

Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage

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Summary

Although the Nigerian government has tried to stamp out child marriage with the enactment of the Child Rights Act of 2003, the practice of child marriage is still prevalent among the Hausa-Fulani tribe (predominantly Muslim) who occupy Northern Nigeria and where Shari'a law is in force. While the Child Rights Act has sharp teeth, it has no bite because each state in Nigeria has to enact the Act under its own state laws before it is enforceable. This means that a social evil such as child marriage can be practised in a state that is yet to pass the Child Rights Act as domestic law. The article presents arguments outlining the reluctance of some of Nigeria's northern states to enact the Act. The author maintains that the right of the girl child in relation to marriage is not adequately protected, due to Part 1 Section 61 of the 1999 Constitution of the Federal Republic of Nigeria. As a result, the article proposes three steps to ensure the legal protection of a girl child against child marriage: Firstly, Part 1 Section 61 of the 1999 Constitution should be modified; secondly, there should be a uniform age set for a child to marry in all of Nigeria's legislation that deals with children; thirdly, while pressure should be put on all Nigerian states which are yet to domesticate the Child Rights Act, there is a need for a new Act (Prohibition of Child Marriage Act) which, if enacted, should automatically apply to all states in Nigeria in order to protect the girl child.

Key words: *Child marriage; Northern Nigeria; Child Rights Act; 1999 Constitution; Ahmed Yerima*

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1 Introduction

The betrothal of female children to adult males is still a regular phenomenon among the Hausa-Fulani ethnic group who occupy the northern part of Nigeria and, to a lesser extent, is prevalent also in other parts of the country. In Northern Nigeria, child marriage is a traditional cultural practice which is heavily influenced by Islam, a religion which historically has been practised in the region and which continues to be practised. Due to pressure exerted on children to marry young in Northern Nigeria, 48 per cent of Hausa-Fulani girls are married by age 15, and 78 per cent are married by age 18.¹

These appalling statistics led Elizabeth to describe the life of a girl child in Northern Nigeria as 'pathetic'. To buttress her assertion she maintains that, while the ideal marriage age of women, although it varies, is between 20 and 26 years old,²

[i]n the North, little girls who have started menstruating are considered mature for marriage and the case of menstruation varies as a girl of twelve can be given out for marriage based on the fact that she has started menstruating.

Despite the prevalence of child marriage among the Hausa-Fulanis, child marriage is illegal in Nigeria. As a step towards showing that it does not support child marriage, Nigeria has signed and ratified international and regional instruments which regulate the rights of children. Nigeria ratified the Convention on the Rights of the Child (CRC) on 16 April 1991, and the African Charter on the Rights and Welfare of the Child (African Children's Charter) on 12 July 2001. Additionally, Nigeria took steps to domesticate both instruments in the form of the Child Rights Act (CRA). However, irrespective of Nigeria's passing of the CRA in 2003, the adherence to Islam and the application of Shari'a in the northern parts of Nigeria, where child marriage is practised, continue to violate the provisions of CRC, the African Children's Charter and the CRA.

The article examines international and regional instruments such as CRC and the African Children's Charter, which prohibit the practice of child marriage. Particular attention is given to Nigeria's domestication of both instruments through the CRA. Irrespective of the promulgation of this Act, I argue that child marriages are, to a certain extent, tolerated in Nigeria because of the weakness of the CRA. Such weakness stems from the fact that the CRA has to be passed into law in each state in Nigeria before child marriage may be considered illegal. Therefore, because the CRA is not enforceable across all Nigerian states, it leaves children in states that have not signed the

1 United Nations Population Fund 'Early marriage in Nigeria' <http://nigeria.unfpa.org/nigeirachild.html> (accessed 10 August 2013).

2 E Elizabeth 'Child marriage: An undying culture?' <http://www.thetidenewsonline.com/2009/12/28/child-marriage-an-undying-culture> (accessed 10 August 2013).

CRA vulnerable. Other than this weakness, the article points out flaws in the 1999 Constitution that are loopholes that allow child marriage in Nigeria.

Part II of the article examines CRC, the African Children's Charter and the promulgation of the CRA in Nigeria despite it being met with opposition from religious groups and traditionalists. In this section problems with the CRA and its conflict with the Islamic practice of child marriage are discussed. Part III deals with the practice of Shari'a law in Northern Nigeria, the reasons why child marriage is practised in that region and the effects of child marriage that have been documented. Part IV argues that despite the enactment of the CRA, the girl child in Nigeria is not adequately protected and that this inadequacy stems from the wording of Part 1 Section 61 of the 1999 Constitution. Part V draws conclusions and proposes recommendations, such as the need for a 'Prohibition of Child Marriage Act', in order to protect the girl child in Nigeria.

2 International and domestic legal framework

2.1 Convention on the Rights of the Child

The CRC, which was adopted and was opened for signature on 20 November 1989, is the first legally-binding international instrument that deals with a full range of human rights issues pertaining to children. Due to the range of children's rights protected, ranging from civil to political rights, Woodhouse describes CRC as a comprehensive charter of children's rights.³ However, scholars such as Warner⁴ and Askari⁵ disagree with Woodhouse's description of CRC as a comprehensive treaty. According to Warner, CRC contains no explicit provision on child marriage,⁶ an omission which she describes as 'odd and downright baffling'. Warner argues that perhaps the drafters of CRC thought that the subject of child marriage was already covered by the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Marriage Convention) and that, therefore, it was unnecessary to deal with child marriage in CRC. Askari exposes the gender bias inherent in CRC, and asserts that, while CRC covers violations that affect boys (for instance, child soldiers), it does not give consideration to a social evil such as child marriage which predominantly affects girls.⁷

3 B Woodhouse *Hidden in plain sight: The tragedy of children's rights from Ben Franklin to Lionel Tate* (2008) 32.

4 E Warner 'Behind the wedding veil: Child marriage as a form of trafficking in girls' (2004) 12 *Journal of Gender, Social Policy and the Law* 233-271.

5 L Askari 'The Convention on the Rights of the Child: The necessity of adding a provision to ban child marriages' (1998-1999) 5 *ILSA Journal of International and Comparative Law* 124.

6 Askari (n 5 above) 251.

7 Askari 124.

Despite these criticisms, a number of CRC's provisions could apply to child marriages, such as the protection of children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.⁸ CRC also provides that children have the right to health,⁹ education,¹⁰ and protection from economic exploitation.¹¹ It is too difficult to imagine that child marriage is a violation of the above provisions. An important clause which can be invoked against child marriage is article 24(3) of CRC, which states:

State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

This provision is perhaps the most relevant clause against child marriage, given that the Hausa-Fulani practice of child marriage is part of their tradition and, as this traditional practice is detrimental to the health of children, CRC can be read to recommend the abolition of traditional practices such as child marriage.

Irrespective of the provisions listed above that can be invoked against child marriage, there are other provisions of CRC that seem to support child marriage. Article 1 of CRC states:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

While CRC defines a child as a person under the age of 18, the provision 'unless under the law applicable to the child, majority is attained earlier', contradicts this and does not help to eradicate child marriage. For instance, in Northern Nigeria, where traditional and cultural practices are heavily influenced by Islam and laws derived from Shari'a, the age of majority for girls is attained pre-puberty. Therefore, CRC's provision is problematic in terms of not adequately stating the age when a child becomes an adult.

Article 14(2) states:

State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

This provision indicates that Nigeria, as a state party to CRC, should respect the rights of parents as guardians and controllers of the lives of their children in respect of education, religion and culture. Therefore, CRC grants the right to a Hausa-Fulani Muslim parent in Northern Nigeria to educate his or her daughter to follow the

8 Art 19 CRC.

9 Art 24 CRC.

10 Art 28 CRC.

11 Art 32 CRC.

teachings of the Quran and, in turn, she can be married off at the age of nine because it is sanctified by Islam.

Bearing in mind the deficiency in CRC identified in articles 1 and 14(2), it is difficult for a country such as Nigeria to consider CRC to be a strong framework for the prevention of child marriage.

2.2 African Charter on the Rights and Welfare of the Child

The African Children's Charter was signed by Nigeria on 13 July 1999, and ratified on 23 July 2001. Unlike CRC, the African Children's Charter is a more comprehensive instrument as it deals with a multitude of rights of the child, including marriage. Also, unlike CRC, the African Children's Charter sets the age of childhood below 18 years,¹² without affording states the opportunity to prescribe otherwise. Therefore, while the practice of child marriage in Northern Nigeria may not contravene article 1 of CRC, it does contravene article 1 of the African Children's Charter. In contrast to CRC, the prohibition of child marriage is included in the African Children's Charter under article 21(2), which states:

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 18 years and make registration of all marriages in an official registry compulsory.

Similar to the African Children's Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), which defines women as including girls, stipulates 18 years¹³ as the minimum age of marriage for women.¹⁴ Furthermore, a number of articles under the African Children's Charter specifically deal with child marriage. These include, but are not limited to, the protection of children from economic exploitation¹⁵ and sexual abuse.¹⁶ Much like article 24(3) of CRC,¹⁷ the African Children's Charter also contains a provision that urges states to protect children against harmful social and cultural practices.¹⁸ Under article 21 of the African Children's Charter, state parties are urged to:

... take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and

12 Art 1 African Children's Charter.

13 Art 1 African Women's Protocol.

14 Art 6 African Women's Protocol.

15 Art 15(1) African Children's Charter.

16 Art 16(1) African Children's Charter.

17 State parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

18 Art 21 African Children's Charter.

- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

This article stamps out the major causes of child marriage, namely, customs and traditional practices. In the Nigerian context, the Hausa-Fulani undoubtedly are in violation of article 21 of the African Children's Charter.

Despite being a signatory to both the African Children's Charter and CRC, Nigeria saw the need to domesticate both instruments and to promote the protection of children in Nigeria. This desire to protect and promote the rights of the Nigerian child began with a Bill of Child Rights in 1993.

2.3 Child Rights Bill

The aim of this Bill was to domesticate CRC and the African Children's Charter into Nigerian law. However, with heated debates in parliament and an unstable government, the Bill could not be passed into law. As Nasir maintains, the difficulty that the Child Rights Bill met came from religious groups and traditionalists.¹⁹ Nasir's assertion is correct because, in October 2002, the Nigerian Parliament rejected the Child Rights Bill on the grounds that the Bill's content was contrary to culture, tradition and the Islamic values of the Hausa-Fulanis of Northern Nigeria.

In relation to marriages in Northern Nigeria, Salamone maintains:²⁰

Hausa women are put into *purdah* (seclusion) directly upon marriage if their husbands can afford to do so. They are cut off from contact from all males but kinsmen. There are strict regulations regarding their public movements. For women, marriage is the only path to virtue. Consequently, marriage is common for young girls between the ages of ten and twelve.

A major objection to the Child Rights Bill was the setting of the age of marriage to 18 years, which was clearly contrary to Hausa culture and traditions, where marriage is common for girls as young as nine years old. As the Child Rights Bill brought about a clash between law, religion and tradition, a special committee was established to 'harmonise the children's Bill with Nigeria's religious and customary beliefs'.²¹ Alongside the special committee, demands from international and national non-governmental organisations (NGOs) put pressure on the senate to reconsider and rekindle their discussions on the Child Rights Bill, irrespective of religious and cultural conflict.

Consequently, after about ten years of pressure from international and national organisations, several Heads of State and heated

19 J Nasir 'Shari'a implementation and female Muslims in Nigeria's Shari'a states' in P Badru & B Sackey (eds) *Islam in Africa south of Sahara: Essays in gender relations and political reform* (2013) 256.

20 F Salamone *The Hausa of Nigeria* (2010) 134.

21 O Akinwumi 'Legal impediments on the practical implementation of the Child Right Act 2003' (2009) 37 *International Journal of Legal Information* 386.

parliamentarian debates, the Child Rights Bill was finally passed into law by the National Assembly in July 2003 and came into force in September 2003 after being assented to by the then president of Nigeria, Olusegun Obasanjo. It was promulgated as the CRA.

2.4 Child Rights Act, 2003

The passing of the CRA signalled Nigeria's domestic intentions to protect and preserve the rights of the Nigerian child. The CRA not only specifies that the best interests of the Nigerian child should be central to all actions, but it also provides the duties and obligations of parents, the government and organisations towards children. The CRA is the most complete legislation dealing with the rights of a child in Nigeria as it covers every situation where a child may be subjected to abuse. Some of the relevant sections which provide for the protection of children include, but are not limited to, the prohibition of the use of children in criminal activities;²² the use of children in exploitative labour;²³ unlawful sexual intercourse with a child;²⁴ and the recruitment of children into the armed forces.²⁵ While the CRA also contains other provisions relating to children with regard to their care and supervision and the custodial possession of children, an important prohibition relates to child marriage.

2.5 Child Rights Act and child marriages

The CRA prohibits both the marriage of those considered to be children and the betrothal of children. In relation to child marriages, Part III Section 21 states:

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.

Also, Part III Section 22, which prohibits the betrothal of children, maintains that '[n]o parent, guardian or any other person shall betroth a child to any person'. A contravention of either section 21 or section 22 amounts to a fine of 500 000 Naira (the equivalent of £2 046 or \$3 123) or imprisonment for a term of five years or to both a fine and imprisonment.²⁶

While the CRA imposes sanctions on child marriages and betrothal, the use of the conjunction 'or' is worrisome because there is an indication that those who partake in child marriages and, in turn, contravene the CRA, may escape jail by only paying the stipulated fine of 500 000 Naira. However, the option to pay a fine for a heinous act such as child marriage appears to be the least of the CRA's problems.

22 Sec 26 CRA.

23 Sec 28 CRA.

24 Sec 31 CRA.

25 Sec 34 CRA.

26 Sec 23(d) CRA.

2.6 Problems regarding the Child Rights Act

A major problem with the CRA is its differing levels of acceptance. When the law was passed, it was not automatically enacted into law in each of Nigeria's 36 states. Each state had to pass the Bill into their state laws for it to become enforceable in order to guarantee and protect the rights of children and, most importantly, to prevent child marriages. Since the CRA was passed in 2003, 12 states have yet to domesticate it.²⁷ What this means is that children may have no rights in states which are yet to enact the law and, subsequently, if child marriage is practised, it is not an offence.

Furthermore, apart from the state of Enugu, the 11 states which are yet to domesticate the CRA are in the northern part of Nigeria and these have adopted a penal code which is based mainly on Shari'a law.²⁸ It is not surprising that states in Northern Nigeria, inhabited predominantly by Muslims and with a culture and tradition heavily influenced by Islam, have objected to receiving and passing the CRA because it conflicts with the Islamic point of view, particularly in relation to the minimum age of marriage. While the law sets a child to be a person under 18, in Islam there is no age that marks childhood. A child's maturity is established by signs of puberty such as menstruation, the growth of breasts and pubic hair. To further buttress the argument that age is a factor contributing to the reluctance of many northern states to pass the CRA, when one of Nigeria's northern states, Jigawa, accepted the CRA, its state law did not adopt the age of 18 as the age of majority as specified in the Act. Instead, it determined the age of childhood in relation to puberty.²⁹

Additionally, other than the age conflict between the CRA and Islam, the CRA creates a conflict between human rights and religion, which is arguably one of the other major reasons for its rejection by most Northern Nigerian states. For example, while the CRA is aimed at protecting the human rights of children, it also infringes the rights of freedom of thought, conscience and religion as provided for in section 38(1) of the 1999 Constitution:

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

From the above statement it is evident that there is a potential conflict between the practice of child marriage in Northern Nigeria, which is derived from Islam, and the CRA's protection of children by outlawing

27 Enugu, Kaduna, Kano, Sokoto, Kebbi, Borno, Yobe, Gombe, Adamawa, Bauchi, Katsina and Zamfara.

28 Northern Nigeria consists of 19 states of which 12 have penal laws enacted under the aegis of Shari'a, namely, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara.

29 Jigawa Child Rights Law, 2008.

child marriage. While the CRA's outlawing of child marriage infringes upon the right to practise a certain part of Islam (child marriage), a stronger argument can be made that when there is a clash between law and religion in respect to children, as in the case of Nigeria, the best interests of the child should be given paramount consideration. In weighing the interests of the child, consideration should be given to the emotional, physical and psychological wellbeing of the child. In addition, protection should be afforded to children and adolescents until they are mature enough to make decisions about marriage. The Islamic practice of child marriage inhibits children from making independent decisions about marriage, which may lead to their emotional, physical and psychological harm. Therefore, if such a practice may harm a child, the right to freedom of religion becomes limited.

Moreover, it is clearly stated in the 1999 Constitution that the right to freedom of religion is not absolute. Section 45(1) states that nothing in section 38 will invalidate any law that is reasonably justifiable in a democratic society:

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom or other persons.

Therefore, for the sole purpose of protecting the rights of children against a social evil such as child marriage, it is justifiable to restrict the freedom to practise a component of Islam such as child marriage, which infringes the rights of children.

3 Child marriage in Northern Nigeria

3.1 Shari'a law in Northern Nigeria

The Hausa-Fulanis in Northern Nigeria show a strict adherence to the Quran and the Prophet Muhammad's Sunnah. As Islam plays a pivotal role in the lives of most northern Nigerians, the culture and traditions of the Hausa-Fulanis are intertwined with Islamic religion. Therefore, due to the influence of Islam and Muhammad's marriage to Aisha, as reported in the Hadiths, it is not surprising that Muslims in Northern Nigeria endorse and practise child marriage.

Of the 36 states in Nigeria, 12 of the northern states introduced Shari'a law into their jurisdictions in contravention of section 10 of the 1999 Constitution, which prohibits states in Nigeria from adopting state religion. Although subject to different interpretations, it can be argued that the adoption of Shari'a by these states is equivalent to adopting a state religion. As a result of this insubordination and a breach of section 10 of the 1999 Constitution, the rest of the nation watched to see what the federal authorities would do, but nothing happened. When in 1999 the plan of adopting Shari'a law was underway, the then President, Olusegun Obasanjo, opposed the

movement but, as Lapidus notes, the northern states 'slipped out of federal control'. However, while it may be argued that the 12 northern states are in breach of section 10 of the 1999 Constitution, section 4(7) of the 1999 Constitution makes it legal for states to make laws for peace and good government in their territories. Therefore, these northern states may have acted within the Constitution by implementing Shari'a, which they consider will promote peace and good government.

3.2 Reasons and consequences of child marriage in Northern Nigeria

According to the organisation Girls not Brides, while 45 per cent of girls in Nigeria were married before they turned 18, the practice of child marriage was more rampant in the northern part of Nigeria, with figures as high as 76 per cent.³⁰ The high percentage of child marriage in Northern Nigeria can be attributed mostly to the fact that the practice of Islam in the region endorses child marriage. However, other than Islam, additional factors contribute to this practice.

Firstly, one of the underlying reasons for child marriage is poverty. According to the National Bureau of Statistics, the rate of poverty is at 67,1 per cent.³¹ In Northern Nigeria, the poverty level is 77,7 per cent in the North-West and 76,3 per cent in the North-East.³² Poverty in the region undoubtedly fuels child marriage. According to Erulkar and Muthengi, child marriage is advantageous to poor families in rural locations. To buttress their argument, the authors state that the betrothal of girls at a young age relieves parents of the costs and responsibilities of raising a girl.³³ Erulkar and Muthengi's assertion is supported by Otoo-Oyortey and Pobi, who maintain:³⁴

Globally, poverty is a major cause, as well as a consequence, of early marriage for many young girls under the age of 18. In many traditional settings, poor families use the early marriage of daughters as a strategy for reducing their own economic vulnerability, shifting the economic burden related to a daughter's care to the husband's family.

Adopting Askari's, Otoo-Oyortey's and Pobi's argument and placing it in the context of Northern Nigeria, there is no doubt that poverty is an underlying reason for child marriage in the region. Due to the

30 Girls not Brides 'Child marriage around the world: Nigeria' (2014) <http://www.girlsnotbrides.org/child-marriage/nigeria/> (accessed 24 July 2014).

31 '112 million Nigerians living below poverty level – Report' *Premium Times* http://www.premiumtimesng.com/news/4211-112million_nigerians_living_below_poverty_level.html (accessed 26 July 2014).

32 BBC 'Nigerians living in poverty rise to nearly 61%' <http://www.bbc.com/news/world-africa-17015873> (accessed 26 July 2014).

33 A Erulkar & E Muthengi 'Evaluation of Berhane Hewan: A programme to delay child marriage in rural Ethiopia' <http://www.guttmacher.org/pubs/journals/3500609.html> (accessed 26 July 2014).

34 N Otoo-Oyortey & S Pobi *Early marriage and poverty: Exploring links for policy and programme development* (2003) 11.

endemic poverty among the Hausa-Fulani, female children are viewed as an additional burden on family resources. As a result of this, the betrothal of female children is used as a strategy for family survival.

Secondly, in Northern Nigeria child marriage is seen and used as a method for the preservation of the virtue of girls. The rationale for the practice of child marriage in Northern Nigeria is to ensure the preservation of virginity of women and, also, that women do not become pregnant out of wedlock. Based on these reasons, it is not uncommon to find children married at the age of 10 in Northern Nigeria. Additionally, other than the rationale that child marriage protects girls from social ills, such as promiscuity, it is also carried out for the preservation of family honour. Therefore, in order to avoid dishonour and the shame attached to pre-marital sex, girls are married off before reaching puberty.

Although there may be reasons put forward in defence of child marriage, nonetheless the disastrous effects on children who marry early outweigh these and undoubtedly make child marriage a social evil. One of the disastrous effects is the development of vesicovaginal fistula, which is an abnormal duct between the vaginal wall and bladder or urethra. In a study carried out by Ijaiya *et al*, it was revealed there was a high prevalence of vesicovaginal fistula in Northern Nigeria. According to the study, in Kano State, 120 vesicovaginal fistula patients were admitted in two months. In other northern states such as Maiduguri, there were 241 vesicovaginal fistula patients in two years, and Jos and Sokoto had 932 cases in seven and a half years and 31 cases in one year respectively.

In addition to vesicovaginal fistula which has been linked with early marriage, studies have also revealed that children who marry early are at risk of contracting sexually-transmitted diseases, including HIV/AIDS. In a study conducted by Karlyn *et al* on early marriage in Northern Nigeria,³⁵ it was revealed that the early marriage of children is a contributor to the spread of HIV/AIDS.

The NGO Girls Not Brides has also revealed other health consequences of child marriage. According to Girls Not Brides, the likelihood of the baby of a girl under 18 years dying is 60 per cent and, in addition to that, girls under 15 are five times more likely to die in childbirth than women in their twenties.³⁶ Furthermore, other than health risks associated with child marriage, one of the most damaging consequences of child marriage is its effect on the educational development of the girl child. Studies have revealed that child marriage equals illiteracy as many girls who marry as children are deprived of a basic education. In relation to the link between illiteracy

35 A Karlyn *et al* 'Adolescent early marriage in Northern Nigeria: Evidence to effective programmatic intervention' paper presented at the Union for African Population Studies, Tanzania, 2007.

36 'The global partnership to end child marriage' Girls Not Brides <http://www.girlsnotbrides.org/themes/health/> (accessed 10 August 2013).

and child marriage in Nigeria, the 2008 National Demographic and Health Survey revealed that there was a higher level of illiteracy among women in Northern Nigeria than any other part of the country.³⁷ Statistics of the National Demographic and Health Survey showed that 68 per cent of women in the North-East and 74 per cent of women in the North-West had no formal education and the cause of this astonishing fact was the practice of child marriage in those regions.

4 Legality of child marriage in Nigeria

4.1 Is child marriage illegal in Nigeria?

Having stated the reasons for and effects of child marriage, it needs to be determined whether child marriage is illegal in Nigeria. While this might seem an absurd question, bearing in mind Nigeria's enactment of the CRA which contains sections outlawing child marriage, there is a strong argument to be made out that child marriage is not illegal in Nigeria under Second Schedule Part 1 item 61 of the 1999 Constitution. This section states:

The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto.

As Nigeria operates a tripartite legal system with civil, customary and Islamic law operating simultaneously, in relation to marriage the federal government has no control over customary and Islamic marriages but only marriages conducted in a civil manner. What this means is that, according to Part 1 Section 61 of the 1999 Constitution, when a person marries a child under Islamic law in Northern Nigeria and is consequently in contravention of the CRA, such a person cannot be prosecuted because the federal government would be interfering with an Islamic marriage and would be in violation of Part 1 Section 61 of the 1999 Constitution. Therefore, in relation to child marriage, Part 1 Section 61 of the 1999 Constitution renders the CRA useless, as the 1999 Constitution serves as the supreme law of the land in Nigeria, overriding all other legislation. An example of how Part 1 Section 61 of the 1999 Constitution can be used as a constitutional backing for child marriage was shown in 2010, when a Nigerian senator, Ahmad Yerima, married a 13 year-old Egyptian girl.

4.2 Ahmad Yerima

In 2010, Ahmad Yerima married the daughter of his chauffeur, a 13 year-old Egyptian girl, after allegedly paying a dowry of \$100 000. Although the marriage created an uproar as it was in contravention of

37 Nigeria Demographic and Health Survey, 2008.

Section 21 of the CRA, Yerima justified the marriage on religious grounds.³⁸

Prophet Muhammad (SAW) married Aisha at the age of nine. Therefore, any Muslim who marries a girl of nine years and above is following the teaching and practices of prophet Muhammad (SAW). If there is anybody who will tell me that what you did contradicts Islam, I will say I will submit, and I will do whatever they ask me to do.

According to Tardzer, although Ahmad Yerima's conduct seemed reprehensible, there was nothing anyone could do about his marriage to the child.³⁹ While Tardzer makes it clear that Yerima was never prosecuted, the Attorney-General of the Federation, Mohammed Bello Adoke, maintained that because Ahmad Yerima's marriage was contracted under Islamic law, he would not face prosecution. According to Mohammed Bello Adoke:⁴⁰

I do not like pedophile and I see the action of Senator Yerima as one that can be likened to pedophile. Let me say as irresponsible as his conduct is but I have to prosecute him according to the dictates of the law. The Child Rights Acts is meant for Nigerian child but the girl in question is an Egyptian and the girl was brought into the country by her parents for marriage to Senator Yerima.

His statement that the CRA is directed at Nigerian children is false and surprising due to his position as the Attorney-General of Nigeria. The CRA is meant to protect anyone considered a child within the Nigerian jurisdiction, irrespective of race or nationality. In addition, if the CRA was only designed for Nigerian children as he maintains, it means that anyone who indulges in child marriage by marrying a non-Nigerian child is exempted from prosecution, which is not what the CRA was created for. Furthermore, while there are continuous calls by rights groups, such as Women Empowerment and Legal Aid,⁴¹ for Ahmad Yerima to be prosecuted, Tardzer has posed a good question: Does a religious practice override the laws of the land even when there is nothing in the operating law that provides for such an exemption? In relation to Tardzer's question, the answer is no. However, if a child marriage is contracted under Islamic law or custom, the federal government cannot interfere with such marriages under Part 1 Section 61 of the 1999 Constitution. Therefore, while Ahmed Yerima is in contravention of the CRA because his marriage is alleged to have taken place in Nigeria's capital Abuja, he cannot be prosecuted because the federal government would be in

38 YouTube 'Nigerian senator defends teen marriage' <http://www.youtube.com/watch?v=rQJ8Rbgiox4> (accessed 10 August 2013).

39 CSK Tardzer *My odyssey, my country* (2012) 77.

40 L Akinboade 'Okigbo report. We can't prosecute IBB, says FG' *Vanguard* <http://www.vanguardngr.com/2010/08/okigbo-report-we-cant-prosecute-ibb-says-fg> (accessed 10 August 2013).

41 A Adesomoju 'Adoke gets ultimatum to prosecute Yerima' *Punch* <http://www.punchng.com/news/adoke-gets-ultimatum-to-prosecute-yerima> (accessed 10 August 2013).

contravention of Part 1 Section 61 of the 1999 Constitution. Consequently, it is as a result of this constitutional provision that it is illegal and difficult to prosecute Ahmed Yerima for his violation of section 21 of the CRA.

5 Conclusion and recommendations

5.1 Conclusion

An attempt has been made to show that, despite Nigeria's adoption of the CRA, the rights of the girl child in respect of marriage are not adequately protected by law. Firstly, this inadequacy stems from the approach taken that states in Nigeria have to domesticate the CRA before it applies in those states. Secondly, Part 1 Section 61 of the 1999 Constitution, which provides that the federal government cannot interfere with Islamic and customary marriages, weakens and fails to give effect to the CRA to protect children against a social evil such as child marriage. Although the wording of Part 1 Section 61 of the 1999 Constitution gives people the freedom to conduct marriages according to their religion and customs, it is a dangerous clause which serves as a loophole for child marriages and serves as constitutional support to those who partake in child marriage and justify it as an Islamic practice. Therefore, as argued previously, the major problem in the inadequate protection of the girl child in Nigeria is to be found in Part 1 Section 61 of the 1999 Constitution.

5.2 Recommendations

Firstly, in order to protect the girl child from child marriage, Part 1 Section 61 of the 1999 Constitution needs to be modified to involve the federal government in 'the formation, annulment and dissolution of all marriages, which includes customary and Islamic marriages'. While it may be argued that such modification goes against the Islamic practice of child marriage in Northern Nigeria, such a modification is necessary because, as revealed in this article, the Islamic practice of child marriage in Northern Nigeria does more harm than good to the girl child.

Secondly, the Nigerian Senate needs to promulgate the marriageable age as 18 years for women in the 1999 Constitution. As the 1999 Constitution serves as the supreme law of the land, any traditional or religious marriage practice that contravenes the age of marriage in the 1999 Constitution will be void. Thirdly, all Nigerian statutes dealing with children and marriage need to adopt a uniform age of 18 as the age of majority. While the CRA stipulates the age of majority to be 18 years, other Nigerian statutes have differing provisions. For example, under article 2 of the Children and Young Persons Act of 1943, which was revised in 1958, a child is defined as a young person under the age of 14 years, while a 'young person' means a person who has attained the age of 14 years and is under the

age of 17 years. The Children and Young Persons Act is one of the few texts which show the different ages that constitute childhood in Nigeria. As Akinwumi maintains, the varieties of minimum age limits are problematic in the sense that they can cause discrimination between children of the same age in different parts of the country.⁴² Additionally, legislation such as the Marriage Act, which is silent on age permissible for marriage, needs to be modified to include the minimum age of 18. The Marriage Act under section 3(1)(e) merely provides that a marriage will be void if 'either of the parties is not of marriageable age'. Similarly, like the Marriage Act, the Matrimonial Causes Act does not prescribe a minimum age of marriage.

Fourthly, there is a need to enact a 'Prohibition of Child Marriage Act' which deals broadly with the issue of child marriage. The discussion and prohibition of child marriage in the CRA are restricted to a single section and do not illuminate the disastrous effect of child marriage. For example, the CRA does not stipulate a sentence for those who conduct child marriages.

Finally, the ongoing practice and high prevalence of child marriage in Northern Nigeria point to the Nigerian government's failure to comply with its international and regional human rights obligations. As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, CRC, the African Children's Charter and the African Women's Protocol, Nigeria is bound to uphold its contract for the protection of women, which includes the girl child. Therefore, for the Nigerian government to observe its treaty obligations in good faith, it must make a concerted effort to realise the implementation of the provisions pertaining to child rights in order to combat the adverse consequences of child marriage.

42 O Akinwumi 'Legal impediments on the practical implementation of the Child Right Act 2003' (2009) 37 *International Journal of Legal Information* 386.