

ANALYSIS OF CHILD MARRIAGE IN NIGERIA AND THE LEGAL IMPORTS*

Abstract

Child marriage is defined as marriage of a child less than 18 years of age and it has devastating effects on young people especially the girl child. Child marriage is also indicative of the levels of development of a region or country and is generally conducted between very young girls and older men. In many parts of the world child marriage is a gratification for overcoming the family financial and social needs. There are numerous problems a couple can face when marriage is entered into on their behalf. Sequel to these, this article sought to analyze child marriage in Nigeria and the legal imports. The specific objectives were to appraise the legal effects of Child marriage as a human rights violation that prevents girls from obtaining an education, enjoying optimal health, bonding with others in their own age, maturing, and ultimately choosing their own life partners. The objective also was to examine the challenges faced by the girl child and to as well appraise enactments both national and international made to curb the menace of early marriage in the Nigerian society and finally made some recommendations. The research design and methodology was doctrinal approach, using analytical and descriptive research methodology. The main sources of data collection were various legal documents and materials, both from the library and internet, and covering the primary sources and the secondary sources. For the summary of findings, it was submitted among others that the term child marriage is common all over the globe and has inflicted dangerous and devastating effects on young children who are compelled to tie the knot in most cases. Child marriage is driven by poverty and has many effects on girls' health: increased risk for sexually transmitted diseases, cervical cancer, malaria, death during childbirth, and obstetric fistulas. It was further observed that child marriage has far-reaching health, social, economic, and political implications for the girl and her community. It truncates a girl's childhood, creates grave physical and psychological health risks, and robs her of internationally recognized human rights. The article recommended, among others, that the National Assembly should amend the Constitution of Nigeria to clearly define a child and be specific on the age of a child and that of a young person. Additionally, the legislatures at the national and state levels, in fixing marriage age, should be cognizant of children who are sexually active and promiscuous from puberty, and be flexible in wordings and construct of the law. Based on the report of this study, its significance cannot be overemphasized.

Keywords: Child, Marriage, Legal, health, Social, Psychological, Fistula, justification.

1. Introduction

There are numerous problems a couple can face when marriage is entered into at an early age for them. Child marriage is common all over the globe and has inflicted dangerous and devastating effects on young children who are compelled to tie the knot in most cases. Child marriage is also indicative of the levels of development of a region or country and is generally conducted between very young girls and older men. In many parts of the world child marriage is a gratification for overcoming the family financial and social needs.¹ Despite international agreements and national laws, there are lots of traditional obnoxious practices in Nigeria such as child marriage, obnoxious widowhood practices, female genital mutilation, trafficking of women and wicked obnoxious practices in our traditional set up. Marriage of girl under 18 years of age is common worldwide and affects millions. Child marriage is a human rights violation that prevents girls from obtaining an education, enjoying optimal health, bonding with others in their own age, maturing, and ultimately choosing their own life partners. Child marriage is driven by poverty and has many effects on girls' health: increased risk for sexually transmitted diseases, cervical cancer, malaria, death during childbirth, and obstetric fistulas. Girls' offspring are at increased risk for premature birth and death as neonates, infants, or children. To stop child marriage, policies and programs must educate communities, raise awareness, engage local and religious leaders, involve parents, and empower girls through education and employment.² Awareness of reproductive health issues in developing nations is growing. Critical issues are the high prevalence of HIV/AIDS among young people; childbearing by young girls, which can lead to obstetric fistulas and death of the mother. Child marriage has far-reaching health, social, economic, and political implications for the girl and her community.

It truncates a girl's childhood, creates grave physical and psychological health risks, and robs her of internationally recognized human rights. Ending child marriage requires the consent of all those involved, including fathers and religious, community, and tribal leaders. To break the cycle of poverty, programs are needed to educate and empower women. There are numerous problems a couple can face when marriage happens at an early age.³ In

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¹ C Onuoha, 'Early Marriage Problems' Online Database <<http://marriage.ygoy.com/early-marriage-problems/>> accessed on 28th August, 2021.

² N M Nour, 'Health Consequences of Child Marriage in Africa' Online Database <<http://wwwnc.cdc.gov/eid/article/12/11/06-0510-article.htm>> assessed on 5th August, 2021.

³ Onuoha (n1).

2000, eight Millennium Development Goals outlined a vision that committed member countries to eradicate extreme poverty and hunger, educate all children through primary school, empower women, reduce childhood death, improve mothers' health, combat HIV/AIDS and malaria, ensure environmental sustainability, and develop a global partnership for development by the year 2015. Most of these goals directly affect child marriage. In some countries, child marriage has been declining.⁴

Education is a key factor for delaying first sexual activity, pregnancy, marriage, and childbearing. Programs that specifically focused on the status of girls may have directly or indirectly reduced the number of child marriages. Successful programs have provided economic and educational opportunities to young women and their families by employing girls with the specific goal of delaying marriage, giving families financial incentives to keep their daughters in school, or feeding children during school to decrease families' expenses. Keeping girls in school or vocational training not only helps protect them from HIV infection, pregnancy, illness, and death but also enhances their earning potential and socioeconomic status. Educated girls can contribute to the health and welfare of their family and marry men of their own choice and age.

Lack of enforcement renders laws against child marriage ineffective. Through media campaigns and educational outreach programs, governments need to take responsibility for stopping this practice. Local, regional, and national governments can also implement health outreach programs for girls and boys. Learning about reproductive and sexual health, STD prevention, contraception, AIDS, and how to seek health care helps girls negotiate safer sex. Governments must incorporate preventive and treatment programs for reproductive health issues into their health services. Necessary preventive services include supplying mosquito netting and condoms; educating patients about contraceptive methods; providing diagnostic screening for HIV and HPV; and offering treatment options such as medications, cesarean sections, and postpartum care. Ending child marriage requires a multifaceted approach focused on the girls, their families, the community, and the government. Culturally appropriate programs that provide families and communities with education and reproductive health services can help stop child marriage, early pregnancies, illness and death in young mothers and their children.

2. The Concept of Child Marriage

Child marriage is defined as a union of an adult person (above 18 years) and a tender person less than eighteen years as husband and wife.⁵ Traditionally, the consent of the intended spouses was not necessary to establish a valid marriage. Indeed marriages even till very recent times were concluded by parents by parents on behalf of minor children who were too young to give their consent. But in modern times there has been a strong shift towards making the consent of the parties even that of the bride, a *sine qua non* for a valid customary marriage. A contract is an agreement between two or more parties creating obligations that are enforceable, or otherwise recognizable at law. Marriage is contracts where the mutual consent of the parties is sine-qua-non, but in a child marriage, the consent of the child is dispensed with, and her parents enter into agreement for her. It is therefore not a marriage. Under the Muslim law, the consent of bride to be is immaterial, as the Muslim had made provision for fathers to validly contract marriages on behalf of their virgin daughters without their consent, age notwithstanding. This is called power *Ijabar* and the marriage guardian, whose presence cannot be dispensed with, has the power to compel the girl into marriage.⁶ In recognition of this wide spread practices of child marriage devoid of consent, United Nations as reported by Mertus *et al* adopted in 1962, the Convention on Consent to Marriage, Minimum Age for marriage, and Registration of marriages. The said Convention called on all the parties to take appropriate steps to ensure the abolition of such customs, ancient laws and practices, by ensuring complete freedom in the choice of spouses, eliminating completely child marriages, and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary, and establishing civil or other registers in which all marriages will be recorded. It goes further to state thus: 'No marriage shall be legally entered into without the full and free consent to be expressed by them in person after due publicity and in the presence of authority competent to solemnize the marriage and of witnesses as prescribed by law.'⁷

In *Osamawoyin v Osamawoyin*,⁸ the Supreme Court held that the consent of the bride-to- be was a condition precedent to the marriage under Bini Customary Law, and because no such consent was given, there was indeed no subsisting customary law marriage at the time the respondent married the petitioner. This decision shows that although we have different customary set ups in Nigeria, there are central issues that run across before a marriage

⁴ *Ibid.*

⁵ O Nwankwo, *Child Marriage as Child Abuse* (Civil Resource Development and Documentation Centre (C.I.R. D.O.C, 2001) 1; C Arinze Umuobi (ed), *Domestic Violence Against Women in Nigeria: A Legal Anatomy* (Folmech Printing and Publishing Co. Ltd, 2008) 76.

⁶ *Ibid.*, 76.

⁷ *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, 1962, Art. 1.

⁸ [1972] CI, 105, (1973) INML, 25.

is declared valid as chronicled by Sagay⁹, as follows: for Ekiti customary law¹⁰, Igbo customary law,¹¹ Ishan customary¹², Urhobo customary law¹³ and, Ijaw customary law¹⁴, the importance of consent of the parties to a marriage for it to be valid was emphasized. There is even clear evidence that even the customary courts are getting attuned to this view of relevance of the parties consent. Thus in *Ijaw Agbeke v Salawu Iyandu*¹⁵ the Oyo native court of Appeal held that the plaintiff (woman) could repudiate a marriage contract entered into with the defendant on her behalf by her parents. According to the court, 'By right and according to the laws, the girl could not be prevented from choosing the man she loves ... we disagree with the evidence of the girl's parents that she should be forced to marry the man for whom she bears no love'. The Ilesha Customary Court grade 'B' took the same view in *Folashade v Ibitayo*¹⁶ where the plaintiff who had been married to the defendant when she was six years old, applied, on attaining the age of seventeen, for the marriage to be nullified. The court granted the application and nullified the marriage on the ground of lack of consent.¹⁷ However, the question to ponder upon is: Can a person of 9years old or 13years old be said to have given a valid consent?

3. Who is a Child?

Biologically, a child (plural: children) is a human being between the stages of birth and puberty,¹⁸ or between the developmental period of infancy and puberty.¹⁹ The legal definition of child generally refers to a minor, otherwise known as a person younger than the age of majority.²⁰ Child may also describe a relationship with a parent (such as sons and daughters of any age) or, metaphorically, an authority figure, or signify group membership in a clan, tribe, or religion; it can also signify being strongly affected by a specific time, place, or circumstance, as in 'a child of nature' or 'a child of the Sixties'.²¹ In the Nigeria context, the definition of who a child is varies, especially in the legal parlance. In contract and corporate governance, for instance, a child is considered to be a minor of under 18years of age. In Sections 20(1) (a) of Companies and Allied Matters Act, a person of under 18years cannot be a partner in the formation of partnership, or a trustee in an incorporated trustee. Section 257 (1) (a) of the same Act²² provides that a person of under 18years is disqualified from being a director of a company.²³ However, there are still disparities in having a univocal range of ages for who could be classified as a child. Section 117 (2) of the Constitution of the Federal Republic of Nigeria²⁴ defines a citizen for the purpose of voting to mean any person who has attained the age of eighteen years. That juxtaposes the phenomenon of universal adult suffrage. This can be inferred that any person below the age of eighteen years is regarded as a child and so not eligible to vote based on the Nigerian constitution. The *Black's Law Dictionary*²⁵ defines a child as a person under the age of majority. A child is a young human who is not yet an adult.²⁶ This dictionary is neither here nor there in distinction of a child based on age. The Labour Act²⁷ defines a child as a person under the age of twelve years and a young person as one under the age of fourteen years. The Act has made a clear distinction of who a child is. In the same vein, section 2 of the Children and Young Person's Act²⁸ defines a child as a 'person who has not attained the age of fourteen years', and a young person to mean 'a person who has attained the age of fourteen years and is under the age of seventeen years.' The definitions by these two Acts are mostly applicable in Nigeria, though still restricted by Companies and Allied Matters Act and the Child Rights Act which place it at below eighteen years of age.

But in the international parlance on the other hand, there is an extension to the age of 18years. For instance, African Charter on the Rights and Welfare of the Child²⁹, the Convention on the Rights of the Child³⁰, and the

⁹ I Sagay, *Nigerian Family Law* (Lagos: Malt House Press Limited, 1999) 821.

¹⁰ *Ogunremi v Ogunremi* Unreported Suit No. M/10/71, High Court of Western State, Ekiti Division.

¹¹ *Opkanum v Okpanum* (1972) 2 ECCLR 561.

¹² *Ejibaokhio v Ejibaokhio* Unreported Suit No U/25/70, High Court of Mid-Western State, Ubiaja, Division.

¹³ *Ikperi v Ikperi* Unreported Suit UHC/13A/70, High court of Mid-Western State, Ugheli, Division.

¹⁴ *Obele v Iniya Obele*, High Court of Rivers State, Port Harcourt Judiciary Division, 22 February, 1972.

¹⁵ Suit 5158 *Civil Record Book* Vol. xii as quoted by Sagay, 821.

¹⁶ *Ibid* Suit 205-60.

¹⁷ M Okunola, 'Interaction between Islamic Law and Customary Law of Succession among the Yoruba People' *PhD Thesis*, p.82.

¹⁸ 'Child' Mosby's Dictionary of Medicine, Nursing & Health Elsevier Health Sciences (Mosby Inc, 2013) 345.

¹⁹ S A Rathus, *Childhood and Adolescence: Voyages in Development* (Cengage Learning, 2013) 48.

²⁰ *Ibid*, 51.

²¹ *American Heritage Dictionary* (Stardom Publishers, 2007).

²² *Companies and Allied Matters Act*

²³ *Company and Allied Matters Act* (CAMA) 2020, s 80.

²⁴ CFRN, 1999, as amended.

²⁵ B A Garner (Ed.), *Black Law Dictionary*, (8th edn, Thomson West, 2004) 254.

²⁶ A Hornby, *Oxford Advanced Learners Dictionary of Current English* (8thedn, Oxford University Press, 2010) 243.

²⁷ Cap LI LFN, 2004.

²⁸ Cap 22, LFN, 2004, s 2.

²⁹ ACRWC, 1999, Art 2.

³⁰ CRC, 1989, Art 1.

Factories Act³¹ define a child as a person below the age of eighteen years. The Criminal Code Act³² provides that a child of seven years is not criminally responsible for any act or omission, except it is proved that at the time of doing the act, or making the omission, he had capacity to know that he ought not to do the act, or make the omission. A male person under the age of twelve year is presumed to be incapable of having carnal knowledge. It is obvious that the explanation in Criminal Code is strictly in relation to crimes and not on civil matters. Furthermore, the Matrimonial Causes Act³³ in section 3 (1) (e) declares a marriage void once it was celebrated between parties not of marriageable age. There is no clear definition of what marriageable age is by both the Marriage Act and Matrimonial Causes Act. The Matrimonial Cause Act in its Sections 72(3) and (4) states that for maintenance and settlement of property, a person below the age of twenty-one is a child'. The Marriage Act³⁴ requires parental consent in a marriage where one of the parties is not up to twenty-one years.³⁵ This position was established in the locus classicus case of *Labinjo v Abeke*,³⁶ where the court held that contractual age for marriage is twenty-one years.

4. Statutes Disparities in Determination of the Age Limit of a Child

However, while the constitution sees a person of eighteen years and above as an adult with suffrage right, the Marriage Act rather sees a person who is under twenty-one years as a child and the Child Rights Act sees a child a person under eighteen years old. These disparities in Nigerian legislation on clear distinction of the age of a child have opened the flawed gate for different conceptualizations and for individuals to hide on any convenient age of a child to get away with child abuse and violation. This has also negatively impacted on the doctrine of *stare decisis*, making the court to rather operate on the doctrine of distinguishing. The court has held in the cases of *Akpan v The State*³⁷ that there are four methods of establishing the age of a child: birth certificate, direct evidence, doctor's medical certificate and court declaration. However, these methods are effective when there is certainty on the age. The word child must therefore be dependent on the context in which it appears according to Cohen J. in *Re Carlon*.³⁸ This interpretational problem of who a child is has been cleared in the recent *Child Rights Act*³⁹ of the Act stipulates that a child is a person below the age of eighteen years. It must be noted that the legislation on issues concerning children in Nigeria is in the residuary legislative list and such depends on the States. Individual States are meant to adopt and adapt the Child's Rights Act.⁴⁰ In the process of adapting, some states have changed the definition of 'a child'. These quagmires in the definition of a child, as earlier discussed, has caused the diversion from efforts to determining the age of a child in marriage to the gaining the consent of the child.

5. The Issue of Consent in Child Marriage

Child marriage is generally conducted between very young girls and older men. Child marriage is mostly a gratification for overcoming the family financial and social needs. It is a human right violation.⁴¹ Succinctly put, child marriage is a union of an adult male and a girl child (under eighteen years) as husband and wife,⁴² but with unsatisfied definition of child attention is drifted to the issue of consent in marriage. In *Osamawoyin v Osamawoyin*,⁴³ the Supreme Court held that the consent of the bride-to-be was a condition precedent to the marriage. The following cases show that although we have different customary set ups in Nigeria, there are central issues that run across before a marriage is declared valid. On this issue, Sagay⁴⁴ observes that for Ekiti customary laws, Igbo customary laws,⁴⁵ Ishan customary laws,⁴⁶ Urhobo customary laws,⁴⁷ and Ijaw customary laws,⁴⁸ the

³¹ Cap. FI-ILEN 2004.

³² Cap. FI-C30, LFN, 2004, s. 30.

³³ Cap M7 I LFN 2004.

³⁴ Marriage Act, Cap 218, LFN, 2004.

³⁵ *Agbo v Udo* (1947)18 NLR 152.

³⁶ (1924)5 NLR 33.

³⁷ (1967) NMLR 185.

³⁸ (1945) ICH 375.

³⁹ CRA, 2003, s. 277.

⁴⁰ Most States of the Federation like Akwa Ibom, Abia, Anambra, Bayelsa, Ebonyi, Edo, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Rivers, Taraba, have adopted the *Child Rights Act*.

⁴¹ C Onuoha, 'Early Marriage Problems' *Online Database* <<http://marriage.ygoy.com/early-marriage-problems/>> accessed on 28th August 2021.

⁴² O Nwankwo, *Child Marriage as Child Abuse* (Civil Resource Development and Documentation Centre (C.I.R.D.O.C) 2001). Also, refer to Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962, though not yet domesticated in Nigeria, but for idea, Art 1 provides that there must be full and free consent after due publicity for a marriage to be legally accepted.

⁴³ (1973) INML, 25.

⁴⁴ I Sagay, *Nigerian Family Law* (Malt House Press Limited, 1999) 821.

⁴⁵ *Ogunremi v Ogunremi* (Unreported Suit No. M/10/71) WSHC.

⁴⁶ *Opkanum v Okpanum* (1972) 2 ECLSR 561.

⁴⁷ *Ejibaokhio v Ejibaokhio* (Unreported Suit No U/25/70) MWS-HC, Ubiaja Div.

⁴⁸ *Ikperi v Ikperi* (Unreported Suit UHC/13A/70) MWS-HC, Ugheli Div.

importance of consent of the parties to a marriage for it to be valid was emphasized. In *Agbwe v SalawuIyandu*⁴⁹ the court nullified the marriage on the ground of lack of consent. This is mostly obvious in underage marriage.⁵⁰ However, the issue of child consent for marriage will still take us back to the unsettled issue in the definition of a child. Section 2 of the Children and Young Person's Act⁵¹ defines a child as a 'person who has not attained the age of fourteen years', and a young person to mean 'a person who has attained the age of fourteen years and is under the age of seventeen years.' Going by this definition, the question that still remains unanswered is can a person (child) of under fourteen years be said to have given a valid consent for marriage? Does a person at that age really understand what marriage is for his consent to be relied upon? Therefore, the issue of consent does not completely solve the problem. To get a better solution and completely put off a child from contracting marriage, different parts of the country have legislation for the age of marriage. In the Eastern States, the Age of Marriage Laws⁵² provides under its section 3 that 'a marriage between or in respect of person under the age of sixteen shall be void as was held in *Emeakuana v Umeojiako*,⁵³ where second respondent was fifteen years when the marriage was contracted. For the Northern State, marriage age has been fixed by various declarations of native laws, customs, and orders, and they are thus: age for a girl child in Biu is fourteen years, Idoma is twelve years,⁵⁴ Tiv is at puberty, and Borgu is thirteen years.

6. Pros and Cons of Child Marriage

Justifications for Child Marriage

Child marriage has many causes which are not limited to cultural, social, economic, and religious factors. In many cases, a mixture of these causes results in the imprisonment of children in marriages with or without their consent. Advocates of child marriage have used these causes to advance their argument for the justification of child marriage. These can be examined inter alia:

Checking Child Promiscuity

Therefore, the issue of univocal definition of a child and his age for marriage still remain unsettled. This is notwithstanding the diversion from age to consent. However, the most worrisome of all these is the issue of child's promiscuity. With genetically modified technology, the contemporary children physically grow and biologically mature faster than those who were children in about two decades ago. Consequently, most children (from their puberty) become sexually active even more than some adults. The question to ponder upon in child marriage are: supposing a child of thirteen or fourteen years become sexually active and promiscuous, is it not better to let her get married and be descent in her sexual escapade? What age should Nigerian legislation, without biasness, fix as marriageable age for the female sex? The researcher's recommendation shall address these questions.

Poverty

Poverty plays a central role in perpetuating child marriage. Parents want to ensure their daughters' financial security.⁵⁵ However, daughters are considered an economic burden. Feeding, clothing, and educating girls is costly, and girls will eventually leave the household.⁵⁶

Notions of morality and honour

Dominant notions of morality and honour are important factors encouraging the practice of child marriage. These are greatly influenced by the importance placed on maintaining 'family honour' and the high value placed on a girl's virginity. It is considered that shame would be cast on a family if a girl was not a virgin when she marries. Therefore, in order to ensure that a girl's virtue remains intact girls may be married earlier, in order to ensure their virginity. Young girls may also be encouraged to marry older men, due to the perception that an older husband will be able to act as a guardian against behaviour deemed immoral and inappropriate.⁵⁷

Protecting the Girl's Sexuality

In certain cultures, marrying a girl young presumes that the girl's sexuality, therefore the girl's family's honour, will be 'protected' but ensuring that the girl marries as a virgin. The imposition of family honour on a girl's individuality, in essence robbing the girl of her honour and dignity, undermines the credibility of family honour

⁴⁹ Suit 5158 *Civil Record Book* Vol. xii.

⁵⁰ *Obele v IniyaObele* (1972) HC, PHJ-Div.

⁵¹ Cap 22, LFN, 2004, s 2

⁵² 1956.

⁵³ M Okunola, 'Interaction between Islamic Law and Customary Law of Succession among the Yoruba People' *Ph.D Dissertation* (Faculty of Law, University of Ilorin).

⁵⁴ Native Authority Declaration (Idoma Native Marriage Law and Custom Order) 1959, s 2 (1).

⁵⁵ UNICEF, 'Child Marriage' *Online Database* <<http://www.forwarduk.org.uk/key-issues/child-marriage>> accessed on 5th September, 2021.

⁵⁶P Tristam, 'Child Marriage: Facts, Causes and Consequences' *Online Database* <<http://midleeast.about.com/od/humanrightsdemocracy/a/child-brides-htm>> as accessed on 5th September, 2021.

⁵⁷ *Ibid.*

and instead underscores the presumed protection's actual aim: to control the girl. Parents worry about ensuring their daughters' virginity and chastity.⁵⁸

Gender Discrimination

Child marriage is a product of cultures that devalue women and girls and discriminate against them. The discrimination often manifests itself in the form of domestic violence, marital rape, and deprivation of food, lack of access to information, education, healthcare, and general impediments to mobility.⁵⁹

Other justifications for child marriage include: inadequacy and disparity of laws especially in the definition of a child based on age, need to raise the economic and social status, religious mandate and/or cultural pressures, responding to gender biasness, lack of education especially for the females, myths and misconceptions about early marriage, and so on.

Consequences/Justifications against Child Marriage

There are numerous detrimental consequences associated with Child marriage. The dangers of child marriages are inexhaustible.⁶⁰

- (a) It endangers the physical, emotional, moral, social or educational welfare of the child.⁶¹
- (b) It is a criminal offence under the Nigerian law to have sexual relationship with a girl less than 11 years.⁶² This is defilement and carries a life term on conviction. Consent is not defense to that charge because a girl cannot consent to sexual act. It follows then that an adult male can face trial under the criminal code or penal code if he engages in child marriage.
- (c) Sexual experience at a very early age is almost always traumatic and leads to fixations on the entire child's life; especially as such marriages are not contracted out of love and affection. At the time of the marriage, the young girl is still trying to come to terms with the changes in her body functions and emotional strains characteristics of puberty. Therefore, it is unfair to make them grapple with the trauma of pregnancy.⁶³
- (d) Because her body tissues and pelvic bones are still too tender to withstand the travails of pregnancy and labour, she runs very high risks of developing V.V.F.⁶⁴, R.V.F.⁶⁵ Patients with V.V.F/R.V.F have to undergo corrective surgery and the facilities for this surgery are very limited in Nigeria.⁶⁶
- (e) Such girls face the risk of death caused by pregnancy related problems/complications. There are higher incidents of child mortality arising from low birth weight, premature birth, still in cases of adolescent mothers.⁶⁷
- (f) In some communities, there exist the superstitious beliefs that a potent cure for venereal disease in a man is a sexual union with a virgin. The girls thus married have the double misfortune of contracting venereal disease which may lead to infertility or even death.
- (g) Early marriages and early pregnancies are legally responsible for the mass illiteracy of the womenfolk in Nigeria. Girls are constantly being withdrawn from school in order to be married. This is caused mostly by poverty of parents who agree to early marriage arrangements to pay back debts or simply to make money. Most primary and secondary schools required pregnant students to withdraw from class attendance. Withdrawal from school leaves the girl without vocational skills.
- (h) This lack of education leaves the young mother poorly equipped for her roles as a mother. She is unfortunate about such issue of hygiene and dietary values, and is easily susceptible to disease and epidemic, poor nutrition, frequent and numerous child bearing and production of deformed children.
- (i) Early marriage could lead to loss of self-confidence and self-identity. The young mother is disorganized, confused, feels trapped and deprived of her teenage life. She suffers from inferiority complex and acquires low self-esteem.
- (j) Child marriage could lead to prostitution. Once the young girl's expectations in marriage are not met, she is likely to desert her matrimonial home and find solace in prostitution. This is because, her parents often refuse to take her in. she is therefore likely to fall prey to traffickers in girls for financial gain.
- (k) The under-aged mother may not be equipped to handle the pressure of running a home. This is in addition to the social responsibilities demanded of her by the society.⁶⁸

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Nwankwo (n5) 3; C Arinze Umobi, *Domestic Violence Against women in Nigeria: A legal Anatomy* (Folmech Printing and Publishing Co. Ltd, 2008) 94.

⁶¹ UNICEF (n55).

⁶² Section 218 *Criminal Code*, cap C 38, ILFN 2004.

⁶³ I Ogunniran 'Child Bride and Child Sex: Combating Child Marriage in Nigeria' (2010) (4) *UNIZIK JILJ* p. 99.

⁶⁴ Vesico Vagina Fistula.

⁶⁵ Rectum Vagina Fistula.

⁶⁶ N M Nour, 'Health Consequences of Child Marriage in Africa' *Online Database* <<http://wwwnc.cdc.gov/eid/article/12/11/06-0510-article.htm>> assessed on 5th August, 2021.

⁶⁷ *Ibid.*

⁶⁸ UNICEF (n55).

6. United Nations Efforts and National Laws in Relation to Child Marriage

The practice of child marriage violates many international human rights provisions. Since 1948, the United Nations and other international agencies have attempted to stop child marriage. The Universal Declaration of Human Rights⁶⁹ 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 child marriage is committing a violation of human rights. 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. It states as follows: ‘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 after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses as prescribed by law.’⁷⁰ It goes further to state as follows: ‘State parties to the present convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses’.⁷¹ Moreover, it also states that all marriages shall be registered in an appropriate official register by the competent authority.⁷² Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women⁷³ requires minimum age for marriage to be specified and says that child marriages are illegal. It clearly states that both parties have the same right freely to choose a spouse and to enter into marriage only with their full and free consent.⁷⁴ It goes further to state that: ‘The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the legislation of marriages in an official registry compulsory’.⁷⁵

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.⁷⁶ The CRC has a number of articles that hold relevance to Child marriage, and provides that in all actions concerning children the best interests of the child shall be a primary consideration.⁷⁷ These are 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,⁷⁸ The right to health; and to access to health services; and to be protected from harmful traditional practices prejudicial to the health of the children.⁷⁹ The right to education on the basis of equal opportunity;⁸⁰ The right to protection from all forms of sexual exploitation and sexual abuse⁸¹; The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.⁸²

In 1994, the International Conference on Population and Development stated that the minimum age of marriage should be raised and enforced, all forms of coercion and discrimination should be eliminated, marriage should be entered into with free consent and as equal partners, and the education and employment of girls should be encouraged.⁸³ African Charter on the Rights and Welfare of the Child, 1990 states as follows: ‘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 and make legislation of all marriages in an official registry compulsory’.⁸⁴

The Child's Rights Act is designed to guarantee certain individual rights--which are abused by early marriage. Rights undermined or lost by children forced to marry early are: The right to an education.⁸⁵ The right to respect for the dignity of his person and no child shall be subjected to physical and mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse.⁸⁶ There are the right to rest and leisure, and to participate freely

⁶⁹ Art. 16.

⁷⁰ Convention of Consent to Marriage, Minimum Age for Marriage and Registration of Marriage 1962 Art.

⁷¹ *Ibid*, Article 2.

⁷² *Ibid*, Article 3.

⁷³ 1979.

⁷⁴ Convention the Elimination of all Forms of Discrimination against Women, 1979, Art. 16 (b).

⁷⁵ *Ibid*, Article 16 (2).

⁷⁶ Convention on the Right of the Child 1989 Art. 1.

⁷⁷ *Ibid* Art. 3.

⁷⁸ *Ibid* Art 19.

⁷⁹ *Ibid* Art 24.

⁸⁰ *Ibid* Art 28.

⁸¹ *Ibid* Art 34.

⁸² *Ibid* Art 36.

⁸³ International Conference on Population and Development 1994 Principle 9 Action 4.18 and Action 5.5.

⁸⁴ *Ibid* Article 21(2).

⁸⁵ *Child Rights Act*, 2003.

⁸⁶ *Ibid* s. 15.

in cultural life;⁸⁷ the right to the enjoyment of the best attainable state of physical mental and spiritual health;⁸⁸ the right to not be separated from parents against the child's will;⁸⁹ the right to protection against all forms of exploitation affecting any aspect of the child's welfare.⁹⁰ It goes further to state 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.'⁹¹ Also it states that No parent, guardian or any other person shall betroth a child to any person.⁹² Any person who marries a child, or to whom a child is betrothed, or who betroths a child commits an offence and is liable on conviction to a fine of N500,000, or imprisonment to a fine of five years or to both fine and imprisonment.⁹³ Moreover it states:

No person shall have intercourse with a child. A person who contravenes this section commits an offence or rape and is liable on conviction to imprisonment for life. Where a person is charged with an offence under this section, it is immaterial that-the offender believed the person to be of or above the age of eighteen years; or the sexual intercourse was with the consent of the child.⁹⁴

In many countries, the legal age for marriage is 18, yet some governments enforce these laws loosely. For example, the percentage of girls married before age 18 in Niger is 77%, in Chad 71%, in Mali 63%, in Cameroon 61%, and in Mozambique 57%. In parts of Ethiopia, 50% of girls are married before the age of 15, and in Mali, 39%. Some marriages even occur at birth; in such instances, the girl is sent to her husband's home at the age of 7.⁹⁵ Child marriage is now widely recognized as a violation of children's rights, a direct form of discrimination against the girl child who as a result of the practice is often deprived of her 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 the lack of education of girls.

7. Conclusion

From the foregoing, it is obvious that to stop child marriage, NGOs and government policies and programs should educate communities, raise awareness, engage local and religious leaders, involve parents, and empower the girls through education and employment. Also, the Northern states which have not adopted the Child Rights Act should do so. It is further recommended that the National Assembly should amend the Constitution of Nigeria to clearly define a child and be specific on the age of a child and that of a young person. Additionally, the legislatures at the national and state levels, in fixing marriage age, should be cognizant of children who are sexually active and promiscuous from puberty, and be flexible in wordings and construct of the law. Though the respective government and society is working tirelessly to abolish early or child marriage through campaigns, laws, policies and individual support of people, it is still a far reaching dream for young girls who are still repeatedly forced into such liaisons. Early marriages have stretched far and wild through time and countries where children in their mid-teens are taking independent steps of tying the nuptial knot with their partners. Most early marriages are considered to be forced which is true but children entering into an early marriage out of choice also should be warned as to the various personal and health challenges issues that could endanger their lives forever.

⁸⁷ *Ibid* s. 12.

⁸⁸ *Ibid* s. 13.

⁸⁹ *Ibid* s. 14.

⁹⁰ *Ibid* s. 28.

⁹¹ *Ibid* s. 21.

⁹² *Ibid* s. 22.

⁹³ *Ibid* s. 23.

⁹⁴ *Ibid* s. 31.

⁹⁵ Nour (n64).