and Muslims in the South-West, child-marriages are no longer arranged and for the Igbo in the South-East who are predominantly Christians, the practice has declined considerably and restricted to few communities.⁴⁹ In child marriages, children are physically forced and threatened to marry men who are old enough to be their fathers or grandfathers. These premature marriages deprive them of the opportunity for personal development as well as their right to full reproductive development, health and wellbeing, education, and participation in civic life.⁵⁰ The negative effects of child marriages include lack of access to healthcare, an increase in vulnerability to health problems, and a general lack of free will.⁵¹ This inevitably denies children of school age their right to education, personal development, preparation for adulthood and effective contribution to the future well-being of their family and society.⁵²

Child marriage with all its attendant evils is widely recognized as a violation of the child's right, and discrimination against all children who as a result are deprived of their basic rights to health, education, development and equality. Tradition, religion and poverty continue to fuel the practice of child marriage, despite its strong association with adverse reproductive health outcomes and

⁴⁷ Population Council 2005: Population Briefs: Reports on Population Council Research 11 (1). New York, The Population Council.

⁴⁸ Contemporary Pedophilic Islamic Marriages, Retrieved through *wikiislam.net/wiki/Contemporary_Pedophilic_Isalmic_Marr...* on 1 December, 2012

⁴⁹ Obang, A.E. (2003) Early Marriage in Eastern Nigeria and the Health Consequences of Vesico-Vagina Fistulae (VVF) Among Young Mothers in Gender and Development, Oxfam GB Vol. 11, No. 2.

⁵⁰ De Smedt, J. (1998) "Child Marriage in Rwanda Refugee Camps" Journal of the International African Institute: Vol. 68, No. 2 Edinburg University Press.

⁵¹ Khabir, T. (2008) The Role of Islam in Childhood Marriage Case Study: Nigeria. Presented at the 17th Annual Convention of the Global Awareness Society International, San Francisco, CA, USA. Retrieved from *organizations.bloomu.edu/gasi/Proceedings%20PDFs/Khab* on 1 December, 2012

⁵² See 'Early Marriage, Child Spouses' (Innocenti Digest No. 7 March 2001). Retrieved from *www.unicef-irc.org/.../digest7e.pdf* on December 1, 2012

the lack of education of girls.⁵³ As such, in Nigeria, the younger the child, the larger the age difference tends to be.⁵⁴ Girls who are sometimes as young as nine years of age are married to mature men, thereby, placing great risks and implications on their life and health.⁵⁵ In a widely published news, the Governor of Zamfara State⁵⁶, Senator Yerima was fifty (50) years old when he married a minor, an Egyptian child in Abuja.⁵⁷ There was domestic and international condemnation of the issue⁵⁸. Regardless of the condemnations, the Senator claimed he had done nothing wrong and would not respect any law that contradicted his religious beliefs.⁵⁹ The Senator was invited by NAPTIP⁶⁰ but he was released on self-recognition and it appears that dust has settled on the issue because not much is read about it in the papers nowadays.⁶¹

The second case was the case of Hauwa Abubakar, whose gruesome murder made headlines in 1987. Hauwa was married off to Mallam Shehu, a 40 year old cattle dealer. She was forcefully taken to Mallam Shehu's house. She ran away twice but on the third occasion, Mallam Shehu pinned her down and chopped off her legs with a poisoned cutlass resulting in her death.⁶²

⁵³ UNICEF 2005, Early Marriage: A Harmful Traditional Practice. Retrieved from www.unicef.org/publications/files/E... on December 12, 2012

⁵⁴ Bello, Mario and Annabel S. Erulkar. (2007) The Experience of Married Adolescent Girls in Northern Nigeria. Retrieved from www.popcouncil.org/pdfs/Nigeria_MarriedAdol.pdf on December 1, 2012

⁵⁵ Ibid.

⁵⁶ Governor Yerima was the first to promulgate Sharia'h Law in Zamfara State and thereby, promoted its resurgence in Northern Nigeria. Retrieved from www.focusnigeria.com/senator-yerima.htm on December 13, 2012

⁵⁷ "Senator Yerima's new wife" *Sunday Punch* of 18th April 2010 p.10.

⁵⁸ "Will Senator Yerima's Child Bride lead him to jail? p. xi. 'Petition: Yerima marriage to a 13-year-Old Girl', Retrieved from <http://www.blacklooks.org/2010/04/updateon-yerima-marriage-to-a13yr-old-child/> This Day of 27th April 2010 on April 4, 2010

⁵⁹ Senator Yerima- Ambiguity in Nigeria. Retrieved from www.focusnigeria.com/senator-yerima.htm on December 13, 2012

⁶⁰ NATIP is National Agency for the Prohibition of Traffic in Persons

⁶¹ Ogunniran, Iyabode. "Child bride and Child Sex: Combating Child Marriage in Nigeria. Retrieved from www.ajol.info/index.php/naujilj/article/viewFile/82389/72544 on December 1, 2012

⁶² Nasir, J.M. The Impediments to the Realisation of the Rights of the Child in Nigeria. Retrieved from dspace.unijos.edu.ng/bitstream/10485/225/1/mrs_nasir.pdf on December 1, 2012

International Instruments on Child Marriages

The rights of the girl-child in Nigeria are protected by a legal framework which comprises of National laws, international and regional conventions which have been ratified by the country. Nigeria is a signatory to many international treaties relating to children. The relevant international human rights instruments on child marriage include: the Universal Declaration of Human Rights (UDHR), 1948, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, African Charter on the Rights and Welfare of the Child, 1990, and the Convention on the Rights of the Child. Others are the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other such related conventions.⁶³

The above international instruments are relevant to the issue of child marriage, and emphasize the need for protection of the child against physical and mental violence, sexual and psychological abuse, maltreatment and exploitation by parents, guardians and members of the family. The instruments also emphasize the right to health, access to health care services and protection from harmful traditional practices. Of particular significance is the Convention on the Rights of the Child which focuses strongly on several survival-related issues underscored by the practice of child marriage such as the right to education, protection from physical, psychological and mental violence, including sexual abuse, rape and exploitation. It also emphasizes for the child, the right to the highest attainable standard of health, rest and leisure, employment and the right to be protected from separation from parents and peers.⁶⁴

⁶³ On 20th November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC), whilst the OAU Assembly of Heads of States and Governments adopted the African Union Charter on the Rights and Welfare of the Child (CRCW) in July 1990. Nigeria signed both instruments and ratified them in 1991 and 2000 respectively. In 2003, Nigeria domesticated the UN Convention on the Rights of the Child with the Child Rights Act (2003). See generally, the Punch. *The Rights of a Child*. Retrieved from www.punchng.com/columnists/pocket-lawyer/rights-of-the-child-2 on December 12, 2012

⁶⁴ It seems that the child is of great importance as the child is considered as a child and not an adult. Children are considered the heritage of our generation and if these children are not able to develop properly, it creates a lot of

Nigeria signed the United Nations Convention of the Rights of the Child (CRC) and the national legislature has passed the Child Rights Act in Abuja, the law however appears to have differing levels of acceptance and implementation among Nigerian states. In Nigeria, the figure varies in the states that have adopted the Child Rights Act 2003.⁶⁵ The FCT Abuja, Ebonyi State, and Ogun State are among those areas to have passed the bill into state law. However, reports have indicated that the law has had little effect on child's rights across Nigeria, due to non-implementation among other states, which have their own government and judiciary. The Child Rights Act is legally "binding," but despite the domestication of the Child Rights Act in 2003, there exists no provision of national force that truly protects children against abusive conditions and it is noteworthy in Nigeria that in many states, child protection activities are still the purview of Non-Governmental Organisations (NGOs). Implementation has been made challenging in some Nigerian states as the country has a diverse range of ethnic groups and customs.⁶⁶

The right to free and full consent to a marriage is recognized in the Universal Declaration of Human Rights (1948) which states that consent cannot be 'free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. The Convention on the Elimination of All Forms of Discrimination Against Women (1979) states that the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age of marriage. The Committee on the Elimination of Discrimination against Women recommends this age to be 18.⁶⁷ However, despite the laid down legislation, child or forced marriages still occur in rural communities of Nigeria, especially in the country's northern states.⁶⁸

problems. Section 4 of the CRA provides that the child has a right to survival and development and this is a matter that should not be ignored if children are to be protected.

⁶⁵ The data collection on states that have adopted CRA vary. Information states fifteen while others state sixteen.

⁶⁶ Nigeria-Representing Children Worldwide. Retrieved from www.law.yale.edu.../frontpage.htm on December 12, 2012

⁶⁷ Child Protection Information Sheet: Child Marriage. Retrieved from www.unicef.org/protection/files/Child-Marriage.pdf on December 19, 2012

⁶⁸ Bamgbose, Oluyemisi (2002) op.cit.

Causes of Child Marriage

A lot of causes can be given for child marriage, however, for the purposes of this paper, poverty/economic, culture/religious dimensions will be discussed.

Poverty/Economic

Poverty is believed to be a critical factor contributing to child marriages globally. It plays a vital role in causing and perpetuating early marriage;⁶⁹ it affects particularly the poorest in the population, and helps to reinforce cycles of poverty. Child wives tend to have more children and fewer independent income options. Poverty ultimately fuels child marriage, which in turn perpetuates the feminization of poverty.⁷⁰ Where poverty is acute, parents may regard young girls as economic burden and their marriage to much older rich men becomes very attractive and beneficial to the girl and her family. A daughter may be treated as a commodity that the family has, for trading and sometimes girls are used as currency to settle debts or stabilize relationships between families.⁷¹

In many parts of Africa, Nigeria inclusive, the bride price paid in exchange for the bride's labour and fertility is an important resource for greater wealth and survival of the family and therefore may induce early arrangements of marriage by parents.⁷² In rural communities in Africa, during poor harvest conditions or war, a family may believe it is necessary to ensure the economic safety of their daughter and family through marriage. Although families have different motivations for marrying their daughters early, the fact that girls are sometimes seen as economic burdens can make them susceptible to becoming child brides.⁷³ The moral aspect is greatly influenced by maintaining what is called "family honour" and also the high value placed on a girl's virginity, not to get pregnant out of wedlock or assaulted sexually. Therefore, girls are married off early to ensure that they keep their virginity and

⁶⁹ Child Marriage. Retrieved through <http://www.care.org/..findex.asp> on January 8, 2013

⁷⁰ Child Marriage Factsheet, Ibid.

⁷¹ Adedokun Olaide, A. et al., Ibid

⁷² Lloyd, C.B. (2005) *Growing Up Global; The Changing Transition to Adulthood in Developing Countries*, Washington D.C. The National Academy Press.

⁷³ For more information, see Sanyukta Mathur, M. and Malhotra, G.A. (2003) "Too Young to Wed: The Lives, Rights, and Health of Young Married Girls". International Center for Research on Women (ICRW). Washington, D.C.

thereby, protecting the family name. Sadly, nobody considers the health risks involved in pushing these girls into early marriages.

Culture/Religion

All the international treaties directly or indirectly forbid the degradation and mistreatment of girls inherent in child marriages. Despite all the international instruments, child marriage has become a global phenomenon which has claimed millions of victims resulting in injuries or death from abuse or complications from pregnancy and childbirth.⁷⁴ Child marriage is prevalent in communities where there is strong social pressure on families to conform to customs of a particular region. Failure to conform can often result in ridicule, disapproval or family shame. Local myths encourage earlier marriage of girls—such as in the Amhara Region of Ethiopia where people perceive menstruation to be induced by intercourse—and such myths encourage earlier marriage of girls. Invariably, local perceptions on the ideal age for marriage, the desire for submissive wives, extended family patterns and other customary requirements (e.g. dowries or bride price), are all enshrined in local customs or religious norms⁷⁵. In many contexts child marriage is legitimized by patriarchy, and related family structures, which ensure that marriage transfers a father's role over his girl child to her future spouse. This is often encouraged "to take place before a girl reaches the age when she might question it."⁷⁶ The reality for many women and girls in rural areas is that their daily lives are more often dictated by customary laws than by national laws. Clearly, many of the social and cultural issues that reinforce child marriage indicate challenges that need to be addressed, but they also provide opportunities for advancing many development and human rights goals.⁷⁷ The use of religion and

⁷⁴ Child Marriage- Facts, Causes and Consequences of Child Marriage and Sexual Abuse of Children. Retrieved through middle east. about. com>About.com>News & Issues>Middle East Issues> Human Rights & Democracy on January 8, 2013

⁷⁵ IPPF (2006) *Community Views on Child Marriage: Findings of Participatory Assessments in Selected Regions in Bangladesh and Ethiopia*. London: International Planned Parenthood Federation

⁷⁶ Ibid.

⁷⁷ United Nations Population Fund (UNFPA) (2004) *Working from Within: Culturally Sensitive Approaches in UNFPA Programming*. New York: United Nations Population Fund

tradition to justify child marriages shows an urgent need for developing effective strategies for collaboration with religious and traditional leaders.⁷⁸

Negative Effects of Child Marriages

Child marriage is regarded as a global problem that undermines international development efforts towards achieving more educated, healthier and stable populations as it often involves discontinuance of education, early severance of family ties, separation of the child-bride from her peers, domestic violence, early sexual activity and child bearing associated with health complications.⁷⁹ It is a vicious cycle which endangers the life of the girl-child. It is one of the most harmful practices as it denies the girl-child many opportunities, for instance, of education and educational opportunities, which leads to poverty and economic insecurity.⁸⁰ There has been an urgent call for the liberation of the girl-child from the shackles of early marriage and attendant relegation to a vulnerable position, but this has continued to be resisted with traditional customs and religious beliefs, despite the United Nations declarations on the fundamental human rights of the girl-child⁸¹. In northern Nigeria, where the majority of girls face the prospect of early marriage, "this has resulted over the years in a large number of cases of vesico-vaginal fistula, a condition caused by giving birth when the cervix is not well developed."⁸² It "occurs because the pelvic bones have had insufficient time to develop to cope with child-birth. Corrective operations often require the consent of the spouse, and more often than not the sufferers are abandoned or divorced by their husbands

⁷⁸ Ending Marriage: A Global Policy Action, Ibid.

⁷⁹ Adedokun Olaide, A., op. cit

⁸⁰ Campaign Against Child Marriage in Ethiopia. The former Child Wives Foundation, Consequences of early marriage. Retrieved through www.hope4childwives.com/cons on 30 September, 2015

⁸¹ United Nations Children's Fund (UNICEF) 2001 Early Marriage: Child Spouses (Innocenti Digest), No. 7.

⁸² UNICEF, quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the challenge of enforcing children's rights*, November 2002. Retrieved from <http://www.irinnews.org/print.asp?ReportID=30878> on November 2, 2012

and ostracized by their communities.”⁸³ An UNFPA⁸⁴ official stated that “22 percent of all Nigerian teenage girls had at least one unwanted pregnancy”. For many girls, this situation is disastrous because it leads to severe discrimination within their own community or even family. They are often punished for being pregnant or are excluded from school.⁸⁵ The following are some of the negative effects that emanate from child marriages. They include:

- (i) **Health:** “For every woman who dies in childbirth, some 15 to 30 survive but suffer chronic disabilities, the most devastating of which is obstetric fistula. Fistula is an injury to a woman’s birth canal that leaves her leaking urine and/or faeces. Young women under age 20 are especially prone to developing fistulas if they cannot get a Caesarean section during prolonged obstructed labour. Prevalence is highest in impoverished communities in Africa and Asia”.⁸⁶ The majority of young brides do not have access to contraception and reproductive health services and information. They are exposed to early and frequent sexual relations and to repeated pregnancies and childbirth before they are physically mature and psychologically ready. Obstetric fistula is one of the most devastating consequences, affecting over two million girls and young women. Pregnancy related deaths are the leading cause of mortality in 15-19 year old girls, and girls aged 15 years or under are five times more likely to die than those over 20⁸⁷.

⁸³ Oxfam: Women and Poverty in Nigeria, p. 58. Retrieved from http://www.oxfam.org.uk/what_we_do/resources/downloads/up-nigeria/wp-nigeria-womenpov.pdf on November 13, 2012

⁸⁴ UNFPA is United Nations Population Fund (formerly United Nations Fund for Population Activities)

⁸⁵ UNFRA, quoted in Integrated Regional Information Networks (IRIN) Nigeria: Retrieved from <http://www.irinnews.org/print.asp?ReportID=36378> on November 14, 2012

⁸⁶ UNFPA. (2003) *State of World Population 2003: Making 1 Billion Count: Investing in Adolescents' Health and Rights*. New York: UNFPA

⁸⁷ Children Marriage Fact Sheet/Equality Now, Retrieved from www.equalitynow.org/node/868 on December 10, 2012

(ii) **Education:** One of the greatest injustices suffered by child brides is the denial of education.⁸⁸ According to the ICRW⁸⁹, education is the strongest predictor of marriage age. For example, in Mozambique approximately 60% of girls with no education are married by 18, compared to 10% of girls with secondary schooling and less than 1% of girls with higher education. Human rights research shows that the greatest obstacles to girls' education—as identified in many government reports to human rights monitoring bodies—are child marriage, pregnancy and domestic chores.⁹⁰ Marriage and premature pregnancy pry millions of girls out of school and condemn them to lives blighted by poverty, illiteracy and powerlessness.⁹¹ In addition, because they do not have the opportunity to education, they are unable to read or write. Since the child wives did not have the opportunity of finishing their primary education, it makes them entirely dependent on their husbands in practical aspects of everyday life.⁹²

The Child Rights Act states that every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to provide such education.⁹³ Unfortunately however, not all the states in Nigeria have adopted and accepted the Child Rights Act.

The Way Forward

Education however, has the potential of enabling countries to break out of the early marriage trap. There are programmes which reveal that change is possible. These programmes have sought to sensitize parents on keeping their young children in school while providing mentoring support and engaging with community leaders. An example is Ethiopia. In 2004 the Ethiopian government, working with local authorities and the Population Council, initiated the

⁸⁸ Out of wedlock, Into School: Combating child marriage through education. Retrieved from www.educationenvoy.org/Child-Marriage.pdf on December 12, 2012

⁸⁹ ICRW is the International Center for Research as Women

⁹⁰ Children Marriage Fact Sheet, Ibid.

⁹¹ Combating child marriage through education, Ibid.

⁹² Consequences of early marriage. Retrieved through www.hope4childwives.com/consequences-of-early-marriage on 30 September, 2015

⁹³ Section 15 of the Child Rights Act 2003

Berhane Hewan programme to counter early marriage in rural Amhara region. The intervention included 'community conversations' to engage elders in a dialogue, the engagement of adult female mentors with young girls, and the provision of financial incentives in the form of cash transfer which is conditional on girls being kept in school.⁹⁴ The Bethane Hewan programme is one of the few child marriage prevention interventions that has been rigorously evaluated. Results show that over a two-year period (2004-2006), school attendance in the project area among girls aged 10-14 increased from 78 percent to 96 percent. Young adolescents up to 14 years in age were three times more likely to be in school and 90 percent less likely to be married⁹⁵. In India, the Haryana state government's Apni Beti Apna Dhan program has designed incentives aimed at changing behaviour. It provides cash incentives to families conditional, on girls remaining unmarried until the age of 18. In this case, the aim is to promote school retention by discouraging early marriage.⁹⁶ In Bangladesh, Pathfinder International and Swanirvar, a Bangladeshi NGO, have also used incentives to target five sub-districts of the poorest areas of the country, targeting support on the last three years of primary and secondary schools. Reported enrolment rates increased by 14 percent in the areas covered by the project. In addition, the Female Secondary School Stipend program was designed with a view to facilitating the transition from primary to secondary school. The program was introduced in the mid-1990s, with funding from the World Bank and Asian Development Bank. Bangladesh had some of the world's largest gender gaps in secondary education. Today, stipends are provided to around 2.3 million girls on a conditional basis up to class 10: the girls must remain unmarried; they must maintain 75 percent attendance in school, and pass annual exams. In the space of fifteen years, Bangladesh has achieved gender equity in lower secondary education⁹⁷. Taking a cue from these third world countries might help in abolishing child marriages in Nigeria. However, it is important to state that the government and the general public need orientation on the ills of early child marriages. The saying, "*what you do not know will not hurt you*" is the general knowledge of Nigerians who are relatively not affected

⁹⁴ Out of Wedlock, into School: Combating Child Marriage, Ibid at p. 27

⁹⁵ Ibid.

⁹⁶ Out of Wedlock, Into School: Combating Child Marriage, Ibid at p.27

⁹⁷ Ibid at p. 27

by such incidences. There is the need therefore, to educate and engage community leaders to take up the challenge in creating awareness on the ills of child marriages.

Recommendations

In order to avoid the high incidence of child marriages, the following are suggested recommendations to promote later legal marriages between an adult man and woman. Firstly, in the different communities in Nigeria (which will involve both the nuclear and extended families), there must be the awareness of the consequences of early marriage on children. Awareness at the rural community levels could be in the form of public campaigns or sensitization schemes. This could be done by organizing regular forums in the different communities in Nigeria. Secondly, there is the need for states (especially those states that have not adopted the CRA) to establish and maintain the age of eighteen (18) as the minimum legal age of marriage for girls. There should be a sanction for the non-compliance of this law in Nigeria. The policy makers should be able to pass a Bill that will define the marriageable age for all citizens in Nigeria. Thirdly, the provision of support health care centres for the girl-child who is vulnerable, especially, being a mother for the first time. These children do not know what to do at this critical stage. Therefore, the need for the support health centres which will go a long way in helping child wives to cope with their situation. Fourthly, the provision of social and economic programs for out-of-school girls, including non-formal education programs to boost their self-esteem. Getting girls into school, keeping them there, and ensuring that they receive decent quality education is one of the most effective ways of breaking the vicious cycle.

Conclusion

It has so often been said that laws of the society are perfect but the operators are very weak. If the operators can rise up to the challenge, imbibing the spirit of selflessness and exhibiting true love for the nation, then children would enjoy all their fundamental rights as provided for by the Child Rights Act.⁹⁸ There are several factors that sway parents or guardians towards giving out their

⁹⁸ Tunde Oyesina, "Child rights act and problem of implementation" Retrieved through <http://tribune.com/ng/index.php/agriculture> on 20 December 2012

children in early marriages which have been mentioned above. However, whatever the reasons for early child marriage, everyone deserves the right to choose his or her partner. The eradication of severe abuse of children in the name of culture, religion, tradition and averting poverty should be the main focus of the government in the battle against the menace of child marriages. We have to take the bull by the horns if Nigeria is to succeed from these problems of child marriages in the society. Where the government however, is willing to address and tackle the issue, its policies would not achieve much in the face of poor data collection, lack of commitment by the traditionalists and a government that is bent on the continuity of native and religious rites which causes the discrimination against women and young girls.⁹⁹ There are grave health risks involved in child marriages which must be addressed in a timely manner by the Nigerian government if child marriage incidences are to be abolished totally and completely. Child marriage and the betrothal of girls and boys shall be prohibited and the effective action including legislation shall be taken to specify the minimum age of marriage to be eighteen (18) years and make registration of all marriages in an official registry compulsory.¹⁰⁰

Finally, every child should have the opportunity of life, to have a good childhood, go to school and be free of every kind of violence and health challenges that are associated with child challenges. All these negative impacts on the child will only create problems on the overall development of the child. Therefore, efforts to stop child marriage must be at the forefront of any democratic government. Every government must therefore ensure that there is global development in order to end extreme poverty and ensure human rights for all.¹⁰¹

⁹⁹ Ending Child Marriage: A Global Policy Action, Ibid.

¹⁰⁰ Article 21 of the African Charter on the Rights and Welfare of the Child 1989

¹⁰¹ International Women's Health Coalition: The Facts on Child Marriage. Retrieved through iwhc.org/resource/facts-child-marriage on 30 September, 2015