

# EVALUATION OF THE FIGHT AGAINST CHILD MARRIAGE IN NIGERIA

By

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## *Abstract*

*Child marriage is a problem that has eaten deep into many African countries. Factors such as poverty, culture and gender inequality have been attributed to the high rate of child marriage in Africa. According to UNICEF, 17% of girls under 15 years old are married while 47% of under 18-year-old girls are married in Nigeria. The effect of this is that the child brides have been deprived of the opportunity to contribute effectively to the economic growth of Nigeria due to the fact that a larger percentage of these girls are denied their right to education. Efforts have been intensified globally to end child marriage. While Nigeria has ratified several international instruments and domesticated same in a bid to end child marriage, it appears that this endemic seems to be on the rise. Many have pointed to the economic recession in the country as a contributing factor to the impediment against this endemic. This article will evaluate the success of the activities to end child marriage in Nigeria in view of legislations, policies and initiatives. Efforts will be made to determine the role and effectiveness of the judiciary in bringing an end to child marriage malaise in Nigeria.*

**Key Words:** Child Marriage, Violence, Harmful Practices, Nigeria, Africa.

## **Introduction**

Child marriage is a pandemic that Africa had been dealing with for decades. This practice had eaten deep into the African system such that the tendencies of African girls at a brighter future which could lead to economic contribution and sustenance had been jeopardised. The highest rate of engagement in child marriage has been reported in West Africa with 49% of girls under the age of 19 living in marital unions.<sup>1</sup>

Nigeria is not left out in this problem. According to Girls Not Bride, the rate at which child marriage is practiced vary depending on the region with incidence of about 76% in the North West region and 10% in the South East of Nigeria.<sup>2</sup> Though child marriage is not exclusive to girls, in Africa, girls are predominantly the victims of child marriage. Child marriage undermines the girl child's right to education, economic empowerment and equal participation in the growth of the society. Child marriage is a gross abuse of human rights.

The United Nations Population Fund (UNFPA) projected that if action is not taken in Nigeria, '4,615,000 of the young girls born between 2005 and 2010 will be married/in union

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<sup>1</sup> Women's Health and Action Research Centre 'Addressing child marriage' available at <http://www.wharc-online.org/publications/wharcs-monthly-update/addressing-child-marriage/> (accessed 18 August 2015).

<sup>2</sup> <http://www.girlsnotbrides.org/child-marriage/nigeria/> (accessed 18 August 2016).

before age 18 by 2030. This projection shows an increase of 64% from the 2010 estimate of married girls, which is compounded by high fertility and low mortality in the recent past.<sup>3</sup>

Though there are international and national legal frameworks that provide for the minimum standard to conform to as regards marriage, often times, the monitoring and enforcement mechanisms are too weak to give effective results. Despite laws that prohibit and criminalise child marriage in Nigeria, the practice is still predominant in some areas of the country. It is against this background that it becomes necessary to re-examine the concept of child marriage in the Nigerian context with a view to identify the promoting factors and the hindrances to the realisation of the effective results in the fight against child marriage in the country.

### **Child marriage**

Child marriage has been described as ‘a customary, religious or legal marriage of anyone under 18 which occurs before the child is physically and psychologically ready for the responsibilities of marriage and child bearing.’<sup>4</sup> Child marriage has been described as a type of gender-based violence perpetrated in a male dominated society to determine power structure. Child marriage can be seen as forced marriage since the child brides can barely make a sound and free decision about the groom, or the nature and implication of such a contract.<sup>5</sup> Child marriage has been defined in the Convention on the Rights of the Child (CRC) as ‘marriage or cohabitation before age 18’<sup>6</sup> In most cases, child brides are not afforded the opportunity to meet their grooms beforehand. They have no say in the decision about the marriage.

According to Nigeria Demographic and Health Survey (NDHS), 2008, 30% of teenagers within the range of ages 15-19 had begun child bearing. Out of this 30%, 39% and 46% were teenagers from the north east and north west respectively.

### **Marriageable Age**

The issue of marriageable age in Nigeria has always been controversial mainly because the Constitution makes no express provision for this neither did the Marriage Act nor Matrimonial Causes Act do the same. A child has been defined by section 277 of the Child’s Rights Act<sup>7</sup> (CRA) as any person below the age of 18. The CRA has expressly prohibited marriage to and by any person under 18,<sup>8</sup> the Act further prohibits parents, guardians or any other person from betrothing a child to anyone and where such betrothal is done, it shall be null and void.<sup>9</sup>

Where a person marries a child under 18, is betrothed to a child, promotes the marriage of a child or betroths a child, such a person, according to section 23 of the CRA, is guilty of an offence punishable by a fine of N500,000<sup>10</sup> or imprisonment for a term of five years or both.

<sup>3</sup>[http://www.devinfo.info/mdg5b/profiles/files/profiles/4/Child\\_Marriage\\_Country\\_Profile\\_AFRNGA\\_Nigeria.pdf](http://www.devinfo.info/mdg5b/profiles/files/profiles/4/Child_Marriage_Country_Profile_AFRNGA_Nigeria.pdf) (accessed 12 August 2015).

<sup>4</sup> JA Walker *Mapping early marriage in West Africa: a scan of trends, interventions, what works, best practices and the way forward* (Being a research report submitted to the Ford Foundation, West Africa, September 2013) 7.

<sup>5</sup> n 3 above.

<sup>6</sup> <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>7</sup> Child’s Rights Act 2003 Cap C50 Laws of the Federation of Nigeria 2004 sec 21.

<sup>8</sup> Sec 21.

<sup>9</sup> n 7 above, sec 22.

<sup>10</sup> Equivalent to \$1588 as at February 2017.

The punishment attached to this crime is not enough to make offenders realise the gravity of the offence. It will be better if the offence is made to be a felony without any option of fine.

Since the Child's Rights Act is a federal legislation that falls under the concurrent list of the Constitution, its provisions are not binding on the states of the federation until each state has enacted its own version of the Act. As such, states can choose to regulate the determinant age to marry, for example, marriageable age in Akwa Ibom State and Kwara State is 16 years while it is 15 years in Jigawa State.<sup>11</sup> As such, by the very law that seeks to protect the Nigerian child in these states, child marriage is legally promoted. Thus it is clear that the political will to change marriage laws is not as strong as it ought to be.

Furthermore, there are three different types of marriage that a man and a woman can contract in Nigeria which are statutory marriage, customary marriage and Islamic marriage.<sup>12</sup> As Nigeria is a multi-ethnic and multi-cultural society, the customs of its people are as varied as the number of ethnic societies. In other words, there is no single customary law for Nigerians.<sup>13</sup> In this respect, the traditional marriage system allows marriage of persons between the ages of 12-14 years for girls and 16 years and above for boys. In some parts of the Eastern region, the marriageable age for girls range from as low as 10 years but based on the condition that after the marriage ceremony is completed, the girl child remains under the protection of her father-in-law until she attains the marriageable age that is normal within the society. Determining the 'normal' marriageable age in the society will further depend on the societal acceptability.

However, for marriages concluded under the Islamic law, the determinant age of a girl getting married is the age she starts her first menstruation which ranges from 9-15 depending on the hormones of the girl child.<sup>14</sup> A usual practice is to betroth a girl as young as 2 years and the marriage ceremony will be properly concluded when the girl child attains puberty. This is common in the Northern region of the country. For girls that are betrothed at a tender age, the child remains in the custody of her parents, but the groom takes up financial responsibility of the child but only takes custody and begins consummation of the marriage when the girl attains puberty age.

It has however been observed that among the educated Nigerians who conduct Islamic marriage, the brides' ages range from 20-35.<sup>15</sup> Thus, there is no fixed rule that every marriage conducted under Islamic law involves child brides; rather the practice is common among the uneducated and poverty-stricken households in the core North of Nigeria.

Since only statutory marriage is regulated by a promulgated law, the rule that the parties to the marriage must be at least 18 years of age is only adhered to in marriages celebrated under the Marriage Act. It follows therefore that any marriage that is validly conducted according to the rules of customary law and Islamic law which are recognised in Nigeria remains valid.

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<sup>11</sup> Jigawa Child's Rights Law, 2008.

<sup>12</sup> Marriage is strictly a union of one man to one woman or more, depending on the nature of marriage. Same sex marriage is prohibited and criminalised in Nigeria by the Same Gender Marriage (Prohibition) Bill of 2011 which was further affirmed by a voice vote of the National Assembly in May 2013.

<sup>13</sup> O Adedokun-Odeyemi *Recovery of child support in Nigeria* (2014) in P Beaumont *et al The recovery of maintenance in the EU and worldwide* 241.

<sup>14</sup> A Buchler and C schlatter 'Marriage Age in Islamic and Contemporary Muslim Family Laws: A Comparative Study' (2013)1 *Electronic Journal of Islamic and Middle Eastern Law* 40.

<sup>15</sup> Based on a survey carried out for this study.

Worthy of mention is the common practice of many Nigerians, especially the educated citizens engaged in a dual system of marriage whereby they conduct both the customary marriage and the statutory marriage. In some situations, some Muslim couples have been noted to celebrate the 3 forms of marriage, i.e. statutory, customary and Islamic forms of marriages.<sup>16</sup> However, as noted earlier, this is a common practice making the elites who are usually above the age of 18 and as such age is not usually a determinant factor in determining the validity or otherwise of the marriage.

### **Factors that Promote Child Marriage**

#### ***Poverty***

Child marriage is common in the poor countries of the world and more prominent in poor families. The poorer a family is, the higher the tendency that the girls of that family will be given out in marriage at a tender age. This gives the family an excuse for lesser mouths to feed. This is more prominent in the Northern part of Nigeria. Furthermore, the betrothal gift received on the child bride provides a means of income for the family and this is evident in the way female children are taken care of till they are given out in marriage in the Northern region of Nigeria.

This is evident in the report of Women's Health and Action Research Centre<sup>17</sup> that:

In Asia and Africa, the importance of financial transactions at the time of marriage also tends to push families to marry their daughters early. For example, in many sub-Saharan cultures parents get a high bride price for a daughter who is married near puberty.

The poverty level in North West of Nigeria is 77.7% while it is 76.3% in the North East of the country. This is evident of the high increase of betrothal of girl children at a tender age to relieve the parents of the financial burden of raising the girl child.<sup>18</sup>

#### ***Culture and religion***

Child marriage is a by-product of discriminatory social norms and power imbalances which ascribes different social roles and status to males and females. Thus, the practice can be traced to the social norm which defines a woman's social status by marriage and child bearing.<sup>19</sup>

Many cultures in the Nigerian society support child marriage in order to prevent a girl child from being promiscuous. The belief is that if a girl child is married off before she becomes sexually active, she will be dedicated to the husband alone and therefore the tendency of the girl child being promiscuous will be reduced. This has not proved totally successful as there have been instances where married women, especially those who were not given the opportunity to have a say in the choice of their groom, have been found to engage in extramarital affairs based on the justification that they do not love their husbands and if given the choice, they would have chosen to marry the persons with whom they engage in extramarital affairs with.

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<sup>16</sup> Cole v. Cole [1898] 1 NLR 15; Asiata v. Goncallo [1990] 1 NLR 41.

<sup>17</sup> n 2 above.

<sup>18</sup> A Erulkar & E Muthengi *Evaluation of Berhane Hewan: A program to delay child marriage in rural Ethiopia* <http://www.guttmacher.org/pubs/journals/3500609.html> (accessed 12 June 2015).

<sup>19</sup> International Planned Parenthood Federation (IPPF) *Ending child marriage: a global guide for policy action* (2006) <http://www.unfpa.org/sites/default/files/pub-pdf/endchildmarriage.pdf> (accessed 26 June 2015).

In the Northern region of Nigeria where the culture is greatly influenced by Islam, a girl child is expected to get married when she attains the age of puberty. Puberty in this context is determined by the period when a girl child first experiences her menstrual cycle. Thus, a girl child is not expected to observe the second monthly period in the father's house but in her husband's house. As such, the important role that Islam plays in the lives of the Northerners cannot be separated from the promotion of child marriage in the region. This is further strengthened by the constitutional guarantee of the freedom of religion, though the paramount interest of the child needs to be emphasized.<sup>20</sup>

Up till 2002 when Zamfara state officially adopted Shariah legal system, Shariah was operative in the Northern Nigeria as a form of customary law,<sup>21</sup> and eleven other Northern states<sup>22</sup> were quick to follow suit. This step had further strengthened the promotion and legality of child marriage in these parts of the country.

It can be safely concluded that due to the influence of Islam in the Northern region of Nigeria and based on the fact that majority of the population of Northern Nigerians practice Islam which endorses and promotes child marriage, the high incidence of child marriage in the Northern region can be attributed to this factor.

### ***Insecurity***

With the high level of insecurity and displacement caused by the Boko Haram insurgents in Nigeria, over 35% of girls between ages of 6-14 are out of school in the Northwest and Northeast regions of Nigeria. This is more compounded with the demand of the insurgents among which is the advocacy against western education. In most of their attacks and kidnap sessions, the insurgents give preference of pardon to girls who are out of school and who are married. Where they kidnap at random, the practice has been to release the girls who were married, especially if they proclaim the Islamic faith. This has led many parents in these regions to give out their girls out in marriage with minimal or no chance at formal education.

### **Effects of Child Marriage**

#### ***Education***

In Northern Nigeria, prominently in the rural parts of the North-East, parents deliberately keep their daughters out of school because investing in their education is considered a liability to the parents.<sup>23</sup> Upon marriage, the chances of a girl child enrolled in school to remain in school and complete her education are greatly reduced. This is mainly due to the burden of household chores coupled with that of child bearing. Some husbands deliberately keep their child brides away from school on the ground that the education will not benefit them in any way and to prevent them from being influenced by 'western knowledge'.

Also, in many African homes, the role of the woman is still seen as being that of the house keeper and child rearing. This factor had discouraged many families from investing in educating a girl child. This is coupled with the justification of many poor families in the

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<sup>20</sup> TS Braimah 'Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage' (2014) 14 *African Human Rights Journal* 474.

<sup>21</sup> S Fabamise 'The introduction of Sharia legal system in Nigeria: problems and prospects' in A Ibidapo-Obe & TF Yerima (eds) *International law, Human Rights and development, essays in honour of Professor Akintunde Oyebo* (2004) 380.

<sup>22</sup> Niger; Bauchi; Borno; Gombe; Jigawa; Kaduna; Kano; Katsina; Kebbi; Sokoto & Yobe.

<sup>23</sup> n 1 above.

Northern part of Nigeria that it is better to get their daughters married off than to enrol them in a school where they get low quality of education that would not add value to their lives.

Research of 29 countries showed that women who got married when they were 18 years or older had more education than their counterparts who got married when they were younger than 18 and it was discovered that a woman's age at first marriage is positively related to her total years of schooling.<sup>24</sup> It was observed in Nigeria that women who were at least 18 when they married achieved, on average, 9.3 years of schooling, while those who married before they were 18 remained in school for only 2.5 years.

For the child brides that continue school after marriage, they are often forced to drop out of school upon getting pregnant and this still results in the same effect as those who had to stop school for marriage purpose. Research has further shown that mothers without education are less likely to keep their children in school since they themselves lack the knowledge of the benefit of being educated and even if they desire for their children to be educated, they often lack the capacity and resources to educate them and the children end up being child brides themselves.<sup>25</sup> This in turn leads to recycling child marriage, poverty and lack of access to education and information.

### ***Reproductive health***

Most child brides lack the basic information they require regarding reproductive health issues. This is mainly due to the fact that the girls are kept out of school and they hardly attend anti natal programmes where they can get adequate information on health-related issues such as HIV vulnerability, maternal mortality and risks associated with pregnancies at a tender age.

Young mothers experience higher rates of maternal mortality and higher risk of obstructed labour and pregnancy-induced hypertension because their bodies are unprepared for childbirth.<sup>26</sup> Girls between 10 and 14 are five times more likely than women ages 20 to 24 to die in pregnancy and childbirth<sup>27</sup> while girls ages 15 to 19 are twice as likely as older women to die from childbirth and pregnancy, making pregnancy the leading cause of death in poor countries for this age group.<sup>28</sup> A child born to a mother in her teens is two times more likely to die before they reach the age of one than a child born to a woman in her 20s.<sup>29</sup> Also, child brides are more vulnerable to contract sexually transmitted diseases and stand the risk of contracting HIV/AIDS since their spouses are always much older and more sexually active.

It has also been established that girls who have babies also have a high risk of suffering from obstetric fistula, a condition in which the vagina, bladder and/or rectum tear during childbirth and, if left untreated, causes lifelong leakage of urine and faeces.<sup>30</sup> Research has further

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<sup>24</sup> S Clark *et al* 'Protecting young women from HIV/AIDS: the case against child and adolescent marriage' (2006) 32:2 *International Family Planning Perspectives* 79.

<sup>25</sup> L Asrar *Preventing child marriage in the Commonwealth: the role of education* (2015).

<sup>26</sup> SM Mathur *et al* 'Too young to wed: the lives, rights and health of young married girls' (2003) *International Center for Research on Women*.

<sup>27</sup> United Nations Population Fund and the University of Aberdeen *Maternal mortality update 2004: delivering into good hands* (2004).

<sup>28</sup> Save the Children 'State of the World's Mothers 2004' (2004).

<sup>29</sup> S Jain & K Kurz *New insights on preventing child marriage: a global analysis of factors and programme* (2007) 8.

<sup>30</sup> United Nations Population Fund and Engender Health *Obstetric fistula needs assessment report: findings from nine African countries* (2003).

revealed that if all women completed primary education, the under-five mortality rate would drop by 15% in low and lower middle income countries, saving almost a million lives annually<sup>31</sup> and if all women completed secondary education, the under-five mortality rate would drop by 49%, saving 3 million lives annually.<sup>32</sup>

### ***Economic Impact***

While it can be shown that educated women contribute towards the economic growth of their society, a research on the rate of global impact of women on the economy is underway, being conducted by the World Bank and International Centre for Research on Women with projected results in 2017.<sup>33</sup> Female education is essential to economic growth and investment in female education has economic and social benefit as it is possible in breaking poverty cycle.

The effect of the form of marriage based on the predominant culture in northern Nigeria indicates a low level of economic contribution on the part of married women. As noted by Salamone<sup>34</sup> when she said:

Hausa women are put into purdah<sup>35</sup> 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.

As noted, child marriage is a causal factor to non-education of many female children in Nigeria and in order to break the cycle of poverty, there is a dire need to invest heavily on education of the girl child. By this investment, the educated female child will be able to contribute her quota to economic development and sustenance which is the most viable means to break the cycle of poverty as well as curb child marriage in Nigeria.

### **Initiatives to End Child Marriage**

Globally, there has been several approaches in fighting child marriage which can be broadly categorised into the legal approach, the social benefit and development approach, the economic benefit and employment approach and the empowerment education approach.<sup>36</sup> Nigeria has about 25 intervention programmes in child marriage with almost all of them concentrated in the northern region. While some programmes are targeted at enrolling and retaining girls at schools using strategies like direct cash grants to the parents on the condition that the girls remain in school, some seek to empower women to be economically independent while other programmes are focused on fistula.

### ***Legal approach***

The legal approach found its root in the works of non-governmental and developmental agencies<sup>37</sup> and Convention on the Elimination of All Forms of Discrimination against

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<sup>31</sup> UNESCO (2013) 20.

<sup>32</sup> n 27 above, 20.

<sup>33</sup> International Center for Research on Women *Understanding the Economic Impacts of Child Marriage* <http://www.icrw.org/where-we-work/understanding-economic-impacts-child-marriage> (accessed 10 June 2015).

<sup>34</sup> F Salamone *The Hausa of Nigeria* (2010) 134.

<sup>35</sup> Seclusion.

<sup>36</sup> A Ekine *et al* 'Improving learning opportunities and outcomes for girls in Africa' (2013)

<http://www.brookings.edu/globalscholars> (accessed 15/08/2015).

<sup>37</sup> Such as USAID, Action Aid, UNESCO, UNICEF and a host of others.

Women, issued in Cairo in 1994 for the purpose of eradicating child marriage and promoting the education and protection of the girl child.

The International Conference on Population and Development (ICPD) in Beyond 2014 agenda-setting report, maintains a strong focus on ending child marriage by compelling governments to fulfil their responsibilities in the area of girls' rights in health and education.<sup>38</sup> The rights based approach seeks to ensure that States promulgate laws regulating the minimum age of marriage but where many African countries had complied with this, enforcement of the laws remain elusive as there are no judicial authorities to buttress the provisions of the laws so promulgated despite the prevalence of child marriage in the Nigerian society.

In Nigeria, between 1970s and 2015, there exist over 54 policies and legislations aimed at promoting girls' education. However, it has been recorded that Nigeria has the highest number of school girls in West Africa and many of these out of school girls between the ages of 10-14 in Nigeria had never attended schools.<sup>39</sup> The main problem seems to lie in the aspect of implementation and enforceability of these frameworks.

And to buttress the need for implementation, at the event to commemorate Day of the African child 2015, Girls, Not Brides had called on all African governments to develop and implement national strategies and action plans and provide a legal framework that protect girls from early marriage and its negative consequences by working closely with civil societies that protect all girls at risks.<sup>40</sup>

### ***Violence against Persons (Prohibition) Act (VAPA) 2015***

The Violence against Persons (Prohibition) Act 2015 recently signed into law is an Act to eliminate violence in private and public life, prohibit all forms of violence against persons and to provide maximum protection and effective remedies for victims and punishment of offenders. The Act goes a step further than the Criminal Code Act<sup>41</sup> in defining rape to mean the intentional penetration of the vagina, anus or mouth of another person if such person does not consent to the said penetration or if the consent is obtained by force or means of threat or intimidation. It also recognizes the fact that women can commit rape too.<sup>42</sup>

The provision that a list of sex offenders should be maintained and made accessible to the public is a welcome development in Nigeria.<sup>43</sup> However, this law has not been publicised enough for stakeholders to be aware of their rights, benefits and obligations under it. Also, the societal attitude might not encourage the effective implantation of this law as Nigerians generally do are not favourably disposed to a wife making a formal complaint or report of sexual assault by a wife against the husband. The law enforcement agents encourage private resolution and settlement of such 'family dispute' rather than focus on the crime said to have been committed against the wife.

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<sup>38</sup> International Conference on Population and Development (ICPD) Beyond 2014 'ICPD Beyond 2014 and the Post-2015 UN Development Agenda' (2014).

<sup>39</sup> n 32 above.

<sup>40</sup> 'Girls Not Brides Calls for Renewed Action to End Child Marriage in Africa' *Leadership* 16 June 2015.

<sup>41</sup> Laws of Federation of Nigeria 2004 Cap C38.

<sup>42</sup> Violence against Persons Act 2015 sec 1.

<sup>43</sup> n 38 above, sec 2.

### ***Child's Rights Act***

In 2003, Nigeria gave internal effect to the UN Convention on the Rights of the Child by enacting the Child's Rights Act<sup>44</sup> and this has been re-enacted or re-enacted *mutatis mutandis* by 26 States in the country. Some States in Northern Nigeria<sup>45</sup> refused to pass the Child's Rights Law mainly because of the provision on marriageable age which contradicts the prevailing custom that permits child marriage. The effect is that the States that have refused to give effect to the Child's Rights Act by enacting a state version of the law cannot be bound by the provisions of the Child's Rights Act.<sup>46</sup>

The justification for the requirement of individual states of the federation to domesticate the law is based on the fact that child justice administration is under the concurrent list of the Nigerian Constitution<sup>47</sup> and as such the National Assembly lacks power to make laws for the States on issues that fall within the concurrent list.

### ***Sexual Offences Bill***

The Sexual Offences Act is a legislation passed into law in May 2015. It seeks to make provisions on sexual offences, prevent and protect all persons from harm, unlawful sexual acts and related purposes. Section 7 of the Act has generated a lot of controversies among scholars, practitioners and general the public. The section which 7 deals with the defilement of a child provides that:

7. (1) A person who commits an act which causes penetration with a child is guilty of an offence called defilement.
- (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for life.
- (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for life.

The implication and intendment of the legislation is that any person who defiles a child below the age of 18 is guilty of the offence of defilement. However, it had been argued nationwide that the manner in which this provision of the law was drafted is ambiguous and this was evidenced by the heat that the provision generated. The opinion of some people is that it was drafted in a manner to protect prospective offenders. This was based on the fact that many people just read the first part that prohibited defilement of a child below 11 years and concluded based on that without reading further.

Subsection 5 of section 7 further provides that:

7 (5) It is a defence to a charge under the section (if)-

- (a) It is proved that such child deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and
- (b) the accused person reasonably believed that the child was over the age of eighteen years.

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<sup>44</sup> n 7 above.

<sup>45</sup> Specifically, Adamawa, Bauchi, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara States of Nigeria.

<sup>46</sup> n 12 above, 245.

<sup>47</sup> The Constitution of the Federal Republic of Nigeria, 1999 (as set out in 1999 Part II of 2nd Schedule to s 4(2).

This is in sharp contrast to the provision of section 31 of the Child's Rights Act 2003 which also prohibited sexual intercourse with a child and makes such an act to be rape which is punishable by imprisonment for life. Under the Child's Rights Act, it is immaterial that the offender believed the person to be of or above the age of 18 years or that the sexual intercourse was with the consent of the child.

From the contradictions in the provisions of the Sexual Offences Bill and the Child's Rights Act, one cannot help but think and wonder if this is a deliberate act on the part of the lawmakers to insert a shield to protect offenders of child marriage and defilement. This line of reason flows from the fact that the Sexual Offences Bill was enacted in 2015 while the Child's Rights Act is a 2003 law. Rationally, a 2015 law ought to be an improvement on the earlier law and not seek to contradict a law which, if properly implemented, could bring about a great reduction in the incident of child marriage in Nigeria.

### ***Social benefit and development approach***

This approach emanated in the 1950s from literatures on girls' education and fertility. The approach is in line with the contribution of education in delaying the first marriage of girls. Thus, when girls are kept in school, the tendency is that the first marriage will be delayed till the girls are psychologically and physically mature to handle the demands of marital life. The, delayed first marriage results in delayed fertility of girls.

Demographers, population scholars, ethnographers and sociologists were at the fore front of this approach. Their works showed a simple linear propositions equating duration of schooling with changes in the age of marriage, numbers of births, numbers of live births and child mortality.<sup>48</sup>

In Nigeria, forward radio programmes like '*Tsarabar Mata*' focuses on discussions on health-related issues like fistula and early marriage. There have also been several campaign programmes by civil societies, media and government on the need to stop acts of child marriage. Most West African countries have in place scholarship schemes and Ambassador programmes to keep female children in school by seeking to reduce the education burden on the parents. Education programmes combined with community advocacy is the most dominant intervention in northern Nigeria.

Also, an estimated 400,000 to 800,000 of the world's estimated 2 million fistula sufferers live in Nigeria, most of them young girls.<sup>49</sup> Programmemes focused on vesicovaginal fistula (VVF) are considerably high in the northern region of Nigeria. Most of these programmes focus on prevention and surgical repairs. Also, some of these programmes offer economic support to some victims of VVF who had undergone surgical repair to make their integration into the society easy.

In July 2016, the federal government of Nigeria, through the Ministry of Women Affairs and Social Development set up a technical committee on strategies to completely end incidence of child marriage in Nigeria. The committee is saddled with the duty to raise awareness on child marriage issues as well as encourage attitudinal change among members of the society.

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<sup>48</sup> n 32 above.

<sup>49</sup> Walker (n 4 above) 42.

Also, the committee is enjoined to monitor and implement exiting laws to eradicate child marriage in Nigeria.

### ***Economic benefit and employment approach***

The economic benefit and employment approach emerged from ‘discourses on economic empowerment and technical education to demonstrate the benefits of non-formal education to the individual girl in terms of income generation alternatives to child marriage.’<sup>50</sup> Literatures developed to link child marriage to the inability of females being able to participate and contribute to the growth of underdeveloped economies.

A notable programme in this context is the married adolescent programme which is a programme that seeks to promote safe and healthy transition to adulthood through prevention of HIV/AIDS among young married girls in eight states in northern Nigeria. The programme provides youth-friendly sexual and reproductive health services like family planning to married adolescents. The programme was funded by United States Agency for International Development (USAID) and implemented by Population Council through partners including America’s Health Insurance Plans (AHIP), Islamic Education Trust and Federation of Muslim Women’s Association in Nigeria (FOMWAN).

### ***Empowerment education approach***

This is basically a feminist approach to ending child marriage. This approach is to the effect that child marriage is a form of gender-based violence and the advocates of this approach aims at raising consciousness and bringing an end to child marriage. This approach tends to empower girls with the knowledge and skills to understand and confront the male dominated status of the society.

Thus, the strategy is to adopt non-formal education rather than the formal education system with the aim of reaching more marginalised girls.<sup>51</sup> The approach was made popular by the International Labour Organization (ILO) basic needs strategy and by the Women in Development (WID) movement of the mid-1970s to early 1990s.<sup>52</sup> It had been observed that the potential of non-formal training programmes to serve as an empowering platform for girls and women escaping from traditional roles, including that of child marriage, was missed in the framing of the Millennium Development Goals (MDGs).<sup>53</sup>

Due to the house chores and other marital responsibilities of a girl wife, she is deprived of her right to education. As such, a series of global policies on women and child’s rights set the stage for this approach. This has led to compelling arguments on empowerment education made by development agencies.<sup>54</sup> UN Women pushed for a curriculum that seeks to provide girls and young women with tools and expertise to understand the root causes of violence in their communities and educate communities to prevent such violence. In a joint statement by

<sup>50</sup> n 32 above.

<sup>51</sup> J Chimombo *et al* *A comparative study on universal primary education policy* (2008) 53.

<sup>52</sup> International Labour Organization *Employment, growth and basic needs: a one world problem-the international basic needs strategy against chronic poverty* (1977).

<sup>53</sup> M Hartl ‘Gender pathway out of poverty: rural employment programme – technical and vocational education and training (TVET) and skills development for poverty reduction – do rural women benefit?’ (paper presented at FAO-IFAD-ILO workshop on gaps, trends and current research in gender dimensions of agricultural and rural employment: differential pathways out of poverty, Rome, March 31–April 2, 2009).

<sup>54</sup> Ekine (n 32 above).

UN agencies to commemorate the 2013 International Day of the Girl Child important empowerment policy recommendations were reiterated on how education can end child marriage.<sup>55</sup>

## Conclusion

An attempt had been made at identifying the prominent causes and factors responsible for child marriage in Nigeria. While child marriage is a general problem in Nigeria, it is more prominent in the Northern part of Nigeria due to the influence of Islam and the adoption of Sharia legal systems in some Northern states of the country.

Also, the government has enacted the domestic version of the UN Convention on the Rights of the Child and further enacted several laws to reduce the incidence of child marriage. These laws have been of little effect, especially in the region that require them most, due to the fact that matters that relate to child justice administration fall under the Concurrent List of Part I of the Second Schedule of the Constitution of Nigeria, and the Federal government lacks absolute legislative power over matters relating to child justice administration. The states are at liberty to legislate as they deem fit on child rights matters, and they are not bound by federal legislation in that regard.

Lastly, while the recent passage of the Violation Against Persons (Prohibition) Act in May 2015 has been a welcome idea in expanding the frontiers of acts that qualifies as violence against women and girls, the Sexual Offence Act 2015 on the other hand appears to contradict the efforts of previous laws on reducing the incidence of child marriage in Nigeria due to the defence that if a man reasonably believes that a child is above the age of 18, the man will not be guilty of defiling the girl child.

## Recommendations

‘Changing social norms can take a long time, and there is still lack of consensus about how exactly social norms change.’<sup>56</sup> There is no single solution to end this phenomenon of child marriage. A starting point to end child marriage is to embark on an aggressive advocacy campaign on the need for attitudinal change of members of the society and especially in the Northern region where most policies are interpreted to be attacks on faith or religious beliefs. There is need to sensitise members of the society on maintaining rational approach and sense of reasoning towards a progressive policy.

While it might be true that the interpretation of some Hadiths<sup>57</sup> promoted child marriage, this act had become archaic in light of modern development and the utmost factor should be the best interest of a child.

In terms of policy and legal framework, the Nigerian government needs to review the Constitution to include child justice administration in the exclusive list such that laws that relate to child welfare and administration will be within the ambit of the federal government without the need for state governments to enact their versions as they deem fit. In this regard,

<sup>55</sup> UN Women *UN Women: Approaches to End Child Marriage* (2012) <http://www.unwomen.org/en/news/stories/2012/10/un-womenapproaches-to-end-child-marriage/pdf> (accessed 15/08/2015).

<sup>56</sup> L Asrar *et al Preventing child marriage in the Commonwealth: the role of education* (2015).

<sup>57</sup> Sayings and deeds of Prophet Mohammed.

the country will be able to maintain uniform laws on matters that deals with child administration and not leave the wellbeing and fate of the future generation, especially the girl child, in the hands of a few individuals whose paramount interest may be to protect and promote their individual interests.

While consent of parties is a requirement of a valid statutory marriage, consent of the parents, families and parties are required under various customary law systems in Nigeria, depending on the ethnic group involved; whereas in some localities, the consent of the bride is not obtained as this is seen as immaterial since she is bound to obey the wishes of her parents, particularly the father. There is the need to embrace a nationwide position that makes the bride's consent a prerequisite to a valid marriage in Nigeria irrespective of the nature of the marriage.

A notable problem with the Nigerian society basically relates to the implementation and enforcement techniques and enthusiasm. Though the country is rich in terms of policy making that is progressive, the laws are of no use if they cannot be implemented to serve the purposes for which they were enacted. The more the government and enforcement agents are able to be dedicated to their duties in a patriotic manner, the more the laws enacted will be enforced to serve its purposes.

Inasmuch as government and civil organisations are making efforts in promoting the education of the girl child, the government has to take firm steps on this position by enacting a specific law on prohibition of child marriage. The law, while prohibiting child marriage, should make completion of basic education of the girl child compulsory and should criminalise all acts to keep the girl child away from a mode of education. Efforts should also be made to make quality inclusive education accessible to all, especially in the states where the practice of child marriage is prominent.