Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions

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Abstract

Child marriage is often deployed as a response to crisis, considered by families and communities to be the best possible means of protecting children. Fear of rape and sexual violence, of unwanted pregnancies outside marriage, of family shame and dishonour, of homelessness and hunger or starvation were all reported by parents and children as legitimate reasons for child marriage in some localities.Poverty, weak legislative frameworks and enforcement, harmful traditional practices, gender discrimination and lack of alternative opportunities for girls (especially education) are all major drivers of child marriage. However this researchers finds in addition to the above mentioned that lack of political will coupled with multiplicities of laws accounts for non-apprehension and prosecution of offenders thereby allowing them to hide under religion and continue to perpetrate crime against humanity. This study is an attempt to fill the void and chart the way out into a brighter and not bleak future for the girl child using data in our content analysis. We hope that stakeholders most especially government and the National Assembly can rise to the challenge and harmonise all laws necessary to deter child marriage in Nigeria. **Keyword:** Child Marriage, Law.

Background of the Study

Nigeria has once again attracted the World's attention on a topical issue of global interest. This time around, the attention was shifted from insurgency of the dreaded and uncompromising Boko Haram in the Northern Nigeria; corruption in the high places; our undemocratic political parties; communal land disputes between Ezza and Ezillo in Ebonyi State; the Plateau State senseless family cleansings and so on to a more sensitive issue of individual, family, state, national, regional and global interest bothering on Child Marriage. The battle line was drawn by the National Assembly through the Senate when S29 (b) of the Constitution which contradicts S29 (a) particularly the Child Rights Act on Age limit for marriage was attempted to be amended. Although this part of the constitution deals with citizenship matters, the clause in the opinion of many grants the liberty for an adult male to marry under-age girl who is less than 18 years. Once this happens, such marriage seems to conferon the Child Bride adulthood and legal capacity. However, the Senate had initially voted to delete the clause before Senator Yerima of Zamfara State persuaded his colleagues for a second vote which eventually purportedly went for his favour. He argued that that it would be blasphemous and against Islam to legislate or fix the age of marriage in years. Consequently, the second vote failed to remove that constitutional provision. The informed public and Human Rights community interpreted the Senate resolution as express adoption of Girl-Child Marriage in the Country at a time when government is pumping billions of Naira from local and foreign aids in a bid to increase girl-child school enrolment. Indeed, it was seen as a major drawback by the Human Rights Community and well informed individuals.

Consequently, the National Open University of Nigeria, School of Law braced the trail by being the first ivory institution in the country and indeed in Africa after the saga to organize a public Seminar/Workshop to discuss the vexed and controversial issue which has generate considerable interest locally and internationally on the 4th of September, 2013 at the School Auditorium in Lagos. It was a conference of Nigeria's finest brains from academic to religious as well traditional leaders and captains of industries. Speakers after speakers in the event, all speaking from their background and perspective on the day but one thing was absolutely common in all their submission; that the law as well as religious faiths did not provide marriageable age of a girl-child but rather, religions, conflict of laws dictates the right age of marriage of a girl-child.

This paper is in line with the Spirit of the current debate on Child Marriage in Nigeria yearning for a lasting solution to the issue. It is obvious that one does go after rats when in actual sense, his roof is under fire. How long do we condone evil and impropriety in our land shows how much we appreciate good things. It is time to call a spade a spade. The old adage that says it's better to allow a sleeping dog lie can no longer hold water in face of teething challenges and problems occasioned by inhumanity of man to man. We must at all time and in all places no matter the cost to us stand for justice, equity and fairness. Therefore, this paper expectedly draws from the proceedings of the Seminar/Workshop and at the same time tries to explore deeper by examining some

conceptual, empirical and theoretical framework of the subject matter under discussion. This paper will at the end draw its implications, prospects and solutions to the Child Marriage from the findings earlier examined.

It is hoped that this paper will provide students, parents, government, academics, Human Rights Activists and Religious leaders with sufficient knowledge on Child Marriage. However, the objective is to enlighten all stakeholders especially the lawmakers whose responsibility is to make law for law and order that can stand the test of time and guarantee peace in our nation. All data used are secondary and we shall employ content analysis in our presentation, analysis and conclusions thereof.

Conceptual Clarification

Marriage has almost universally been defined as a social and legal union between men and women, although a few cultures have allowed people of the same sex to marry (Coontz 2005). Sociologist Max Weber defined marriage as a "stable sexual relationship" allowed and legitimized by the larger kin group and used to determine rules about property rights for children (R. Collins 1986:276). The majority of marriages are based on monogamy-a union between one woman and one man-but many societies also have allowed people to have more than one spouse, or polygamous marriages. The Talmud, which comprises Jewish religious law and customs, allows men to have as many as four wives. Whether monogamous or polygamous, marriage systems do not emerge in a vacuum but, like families, are social institutions that serve a purpose¹. Child marriage is defined as marriage of a child less than 18 years of age, is an ancient, worldwide custom. Other terms applied to child marriage include "early marriage" and "child brides." Early marriage is vague and does not necessarily refer to children. Moreover, what is early for one person may be late for another. Child bride seems to glorify the process, implying a celebration and a bride who is happy to start a loving union with her spouse. But for the most part, girl brides do not know and may have never met their groom². Child marriage, also known as early marriage, is defined as "any 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."Child marriage, on the other hand, involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws³. The term 'early marriage' refers to both formal marriages and informal unions in which a girl lives with a partner as if married before the age of eighteen (18yrs) years⁴. It is also known as Child Marriage and it refers to any marriage carried out below the age of eighteen (18yrs) years before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and child bearing⁵. Child marriage is a marriage of a child younger than eighteen (18yrs)⁶. Early marriage or child marriage is defined as the marriage or union between two people in which one or both parties are younger than 18 years old (McIntyre, 2006; ICRW, 2005). The Universal Declaration of Human Rights recognizes the right to "free and full" consent to a marriage, acknowledging that consent cannot be "free and full" when one of the individuals involved is not sufficiently mature to make an informed decision about a life partner (UNICEF, 2005). Hence, early marriage is considered a human rights issue'.

Definition of child marriage includes boys but most children married at less than 18 years of age are girls. Article 16 of the Universal Declaration of Human Rights states that persons must be at "full age" when married and that marriage should be entered into "freely" and with "full consent." In other words, any country that allows childmarriage is committing a violation of human rights. Articles 1, 2, and 3 of the 1962 Convention of Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages require that countries establish a minimum age for marriage and that all marriages be registered. Article 16 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women requires minimum age for marriage to be specified and says that child marriages are illegal. However, not until 1989, at the Convention on the Rights of the Child, did international law define children as persons less than 18 years of age (Article 1).In 2002, about 52 million girls less than 18 years of age were married. With about 25,000 girls less than 18 years being married each day, an estimated 100 million will be married by 2012⁸.

In Nigeria, by the virtue of S29 (4)(1), 'full age' means the age of eighteen years and above' while the Child Rights Act states that the age of marriage shall be 18 years. Nigeria's immigration Act states that any person below 16 years is a minor. Section 3(1)(e) of the Matrimonial Causes Act, 2004, states a marriage is null and void if either of the parties is not of a marriageable age. The Nigerian Electoral Act 2011 under S12 (1)

⁵ See United Nations Fund for Population Activities

¹ See The Evolution of Families and Marriages; Families: A Social Class Perspective

² See Nawal M. Nour:Health Consequences of Child Marriage in Africa

³ See International Planned Parenthood Federation and the Forum on Marriage and the Rights of Women and Girls,(IPPF): Ending child marriage, A guide for global policy action

⁴ See United Nations International Children Emergency Fund (UNICEF)

⁶ See Convention on the Right of the Child, (1989), Article 1

⁷ USAID, (2009): Fact Sheet on Youth Reproductive Health Policy; Early Marriage And Youth Reproductive Health.

⁸ See Nawal M. Nour:Health Consequences of Child Marriage in Africa

states that a person shall be qualified to be registered as a voter if such a person is a citizen of Nigeria and has attained the age of 18 years. The Child Right's Act 2003, passed into law in Nigeria defines a child as a person who has not attained the age of eighteen years.

Factors responsible for Child Marriage.

Child marriage, generally defined as marriage before age 18, is not limited to any one country or continent. Generally, girls living in rural areas marry earlier than girls in urban areas. In rural areas of Nigeria, for example, 21 percent of young women, who are now 20 to 24, were married by age 15, as compared to 8 percent in urban areas¹. According to Aduradola, A. M., the followings are the causes of Child Marriage: Cultural and Social pressure; persecution, forced migration and slavery; financial challenges; politics and financial relationship; religion and child marriage². Poverty and economic transactions; Notions of morality and honour are also major causes of Child Marriage³. Underlying causes of early marriage are many and include poverty, parental desire to prevent sexual relations outside marriage and the fear of rape, a lack of educational or employment opportunities for girls, and traditional notions of the primary role of women and girls as wives and mothers⁴.Child marriage is often deployed as a response to crisis, considered by families and communities to be the best possible means of protecting children. Fear of rape and sexual violence, of unwanted pregnancies outside marriage, of family shame and dishonour, of homelessness and hunger or starvation were all reported by parents and children as legitimate reasons for child marriage in Somaliland, Bangladesh and Niger.Poverty, weak legislative frameworks and enforcement, harmful traditional practices, gender discrimination and lack of alternative opportunities for girls (especially education) are all major drivers of child marriage.Fragility of environment breeds particular fears and anxieties that cause parents and girls to resort to early marriage as a protection against risk (whether real or perceived)⁵.Lack of education, the lower value placed on girls' education, school drop-out, gender-based violence (including sexual violence) and early pregnancy, can be both causes and consequences of child marriage. In many societies, women and girls are subject to deep-rooted norms, attitudes and behaviours that assign them a lower status than men and boys within the household, the community and in society at large. These beliefsdeny girls their rights and stifle their ability to play an equal role at home and in the $community^6$.

Legal Issues in Nigeria and Conflicting Laws

The existence of many laws relating to age of a child and adult in Nigeria is quite conflicting leading to complications in adjudication in Child Marriage. The resultant effect is the complications in legal issues and difficulty in determining and reconciling vis-à-vis fixing the marriageable age of a girl-child in Nigeria. However, we present you with a few of these laws as follows:The Child Right's Act 2003, passed into law defines a child as a person who has not attained the age of eighteen years. However, according to Article 2 of Children and Young Persons Act, enacted in Eastern, Western and Northern regions (hereafter referred to as CYPA), defines a 'child' means as person under the age of fourteen years, while 'young person' means a person who has attained the age of fourteen years is a minor, whereas the Matrimonial Causes Act puts the age of maturity at 21. The latter act becomes irrelevant in practice, since the individual States state their age for marriage. As for penal responsibility, Article 50 ofthe Penal Code (North) states: "No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act"⁷.

By virtue of section 29(4)(a) of the Constitution of the Federal Republic of Nigeria 1999 as amended, 'full age' means the age of eighteen years and above. Section 18 of the Marriage Act states that if either a party to an intended marriage, not being a widower or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent in Nigeria, of the mother..., must be produced and

¹ See Alexandra Hervish and Charlotte Feldman-Jacobs, (2011): Who Speaks for Me? Ending Child Marriage

² See Aduradola, A. M.(2013): Child Marriage: Issues, Problems and Challenges, A Paper presented at a One Day Seminar organised by National Open University of Nigeria, Lagos on the 4th September.

³ See Adebambo Adeyinka Veronica (2010):Cultural Influence On Child Marriage Focus On Northern Nigerians Resident In Ogun State, Nigeria, A Project Submitted To The Department Of Home Science And Management (Child Development And Family Studies) College Of Food Science And Human Ecology. University Of Agriculture, Abeokuta

⁴ See United Nations Children's Fund (UNICEF), New YORK, (2008):Child Marriage And The Law, Legislative Reform Initiative Paper Series, Global Policy Section.

⁵ SeeWorld Vision UK (2013): Untying The Knot; Exploring Early Marriage in Fragile States.

⁶ See Davis, A., Postles, C. and Rosa, G (2013): A girl's right to say no to marriage: Working to end child marriage and keep girls in school. Woking: Plan International.

⁷ See OMCT In partnership with CLEEN Foundation: Rights of the Child in Nigeria.

annexed to such affidavit as aforesaid before a licence can be granted or a certificate (Marriage Certificate) issued. Section 12 (1) of the Electoral Act, 2011, states that a person shall be qualified to be registered as a voter if such a person is a citizen of Nigeria and has attained the age of 18 years. The Matrimonial Causes Act, 2004, S3(1)(e), provides that a party to a marriage must not be an infant. He/she must be mature enough for marriage. Marriage law in the former Eastern Nigeria S3(1) in particular states that a marriage between or in respect of persons either of whom is under the age of 16 years shall be void. S4(1) of the same law states that it is an offence punishable with six month imprisonment or a fine of two hundred naira for any person to act, receive or obtain any property or benefit of any kind for himself or from any other person on account of a marriage which is void under the law. In the Northern States of Borno, Benue and Kwara, the marriageable age for girls has been fixed by various declarations of Marriage law and Custom Orders. Hence, Kwara 13 years, Idoma and Tiv in Benue, 12 years. The Nigerian Criminal Code S222 provides against the procuration of girls under 18 years of age and S233 provides against abduction. Under the Common law of England, a valid marriage may be contracted if the parties have attained the age of puberty-14 years in the case of boys and 12 years for girls (Harold v Harold, 1854).

The Constitution of the Federal Republic of Nigeria 1999 as amended states in its section 34 (1) that: "every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subject to torture or to inhuman degrading treatment." Section 17 (2)(b) further states that "the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced". Section 17 (3)(f) states that 'children; young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect'.Article 19 (1) of the Committee on the Rights of the Child (CRC), "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexualabuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

Torture is also prohibited under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Article 4 recognises the inviolability of human life and the right of everyone to respect for his life and person, Article 5 states that "[...] all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." Nigeria signed the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) on July 28th 1988 and ratified it on June 28th 2001. However, it has still not been turned into domestic law¹.

Universal Declaration of Human Rights, 1948, Article 16 states that (1) Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, provides in Article 1 that No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person ... as prescribed by law. Article 2, States Parties to the present Convention shall ... specify a minimum age for marriage ("not less than 15 years" according to the nonbinding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses. Article 3, All marriages shall be registered ... by the competent authority. Similarly, African Charter on the Rights and Welfare of the Child, 1990, Article XXI, Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years. Also, Convention on the Rights of the Child, 1989, which has been ratified by all countries with the exception of the United States and Somalia states as follows: Article 3: In all actions concerning children ... the best interests of the child shall be a primary consideration. Article 19 provides for the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person. Article 24 provides the right to health; and to access to health services; and to be protected from harmful traditional practices. Article 28 and 29 provides the right to education on the basis of equal opportunity. Article 34 gives the right to protection from all forms of sexual exploitation and sexual abuse and Article 36 gives the right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

Implications of Multiplicity of Laws on Marriageable Age

A major negative consequence of early marriage is instability, (disagreements and eventual divorce or separation). Marriage without consent is widely thought to be the major cause for most of the divorces, and many of the early marriages are conducted without the consent of the girls. One of the many sufferings early

¹ See OMCT;The Centre For Law Enforcement Education (2005):Rights of the Child in Nigeria,A Report on the implementation of the Convention on the Rights of the Child by Nigeria

married women face is the physical pain associated with sexual intercourse due to the physiological immaturity of the sexual organs. Physical pain during intercourse, obstetric fistula due to youthful delivery, when girls are not physically matured, and other complications due to pregnancy are among the many health-related problems faced by young married women. Another health impact of early marriage is an increased level of exposure to infection by HIV/AIDS.Early marriage increases the span of a woman's reproductive period, and those who marry earlier are more likely to have a greater number of children than others. Early marriage is the major cause of school leaving for girls, which directly affects women's social and economic status. Apart from a young woman's education, early marriage has a negative impact on her children. A very young mother may be unable to give the required care and protection to her children because she herself is a child, and in many instances has not developed the skills such as patience and tolerance needed to raise children. The issue of gender inequality and women's low economic and social status is recognized as a serious impediment to development in the international arena¹.Detrimental consequences associated with Child marriage, with physical, developmental, psychological and social implications. When a child bride is married she is likely to be forced into sexual activity with her husband, and at an age where the bride is not physically and sexually mature this has severe health consequences. Child brides are likely to become pregnant at an early age and there is a strong correlation between the age of a mother and maternal mortality. Girls ages, 10-14 are five times more likely to die in pregnancy or childbirth than women aged 20-24 and girls aged 15-19 are twice as likely to die. Young mothers face higher risks during pregnancies including complications such as heavy bleeding, fistula, infection, anaemia, and eclampsia which contribute to higher mortality rates of both mother and child. Obstetric fistula can also be caused by the early sexual relations associated with child marriage, which take place sometimes even before menarche. (Women's International Network 2000 and IHEU 2006)²

Despite the implications discussed above, one major source of concern for these researchers is the legal implications of Child Marriage in Nigeria. Absence of uniform fixed legal marriageable age by law has given rise to Child Marriage and most appropriate law to prosecute culpable abusers. Plurality in this context connotes state of confusion, anarchy and doom for any effort in this direction such as witnessed in the National Assembly recently. More worrisome is the fact that more men in the high places than the middle class and poor are the ones who are carrying out these condemnable acts. No single person has been tried in any court of law and convicted in Nigeria and yet government spends millions of tax payers' money treating women with cases of Child Marriage related diseases. This measure to us is a cosmetic solution to the real at hand. Fixing marriageable age by an Act and prosecuting the offenders is a pragmatic way of putting to an end of Child Marriage. Through this way, the society can be sanitized.

Theories of Marriage

Two simple principles form the heart of the analysis. The first is that,since marriage is practically always voluntary, either by the personsmarrying or their parents, the theory of preferences can be readily applied, and persons marrying (or their parents) can be assumed to expect to raise their utility level above what it would be were they to remain single. The second is that, since many men and women compete as they seek mates, a market in marriages can be presumed to exist. Each person tries to find the best mate, subject to the restrictions imposed by market conditions.

These two principles easily explain why most adults are married and why sorting of mates by wealth, education, and other characteristics is similar under apparently quite different conditions. Yet marital patterns differ among societies and change over time in a variety of ways that challenge any single theory. In some societies divorce is relatively common, in others, virtually impossible, and in Western countries it has grown rapidly during the last half-century. Some societies adjust to legal difficulties in receiving divorces by delaying marriage, whereas others adjust by developing more flexible "consensual," "common-law," or "trial" marriages. In many the bride brings a dowry, in others the groom pays a bride-price, and in still others couples marry for "love" and disdain any financial bargaining. In some the newly married usually set up their own household, in others they live with one set of parents³.

Benefits of Delaying Marriage

Child marriage undermines nearly every Millennium Development Goal; it is an obstacle to eradicating poverty, achieving universal primary education, promoting gender equality, improving maternal and child health, and

Family Studies) College Of Food Science And Human Ecology. University Of Agriculture, Abeokuta ³ See Theodore W. Schultz, ed (1074) Foonomics of the Family: Marriage Children, and Human

¹ See Pathfinder International/Ethiopia, (2006):Report On Causes And Consequences Of Early Marriage In Amhara Region
² SeeAdebambo Adeyinka Veronica (2010): Cultural Influence On Child Marriage Focus On Northern Nigerians Resident In Ogun State, Nigeria, A Project Submitted To The Department Of Home Science And Management (Child Development And

³ See Theodore W. Schultz, ed.(1974):Economics of the Family: Marriage, Children, and Human

Capital, http://www.nber.org/books/schu74-1.

reducing HIV and AIDS. Child marriage also infringes on the rights of women and children by denying them access to an education, good health, and freedom. These rights are spelled out in international agreements such as the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC). Delaying marriage positively affects development in these ways: Maternal and Infant Health; Reduced cases of HIV and AIDS; Reproductive Health and Well-Being of Women and Girls; Education and Economic Opportunities¹.

Prospects and Solutions to Child Marriage.

Nigeria and International communities are increasingly recognizing child marriage as a serious problem, both as a violation of girls' human rights and as a hindrance to key development outcomes. As more programmes, policies, donors and advocacy agencies pledge commitment, resources and action to address this problem, it becomes important to find model solutions to address child marriage which has become a challenge in our generation today. It is important to mention here that the extent of child marriage varies substantially between countries; the highest rates arefound in West Africa and Nigeria in particular, followed by South Asia, North Africa/Middle East and Latin America (Clifton & Frost 2011; ICRW 2011)². According to ICRW, 2011, efforts to address child marriage in many parts of the world date back to the 1920s. For example, the first legislative attempt to end child marriage in India was through the passage of the "Sarda Act" in 1929 (Mukherjee 2006). More recently, legal reform began to gain ground in the 1970s and 1980s, as countries such as Bangladesh, India and Indonesia established or raised the legal minimum age of marriage to 18 for girls. During the same period, human rights activists and the United Nations launched efforts to address harmful traditional practices affecting women. However, programmatic interventions to eradicate this practice have only gained momentum since the 1990s, coinciding with the attention to adolescent reproductive health at the Cairo International Conference on Population and Development in 1994 and the assertion of women's and girls' human rights at the UN International Conference on Women in Beijing in 1995 (UNICEF 2001). Nigeria stands to benefit from being recognized internationally as responsible and responsive country in marriage related issues which tend to promote and protect rights of children. Hence, the following programmes can effectively eradicate child marriage in Nigeria. They include: enacting and amending such other laws that fixes the age of majority to 18 years in all cases and prescribing serious punishment to offenders. This must also be accompanied with strong political and judicial will to enforce the law. Also, improving the school curriculum and training teachers to deliver content on topics such as life skills, sexual and reproductive health, HIV/AIDS, and gender sensitivity can help educate our children on the danger of early child marriage. Government should also improve and intensify effort on boosting the economy since most of the child marriage cases are induced by poor state of economic well-being of individuals and families who cannot on one part afford to send their children to school.

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¹ See Alexandra Hervish and Charlotte Feldman-Jacobs (2011): Who Speaks for Me? Ending Child Marriage

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