

RIGHT TO EDUCATION OF THE GIRL CHILD AND PRACTICE OF CHILD MARRIAGE IN NORTHERN NIGERIA: CHALLENGES AND WAY FORWARD

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Abstract

Child marriage is a perennial problem that is common and peculiar in Northern Nigeria with attendant increase in number of out of school girls. Efforts are made to contain the trend of child marriage as can be gleaned from the enactment of Child's Right Act which prohibits child marriage. However, Child Right Laws in most states of the North seem to permit child marriage where the child has attained puberty. Out of several options that are been considered as possible solutions to the problem of child marriage, the strategy that seems to have agitated the international community, government and other stakeholders is free and compulsory education of the girl child. This paper adopted doctrinal method of research to examine the practice of Child marriage and how compulsory education impacts practice of child marriage in the North. Thus, the research question was, what is the best way forward for addressing the prevailing culture of marriage with children in Northern Nigeria? This paper has found that some legislation and customs seem to permit child marriage and betrothal despite the acclaimed right of the girl child to free, and compulsory education, and the International legal instruments which do not permit child marriage. More so, the problem of marriage with a child requires a multi- faceted approach rather than the compulsory education approach which seems restrictive. Thus, it has been recommended that the Child Right Laws of the Northern states should be amended to clearly prohibit child marriage in the North, and proscribe customary practices that promote marriage with a child.

Keywords: Right, Compulsory Education, Child Marriage, Girl Child, Human Right.

1.1 INTRODUCTION

Child marriage is a perennial problem that is common in Nigeria, particularly in the North with certain socio-economic consequences such as increase in the number of out of school girls. Efforts are made towards checking the trend of child marriage in the North as can be gleaned from the enactment of legislation prohibiting child marriage such as the Child's Right Act¹. Out of several options that are been considered as possible solutions to the problem of child marriage, the strategy that seems to have agitated the international community, government and civil society organizations is the option of free and compulsory education of the girl child. Education is crucial

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¹ The Child Right Act, 2003 was promulgated on 31th July, 2003 as Act No.26 after it was assented to by President Olusegun Obasanjo. The Act shall herein after be called 'CRA'.

because it empowers the girl and enables her to take informed decision about marriage.² By educating the girl child, it is believed that she will be retained in school and her education will not be interrupted due to early marriage. However, certain socio-economic and legal challenges in Nigeria make it impossible to address child marriage in the North through compulsory education. This research argues that certain customs of the communities and legislation in the North still permit child marriage and betrothal despite the right to free, and compulsory education.

It is instructive to note that the multi-structural nature of Nigeria's legal system enables different laws such as customary law, Islamic law and legislation to operate with attendant incident of conflict of laws. This situation entails irreconcilable conflicts among these laws although the Constitution has clearly defined their areas of application, especially customary law and Islamic law. The research question posed by this paper is, what is the strategy to be adopted to address the prevailing culture of marriage with children in Northern Nigeria? This paper examines the interplay between the right to education and the culture of marriage with children in the context of the multi-dimensional pattern of Nigerian legal system.

The significance of the paper lies in the fact that this paper addresses the vexed problem of the culture of marriage involving children by examining the different applicable to marriage with a child. More so, this paper underscores the point that unless the conflicts in customary law, Islamic law and legislation governing child marriage are resolved, child marriage will persist in the North despite various legislation, policies and interventions by government, agencies and non-governmental organization. To this end, this paper relied on doctrinal research method to examine the interplay between the right to access education and child marriage. The objective of the paper is to establish that although promoting the girl child's access education can be an effective strategy to drastically reduce incidences of child marriage, education may not a silver bullet. Therefore, it is imperative to interrogate the laws enacted to protect the child and prohibit marriage with the child in the Northern Nigeria and discover whether the laws actually promote the practice.

² Olayinka Ademidun Adediran, *Abolition of Child Marriage Practice in Nigeria: A Case Study of Girl Bride in the Northern Part of Nigeria*, (Maimo University, 2021) 22. Retrieved from: <https://www.diva-portal.org/smash/get/diva2:1562366/FULLTEXT02.pdf>. Accessed on 19/4/25 at 11:40am.

1.2 LEGAL FRAMEWORK GOVERNING THE RIGHT TO EDUCATION IN NIGERIA

Access to education is a right which has received recognition and protection under numerous international and local human rights instruments. Prior to the development of human rights in International law, human rights were considered as matters within the domestic jurisdiction of sovereign states. However, after 1945, focus was directed at human rights due to the grave breaches that were perpetrated during the wars. As such, in 1945, the international community adopted the United Nations Charter in 1945 with the purpose of promoting human rights, and this was subsequently followed by the Universal Declaration of Human Rights and series of international human rights instruments.³ At the level of international law, education is guaranteed by international human rights instruments such as Universal Declaration of Human Rights⁴, International Covenants on Civil and Political Rights (ICCPR), International Covenants on Economic, Social and Cultural Rights⁵, and the Convention on the Rights of the Child⁶. These instruments collectively entrenched the right to education internationally and thus place equal obligation on the states to protect and promote the right to education. For instance, as regards right to education, it is provided as follows:⁷

1. Everyone has the right to education. Education shall be free, at least in the elementary level and shall be compulsory and accessible.
2. Education shall be aimed at full development of an individual and to strengthen the respect for human rights. It must promote understanding, tolerance and friendliness among countries and shall promote and maintain world peace and security.
3. Parents have right to choose the type of education that is to be accessible by their children.

This right is important because it provides the individual with tools for his socio-economic development. It covers civil and political rights, as well as economic, social, and cultural rights,

³ David Harris, *Cases and Materials on International Law* (7th Edition, Sweet & Maxwell, 2010)535.

⁴ It was adopted on 10th December, 1948 by UN General Assembly. It shall hereinafter be referred to as 'UDHR'.

⁵ Both Covenants were adopted by the UN General Assembly on 16th December, 1966.

⁶ It was adopted on November, 1989. It is herein after referred to as 'CRC'.

⁷ Universal Declaration of Human Rights, 1948, Article 12.

and also promotes the notions of understanding, tolerance, peace and harmonious relationship among individuals of different racial and religious inclination.⁸

The philosophy of the right to free and compulsory education for all, especially the girl child has been succinctly provided in the UDHR.⁹ Similarly, the CRC also provides for protection of the right to education by affirming the right of every child to free and compulsory education.¹⁰ At the regional level, the African Charter on Human and Peoples' Right¹¹ also states that every individual shall have a right to education. More so, the African Charter on the Rights and Welfare of the Child¹² provides for right to education. These instruments have been ratified by Nigeria and therefore Nigeria has a duty to implement the provisions of the human rights instruments. However, ratification of the international treaties on right to education does not automatically make such treaties enforceable in Nigeria.¹³ Therefore, the Nigerian Constitution requires that a treaty has to be enacted into law before it becomes enforceable in Nigeria.¹⁴

At the national level, Nigerian Constitution recognizes the compulsory education although this is not included as a part of Chapter Four of the Constitution. The right to education is seen in the responsibility imposed on government to ensure that there are equal and adequate educational opportunities at all levels. This responsibility also imposes duty on government to strive to eradicate poverty and provide free education at all levels.¹⁵ Conscious of these responsibilities, the government introduced the Universal Basic Education (UBEC) programme and also enacted the Child Right Laws. Kaduna State was the first state in the Northern Nigeria to domesticate the CRA by enacting the Child Welfare and Protection law in 2018.¹⁶ Therefore, the Constitution, Universal Basic Education Act and CRA constitute the legal framework for the implementation of compulsory education in Nigeria. The principles of equality of opportunity in education and freedom from discrimination underpin the right to compulsory education.¹⁷ These principles have

⁸ Javaid Rehman, *International Human Rights Law*, (2nd Edition, Pearson Education Limited, 2010)160.

⁹ UDHR, 1948, Article 26

¹⁰ CRC, Articles 28, 29, 30, and 31.

¹¹ This was adopted by Nigeria on 22nd June, 1983. It was ratified by an Act No. 2 of 1983

¹² Adopted on July, 1990 but ratified on July, 2001.

¹³ Katarina Tomsevski, *Free and Compulsory Education for All Children: Gap Between Promise and Performance*, Raoul Wallenberg Institute, 2001)16

¹⁴ CFRN, 1999, s 12

¹⁵ CFRN, 1999 s 18(3)(a)-(d)

¹⁶ https://dailytrust.com/kaduna-assembly-passes-child-protection-law/#google_vignette. Accessed on 4/06/2024 at 2:15pm

¹⁷ Elijah Adewale Taiwo, 'Equal Access to Education and Freedom from Discrimination in Educational

been adopted in the UNESCO Convention against Discrimination in Education with a two-throng objective: elimination of discrimination in education and promotion of equality of opportunity and treatment.¹⁸

However, the nature and extent of the relationship between international human rights instruments and local legislation remain controversial. There are few theories which seek to explain the interplay between international law and Nigerian domestic laws. The dualist theory opines that international law and domestic law are quite different from each other in terms of nature, character and sphere of application.¹⁹ That notwithstanding, in the event of conflict between the two systems, national law will take precedence over international law. Thus, international law can only be applied in a foreign country if it has been incorporated or transformed in the municipal law and it satisfies the conditions prescribed by municipal law for its validity and operation.²⁰ However, the Monist theory provides an alternative approach to the relationship between international human rights instrument and domestic laws. This theory views international and municipal laws as interconnected and therefore constitute a whole legal structure.²¹ As such, English courts take judicial notice of international law because rules of international law or treaties are considered as rules of law which need not be proved before the court.²² According to the Monist theory, international law is superior even within the sphere of domestic laws.²³

Notwithstanding the foregoing, the theories of dualism and monism can be criticized on the basis that they presuppose that there is a common place or ground where both international law and municipal law interact. In view of the criticism against dualism and monism, third theory formulated by Fitzmaurice and Rousseau deny the existence of a common ground on which international law and municipal law apply and argue that the superiority of one system over the other does not arise.²⁴ According to the theory, international law and municipal law are two distinct

Opportunity: An Analysis of the Constitution and International Obligations in Nigeria' [2011] (1)(1) *University of Ibadan Law Journal*, 288.

¹⁸ Ibid, 289.

¹⁹ Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria*, (Snaap Press Limited, 2013) 106.

²⁰ E.N. Mgbemena, *Moniest and Dualists and the Applicable Laws in International Commercial Arbitration*, [2916](4)(1) *Madonna University Faculty of Law Journal*, 72.

²¹ J.G. Starke, *An Introduction to International Law*, (Eight Edition, Butterworths, 1977) 84

²² Ian Brownlie, *Principles of International Law*, (Third Edition, Clarendon Press, 1979) 44

²³ Chris Nwachukwu Okeke, *The Theory and Practice of International Law in Nigeria* (Fourth Dimension Publishers, 1986) 3.

²⁴ Malcolm N. Shaw, *International Law*, (Seventh Edition, Cambridge University Press, 2014) 94.

legal systems operating within their respective fields.²⁵ In the Nigerian context, the dualist theory has been adopted in Nigeria to govern the application of international treaties in Nigeria since the Constitution provides that a treaty shall not apply in Nigeria unless it is enacted into law.²⁶ In any case, the legal effect of such relationship between international law and municipal law is rarely significant because the principles of international human rights on right to education, especially free and compulsory education have been incorporated into the domestic legal regime. Nonetheless, since these international human rights instruments do not apply automatically in Nigeria, it is necessary to domesticate them to make them enforceable in Nigeria.

1.3 THE CONCEPT OF CHILD MARRIAGE IN NIGERIA

Marriage is an institution that is significant in every society due to its socio-economic values. As such, some international instruments provide that persons of marriageable age are entitled to marry and establish a family according to their national laws.²⁷ Danladi opined that this right is distinct from other rights because it does not have limitations at all. He however conceded that some limitations may be found in some national laws governing exercise of the right such as the laws that prohibit Incest and Polygamy in some jurisdictions.²⁸ Similarly, the UDHR also recognizes the right to marry, and found a family.²⁹ It can be gathered from the *travaux preparatoires*³⁰ of the UDHR that Article 16 requires marriages to be entered into voluntarily and that the partners to the marriage should be treated on the basis of equality.³¹ This concern was considered in the drafting of subsequent international instruments. Unfortunately, Article 12 of the European Convention has been described as retrogressive as it did not reflect the provision of Article 16 of the UDHR.³² The

²⁵ Ibid.

²⁶ CFRN 1999, s 12

²⁷ European Convention on Human Rights and Fundamental Freedoms, Article 12

²⁸ Kabir Mohammed Danladi, *Introduction to International Human Rights Law and Practice* (Ahmadu Bello University Press Ltd, 2016) 113.

²⁹ Article 16 of Universal Declaration of Human Right, 1948, Article 16

³⁰ Documents and materials produced during negotiation, drafting and discussion of a treaty such as minutes of Meetings, draft of the treaty texts, reports and other documents prepared during the treaty making process.

³¹ Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, (Clarendon Press, Oxford, 1984) 155.

³² Ibid, 55.

American Convention meanwhile, guarantees all rights found in the UDHR and also requires that equal rights shall be accorded to children born out of wedlock and those born in wedlock.³³

Similarly, Nigerian Constitution has guaranteed the right to found a family through marriage in line with the customs of the people. The question to be answered here is, does the girl child also enjoy freedom to marry and found a family as guaranteed by international instruments and the Constitution? The response to this question depends on the minimum age of marriage stipulated by law. It is important to note that marriage is contractual in nature, and like other contracts, the capacity of a child to enter into contract of marriage is governed by the rules of law of contract. At common law, an infant can enforce a contract to which he is a party but the infant cannot be sued on the contract during his infancy.³⁴

Under customary law, infancy or adolescence is a concept of universal acceptance in all African societies, including the communities of the North where Islam is the predominant religion. The age of majority varies from one community to another, and the customs prescribe the attainment of puberty as age of majority and basis for membership of the community. Thus, in such communities, unless a child has performed puberty rites, he or she is not legally entitled to get married.³⁵ Puberty is usually attained at the ages of 14 and 16 for girls, and 16 and 18 for boys.³⁶ Thus, most customary laws in Nigeria do not prescribe any specific age of solemnization of customary law-marriage. Consequently, the capacity of the parties to contract a customary marriage depends on two factors. One is the attainment of the marriageable age, and the second is exclusion from the prohibited degrees as recognized by the community.³⁷ In contrast, Kolaja identified four essential requirements for validity of customary marriage: consent of the bride and her parents or guardian, capacity to marry, payment of bride price, and formal giving away of bride.³⁸ At customary law, a person lacks legal capacity to marry either because he is under age or because there is a 'Christian marriage' subsisting between him and a third party.³⁹ According to

³³ American Convention on Human Rights, Article 17

³⁴ E.I. Nwagugu, *Family Law in Nigeria*, (Heinemann Educational Books Plc, 1974) 2.

³⁵ T. Olawale Elias, *The Nature of African Customary Law* (Third Impression, Manchester University Press, 1972) 103

³⁶ Ibid.

³⁷ Akintunde Emiola, *African Customary Law*, (3rd Edition, Emiola Publishers Ltd, 2011) 128-129.

³⁸ A.A. Kolajo, *Customary Law in Nigeria through the Cases*, (Spectrum Books Ltd, 2005) 235.

³⁹ Ibid

Nwagugu, absence of a specific age for marriage in the customary law has encouraged the practice of child marriage.⁴⁰

Furthermore, the laws governing marriage in Nigeria do not seem to specify any age minimum threshold for marriage. Rather, they merely state that unless the party is a widow or widower, there is need to obtain the written consent of either the parents or guardian, where such party is below the age of 21 years.⁴¹ The implication is that a child can get married subject to consent of her parent or guardian while a person who is 21 years or above is not required to obtain consent of the parent or guardian. Unfortunately, the laws seem to allow encourage child marriage since statutory marriage with a child will be valid if the consent of the parent was obtained in writing.⁴² In consequence, the laws governing marriage tend to undermine the objectives of the CRA, Child Rights Laws and restrict access to compulsory education.

CRA which domesticated the international instrument on the rights of the Child defines a child as a person below 18 years.⁴³ The pertinent question therefore is, what is the age at which a person can enter into contract of marriage in Nigeria? This question is important because it determines whether a particular marriage is a child marriage or not. Before the CRA, it was believed that the age at which a person can lawfully contract marriage was 16 which was the age applicable under the English law. Although it has been canvassed that Nigeria should revert to the Common law age of 14 years for boys and 12 for girls, this has been dismissed retrogressive.⁴⁴ Nevertheless, countries have obligations to take legislative action to specify the minimum age for marriage. Accordingly, no marriage shall be legally entered into by any person under the prescribed age except, where a competent authority has granted an exemption for serious reasons which will protect the interest of the party to the marriage who is below 18 years.⁴⁵

Child marriage in Northern Nigeria has been lingering on for a long time and the girl child has been suffering as she is deprived of her right to access education and other opportunities to realize

⁴⁰ Nwagugu (n, 34) 43.

⁴¹ Margaret C. Onokah, *Family Law* (Spectrum Books Ltd, Ibadan, 2003) 13.

⁴² Ibid, 124.

⁴³ Ifeoluwa A. Olubiyi and Aghohovwia Kwame-Okpu, 'An Assessment of the Protection of Children under the Nigerian data Protection Regulation 2019' [2021](9)(1), *ABUAD Law Journal*, 8.

⁴⁴ Itse Sagay, *Nigerian Family Law, Principles, Cases, Statutes & Commentaries* (Malthouse Press Ltd, Ikeja, 1999) 52.

⁴⁵ Article 2 of the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages Opened for Signature and Ratification by General Assembly resolution 1763 A(XVII) of 7th November, 1962 which into force 9th December, 1964.

her full potentials. Although the government is making effort to end child marriage in Nigeria, the practice is still common and widely practiced in the North. It has been argued that religious practice tends to encourage early marriage and parents indulge in it as a way of preventing pregnancy outside wedlock.⁴⁶ Reasons adduced for early marriage is that it preserves the value of virginity, reduces fear about marital sexual activity and promiscuity.⁴⁷ However, child marriage can be criticized for making young girls become mothers before adolescence. It exposes children to risk of Vesico Vagina Fistula (VVF) which renders the girl prone to diseases.⁴⁸ Wallace considers early marriage as an obstacle to the education of girl child, as well as the cultural beliefs that favour the education of the boys and deem girls as destined to the roles of wife and mother.⁴⁹

Wallace proposed strategies to combat difficulties which hinder access to education through sensitization and mobilization of public opinion, especially of parents and giving the girl bride opportunity to continue their education.⁵⁰ However, the basis of inequality between boys and girls which affects their legal status is seen in the unequal opportunity for education in the traditional African society. This pattern of education dictated the roles that boys and girls are supposed to play in the society with the girls conditioned to accept the role of women primarily as wives and mothers.⁵¹ That notwithstanding, it is necessary to reiterate that Nigeria is a patriarchal society that records high rate of teenage pregnancy and early marriage, especially in the North. To ensure that the girl child has access to education, the law makes provision for a pregnant girl child to be given the opportunity to complete her education after delivery. This will help a great deal to support the girl child and guarantee her right to education.⁵² It is posited that the same opportunity may be extended to victims of child marriage by ensuring that their right to education is not defeated by reason of the pre-mature marriage. There seems not to be convincing reason for discrimination between girls who got pregnant and girl child who is married off causing interruption of their

⁴⁶ Oguntokun Oluwanike Olufunke, 'Culture and Religion as Impediments to the Elimination of Violence against Women and the Girl Child in Nigeria', [2017]1 *Baze University Abuja Law Journal*, 248

⁴⁷ Ibid, 249

⁴⁸ Ibid, 249

⁴⁹ Rebecca Wallace, *International Human Rights: Texts and Materials* (Sweet & Maxwell, London) 243.

⁵⁰ Ibid, 244.

⁵¹ B. Aisha Lemu, Muslim Women and Marriage under the Shariah Rights and Problems Faced. In: Bola Ajibola, et al (eds) *Women and Children under the Nigerian Law*, (6) Federal Ministry of Justice, 97.

⁵² Elisabeta Smaranda Olarinde, 'Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act, 2003', [2005] (4) *University of Ibadan Journal of Private and Business Law*, 97.

education. Education of the girl child will increase the number of educated mothers, and this will in turn impact positively on the larger population.⁵³

However, the Child Right Laws of some states in the North do not seem to expressly address the problem of Child marriage. On the contrary, it can in fact be argued that the laws tend to provide leeway for marriage with a child to be concluded in the states. For example, the Niger State Child's Right Law prohibits both marriage and betrothal with a child. In fact, the law makes it an offence punishable with a term of imprisonment not less than 6 months or a fine of N500,000.⁵⁴ The law does not clearly provide for exception to the prohibition of child marriage on the basis of faith or personal law of the child. However, where there is conflict involving questions of Islamic law and any of the provisions of the law, Islamic personal law shall prevail.⁵⁵ Therefore, it seems an exception is created in Islamic personal law where a party to a child marriage is a Muslim.

The Kano State Child Protection Law has clearly prohibited marriage with girl by providing that the girl is not capable of contracting a valid marriage and such marriage is null unless the girl's culture permits.⁵⁶ This provision of the law which permits marriage with the child on the basis of culture can be criticized on three grounds. First, although the law defines a 'child' as a person who is to attain the age of 18 years,⁵⁷ it defines 'child' for purpose of child marriage as a person below the age of puberty.⁵⁸ Unfortunately, the word 'puberty' is not defined in the law even as it is incapable of precise definition because puberty is relative. Thus, definitions of the 'child' used in the law seem contradictory and ambiguous and thus undermine the essence of the prohibition of marriage with a child. Secondly, the law seems to adopt double standards in the definition of a child; age and puberty. This tends to create uncertainty in the law and provides a leeway for the practice of child marriage to be justified under the law. The essence of the CRC, CRA, and Child Rights Law are to make the age, and not puberty, of the child the criterion for determining age of majority. Thirdly, the prohibition is subject to an exception that marriage with a child is permitted under the law where the custom permits. The necessary implication is that customs that promote child marriage will continue to be observed despite the prohibition in the law.

⁵³ Ibid, 97-98.

⁵⁴ Niger State Child's Right Law, 2021, s 16(1)(2)(3)

⁵⁵ Ibid, s 33.

⁵⁶ Kano State Child Protection Law, 2023, s 16(2)

⁵⁷ Kano State Child Protection Law, 2023, s 2

⁵⁸ Ibid, s 16(2)

In contrast, other Child Right Laws such as Zamfara Child Protection Law does not have similar provision which prohibit marriage with a child in Zamfara state. Yet, there is a provision in the law that where there is a conflict between the Child Protection Law and the Personal Law of the Child, the personal law shall prevail.⁵⁹ Thus, where the personal law of the child permits marriage to a child, there will be no issue of inconsistency of the provisions because the Child Protection law has not only unilaterally conceded and but also subjected its provisions to the personal law of the Child. Unfortunately, the definition of ‘personal law’ in the law is ambiguous as personal law is defined as ‘the faith of a child’.⁶⁰ The faith of the child in this context is the religion which the child professes and her right to profess any religion is protected in the Constitution and the CRA.⁶¹ The question therefore is, why does the law subject the prohibition on marriage with the child to the ‘faith of the child’? it can be argued that there is no justification for this exception on the basis of the faith of the child since the child may not be experienced enough to take such a crucial decision as to her faith without the guidance of her parents. It seems absurd that the child with whom marriage is prohibited can choose her faith by reference to which legality of her marriage is to be determined. In a nutshell, the legality of the marriage with the child is to be determined by the child’s religion and not the Child protection Law which is enacted to protect the child. In any case, Freedom of religion forbids the imposition on a person attending educational institution of a requirement to receive religious instructions or to participate in religious exercises of a denomination which is not his own or approved by his parent or guardian.⁶² The religious and community leaders are therefore, urged to encourage respect for the child’s freedom of religion and eliminate cultural practices that obstruct the enjoyment of the right.⁶³ At the final analysis, it seems therefore that marriage with the child is not out rightly prohibited in the law in Zamfara State Child Protection law though it is prohibited in the Child Right Act.

The Nigerian legal system is pluralistic because it evolved from multiple sources that reflect the legal history and socio- cultural diversity in Nigeria. Islamic law is recognized as a source of law

⁵⁹ Zamfara Child protection Law 2022, s 169.

⁶⁰ Zamfara Child Protection Law, 2022, s 2.

⁶¹ CFRN, 1999, s 38; CRA, s 7(1)

⁶² Ayo Ajomo, *New Dimensions in Nigerian Law*, (Nigerian Institute of Advanced Legal Studies, 1989) 105-106.

⁶³ Nasiru, A.S, ‘The Right of the Child and Religious Freedom in Nigeria’, 14. Retrieved from:
<https://www.scribd.com/document/322440597/The-Right-of-the-Child-and-Religious-Freedom-in-Nigeria>.
Accessed 18/04/25 at 10:03pm

even though its scope is limited to Islamic personal law.⁶⁴ Although CRA prohibits marriage with a child and betrothal, Islamic law does not stipulate age limit for marriage and thus marriage with a girl is permissible under Islamic law.⁶⁵ According to Ekundayo, the Islamic position is considered as an impediment to education of the girl child in the Northern Nigeria.⁶⁶ However, there are arguments on the implementation of the CRA across Nigeria, especially in Northern states that are yet to enact the Child Rights law. The Nigerian Constitution vests the power to make laws relating to the rights of the child in the legislature having categorized it under the Residual Legislative List. Thus, states are entitled to adopt the Child Rights Act or refuse to adopt it. As such, the CRA cannot be enforced in the states that have not yet enacted the Child Rights Law.⁶⁷ However, while the Child Rights laws stipulate 18 years as minimum age of marriage, Islamic law allows marriage of a child below 18 years. In the North, precedence is accorded to Islamic law because the most communities are predominantly Muslims. Therefore, a girl child can be married off in accordance with Islamic law. Kaduna State Child Welfare and Protection Law regards Islamic law as supreme and permits marriage with a girl who is 14 years or above. Similarly, Katsina State Child Protection Law considers Islamic law as supreme over the provisions of the Child Protection Law where the child is a Muslim.⁶⁸ Adeyemi et al have lamented that due to exception of custom and Islamic law, it will not possible to eradicate marriage with a child, especially in the North.⁶⁹ Kayode posited that Islamic position on marriage with a child seems to offend the validity test prescribed for customary law. Thus, where the validity of the marriage is to be tested in a superior court, it will fail the test of validity.⁷⁰ However, it has been argued that child marriage is not

⁶⁴ Abdulraheem Taofeeq Abolaji, 'Child Rights and protection in Nigeria: Exploring Nexus of Shariah, Common and Customary Law Provisions', [2016] (2)(2)*Lead University Law Journal*, 210.

⁶⁵ Dije Mohammed, 'A Comparative Analysis of the Child's Right Act and the Islamic Legal Regime in Nigeria' [2015] (8) *Journal of Private and Comparative Law*, 108.

⁶⁶ Ekundayo, Osifunke Sekinah *The Legal Protection of Children's Right to Free and Compulsory Primary Education in Nigeria: problems and prospects* (PhD Thesis, SOAS University of London, 2015) 163. Retrieved from: https://www.academia.edu/64019643/The_legal_protection_of_children_s_right_to_free_and_compulsory_primary_education_in_Nigeria_problems_and_prospects. Accessed on 1/06/2024 at 8:45pm.

⁶⁷ Ibid, 163.

⁶⁸ Child Protection Law of Katsina State, 2020, s 3

⁶⁹ Adeyemi Nurat Keyinde, et al, 'Causes and Challenges of Girl- Child Marriage in North West Nigeria', [2023](21)(1)*African Anthropologist*, 33-34.

⁷⁰ Kayode Olatunbosun Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Education Rights', [2015] (5)(7)*US- China Education Review*, 166.

prohibited in Nigeria because the Constitution has recognized Islamic and customary marriages.⁷¹ Islamic and customary marriages have been categorized under residual list which is within the legislative competence of the states. As such, it will not be constitutional to determine the legality of child marriage on the basis of the law made by National Assembly since that is not within its legislative competence. Therefore, in resolving the issue of child marriage, it must be noted that the issue is delicately linked to the pluralistic nature of the Nigerian legal system which recognize customary and Islamic law as sources of law. Therefore, it seems the issue cannot be effectively resolved by reference to Child Rights Act independent or in isolation of Islamic and customary laws recognized in the Nigerian Constitution. In conclusion, although CRA protect the rights of the child by prohibiting marriage with a child, it seems to infringe the child's right to practise any religion.⁷² This is perhaps the justification for subjecting the provisions of the Child's right law prohibiting child marriage to the faith or personal law of the child.

1.4 ENFORCEMENT OF RIGHT TO COMPULSORY EDUCATION

Enforcement of the international human instruments on right to education are essential to realizing access to education. Unfortunately, the UN lacks the mechanism to compel compliance with these obligations by states.⁷³ Therefore, local legislation is crucial for enforcement of the right to education. Yet, legislation alone is not enough to support effective implementation of the right. Litigation is one important mechanism for enforcement of the right to education and the judiciary plays a central and critical role in this regard.⁷⁴ However, the Courts have been inundated with enormous challenges such as corruption, poor remuneration, inadequate funding, and abuse of court orders by the government agencies which affect the effective delivery of justice and by necessary implication enforcement of right to education.⁷⁵ More so, another challenge to enforcement of right to education is the rigid distinction made by the Constitution between civil and political rights and economic, social and cultural rights. While the former have been

⁷¹ Eyinna S Nwauche, 'Child Marriage in Nigeria: (Il)legal and (Un) constitutional?' [2015] 15 *African Human Rights Law Journal*, 427.

⁷² Tim S Braimah, Child Marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the Protection of children against Child Marriage, *African Human Rights Law Journal*, (2014)14, pp.481-482.

⁷³ Akin Oyeboade, *International Law and Politics: An African Perspective*, Bolabay Publications, Ikeja, 2003, p.203.

⁷⁴ Emmanuel Olugbenga Akingbehin, The Justiciability of Right to Free Basic Education Conundrum in Nigeria, South Africa and India: From Obstacle to Miracle, *AUDJ*, Vol.17, No.1, 2021, p.75.

⁷⁵ M.T. Ladan, *Materials and Cases on Public International Law* (Ahmadu Bello University Press Ltd, Zaria) 194.

recognized in Chapter 4 of the Constitution, the latter have been captured in Chapter 2 under ‘Fundamental Objectives and Directive Principles of State Policy’.⁷⁶ Thus, it seems there is absence of a forum under the Constitution for the enforcement of the right to access education in Nigeria. It has been argued that the right to education ought to be enforceable in Nigeria because Nigeria has ratified the ICESCR and therefore Nigeria is bound by its obligation despite the limitations placed by its local legislation and conditions.⁷⁷

Fortunately, a window for the judicial enforceability of the right to education as part of the fundamental state policy is seen in the provisions of the African Charter on Human and Peoples’ Rights which is applicable in Nigeria as African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.⁷⁸ In *Abacha v. Fawehinmi*,⁷⁹ the Supreme Court reiterated that the Charter has become part of the domestic laws and is enforceable in Nigerian Courts. It is worthy to note that the provisions of the Charter have been incorporated and implemented in successive government policies and programmes including Universal Basic Education Act as well as Universal Basic Education Programme aimed at re-enforcing free compulsory basic education.⁸⁰ Nevertheless, the question of enforceability of the right to compulsory education was raised before the ECOWAS Community Court of Justice. In the case of *Registered Trustees of Socio-Economic Rights and Accountability Project v. Federal Republic of Nigeria and Universal Basic Education Commission*,⁸¹ the plaintiff filed an application before the ECOWAS Community Court of Justice against the defendants alleging infringement of the right to quality education. The Defendants challenged the jurisdiction of the court contending that the right to education is not justiciable. The 2nd Defendant contended that although the Constitution has imposed a duty on the government to provide free compulsory education, such directive is non-justiciable. In its ruling delivered on 27/10/2009, the Court decided that the right to education recognized in Article 17 of the AFCHPR is independent of the constitutional provision. The Court further found that it is empowered to apply the provisions of the Charter more so that the right to education is justiciable before the

⁷⁶ Ibid.

⁷⁷ Ibid. p.195.

⁷⁸ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap.A9, Laws of the Federation of Nigeria, 2004.

⁷⁹ [2001] 51 WRN 29

⁸⁰ Olasupo Shashore, “Public Interest Litigation- Enforcing Social and Economic Rights” [2012]30, The Advocate, 105

⁸¹ Suit No: ECW/CCJ/APP/08/08

Court.⁸² This decision seems to have provided the necessary impetus to Nigerian courts when faced with matters of socio-economic rights. In *Legal Defence and Assistance project (LEDAP) Ltd/Gte v. Federal Ministry of Education & Anor*,⁸³ the applicant commenced a suit at the Federal High Court, Abuja praying for a declaration that the right to free compulsory education is enforceable having regard to the UBE Act, 2004. The learned judge held that with the enactment of the UBE Act, the right to free compulsory education is now justiciable. With these judicial authorities, it is beyond doubt that the right to education of the girl child is justiceable and enforceable. This has impact on the practice of child marriage because the girl child cannot be denied right to education and forced into early marriage. Although right to education will not completely address the problem of marriage with a child, it is a strategy to combat child marriage.

The Child Rights laws contain provisions for the right to compulsory education and also mechanism for enforcement of this right. For instance, Zamfara Child Protection Law affirms that every child has right to free, compulsory and Universal Basic education and religious education.⁸⁴ Under the law, the Family Court is created to hear matters relating to the child.⁸⁵ The court also has jurisdiction to hear any civil proceedings in which the existence or extent of a legal right, power, duty, liability in respect of a child is in issue.⁸⁶ These provisions appear to have given the family court exclusive jurisdiction to hear child rights matters, including right to compulsory education. It may be contended that this provisions seems to contradict the provisions of the constitution which confers jurisdiction on the FHC and the SHC to hear matters of fundamental rights enforcement.⁸⁷ In the light of the foregoing, the provisions of sections 42 and 44 of the Zamfara State Child Protection Law seem to be void due to inconsistency with the Constitution.⁸⁸ In contrast, the Niger State Child's Right Law created a family court for the purpose of hearing and determining matters relating to children.⁸⁹ The law created two levels of court; Magistrate and Sharia Courts with original jurisdiction while the High Court has appellate jurisdiction.⁹⁰ Although

⁸² The ruling was delivered on 27/10/2009

⁸³ (Unreported) Suit No: FHC/ABJ/CS/978/15

⁸⁴ Zamfara Child Protection Law, 2022, s 8(1); Niger State Child's Right Law, 2021, s 9(1)(2)

⁸⁵ Zamfara Child Protection Law, 2022, s 42.

⁸⁶ Ibid, s 44(1)(a)

⁸⁷ CFRN,1999, s 46

⁸⁸ CFRN,1999, s 1(3)

⁸⁹ Niger State Child's Right Law, 2021, s 50(1).

⁹⁰ Ibid, s 50(2)(a-b)

the law confers jurisdiction on the Magistrate and Sharia Courts to try offences under the law,⁹¹ the civil jurisdiction of the courts is not clear.

1.5 COMPULSORY EDUCATION APPROACH TO PRACTICE OF CHILD MARRIAGE

Marriage with a Child is one of the factors that contribute to increase in the number of drop-out rate among girls in the North. This also contribute to the high rate of illiteracy in the Northern Nigeria.⁹² Thus, poverty and illiteracy are identified as factors contributing to child marriage in the North.⁹³ High rate of poverty in Nigeria is a cause of child marriage because of its perceived economic benefit by families in the rural communities.⁹⁴ Early marriage sometimes provides some indigent families with alternative sources of income in the form of bride price.⁹⁵ To address this problem, the National policy on Gender in Basic Education proposed a strategy to encourage state governments to introduce legislation that will prohibit child marriage and enforce free universal education for the girl child.⁹⁶ Unfortunately, most governors of the Northern states have not taken steps to make laws to prohibit child marriage in this regard. It is significant to stress that the National Policy was introduced three years after the CRA was enacted heralding the legal regime for protection of the child with provisions prohibiting child marriage. It is therefore surprising that the National Policy on Gender in Basic Education did not refer to provisions on the CRA which promote access to education of the child and also ensure that the child's access to basic education is not interrupted.

Marriage involving a child is a multi- faceted socio-cultural harmful practice which jeopardizes personal development and opportunities of the girl child. The National Strategy on Ending Child Marriage sought to determine how access to free education can be increased and retention of the child in school can be promoted to minimize the risk to child marriage.⁹⁷ This underscores the

⁹¹ Ibid, s 50(3)

⁹² Felix Daniel Ngarga, 'Impediments to the Domestication of Nigeria CRA by the States' [2016](6)(9) *Research on Humanities and Social Science*, 127

⁹³ Ukamaka Nnenna Ugwu, 'The Rights of a Girl-Child and Women in Nigeria' [2021](7)(1) *Journal of Current Issues in Social Sciences*, 62.

⁹⁴ Adeyemi Nurat Keyinde, et al, 'Causes and Challenges of Girl- Child Marriage in NorthWest Nigeria', [2023](21) (1) *African Anthropologist*, 27. ajol-file-journals_136_articles_245538_submission_proof_245538-1621-589127-1-10-20230409.pdf. Accessed on 4/6/2024 at 11:12am.

⁹⁵ Buzome Chukwemeke and Henry Webechi Ugwu, 'Early Child Marriage in Nigeria: Causes, Effects and Remedies', Vol.4(1) *Social Sciences Research*, 62

⁹⁶ National Policy on Gender in Basic Education (2006) published by the Federal Ministry of Education.

⁹⁷ National Strategy to End Child Marriage in Nigeria 2016-2021. Federal Ministry of Women Affairs and Social

education centred approach to problem of child marriage because there seems to be disconnect between the education and other strategies deployed to reduce the trend of child marriage.⁹⁸ Child marriage is seen as both a cause and effect of poor education. On one hand, a married child is more likely to drop out of school than the girl child who is in school. On the other hand, the girl child who does not have access to education is also likely to marry young.⁹⁹ With marriage, the education of the girl child is disrupted as she is now saddled with a family responsibility as a wife and subsequently mother.¹⁰⁰ Akande and Aminu have submitted that the level of girl child education is generally low due to cultural issues such as child marriage. The notion that a girl's primary aim is to strive to become a good housewife has led to the girl child being relegated to the kitchen. Thus, her education is disrupted while her male counterparts enjoy all opportunities for education which place them at a vantage position in the society.¹⁰¹

Therefore, Compulsory education is a strategic mechanism for dealing with the problem of child marriage. It has been reported that increases in education achievement is usually linked to delay in early marriage.¹⁰² Ensuring the girl child's access to education reduces the risk of child marriage. Statistics demonstrate that for every year a girl child delays marriage, her chance of education increases by 5.6% while the chances of accessing secondary education further increases by 6.5%.¹⁰³ This strategy of ending child marriage through education has also attracted the attention of the global community culminating in a consensus at the international level of the importance of enrolling and retaining the girl child in school.¹⁰⁴ Therefore, low quality education

Development, 2016. Retrieved from:

https://www.girlsnotbrides.org/documents/633/Strategy-to-end-child-marriage_for-printing_08-03-2017.pdf.

Accessed on 4/06/2024 at 10:14pm

⁹⁸ Michael Addaney and Onuora-Oguno Azubike, 'Education As a Contrivance to Ending Child Marriage in Africa: Perspectives from Nigeria and Uganda', *Armsterdam Law Reform*, (2017), Vol.9(2),p.128.

⁹⁹ <https://www.girlsnotbrides.org/documents/857/Addressing-child-marriage-through-education-what-the-evidence-shows-knowledge-summary.pdf>. Accessed on 4/06/2024 at 10:28pm.

¹⁰⁰ Buzome Chukwemeke, 'Early Child Marriage in Nigeria Causes, Effects and Remedies' [2018](4)(1) *Social Science Research*, 62.

¹⁰¹ Akande, I.F. and Aminu, S.A, "A Comparative Analysis of the Political Rights of Women under Shari'ah and Statutory Laws in Nigeria", [2020](1)(2), *Annur Chambers Annual Journal of Contemporary Issues in Shariah and Comparative Law*, 428.

¹⁰² Louise Wetheredge, *Negotiated Realities: Adolescent Girls, Formal Schooling, and Early Marriage in Kaduna State, NorthWest Nigeria*. (PhD Thesis, University College, 2021) 50.

¹⁰³ https://www.brookings.edu/wp-content/uploads/2016/07/walker_girls_education.pdf. Accessed on 4/06/2024 at 10:50pm

¹⁰⁴ Ibid

or lack of access to educational opportunities and unemployment also contribute to rise in child marriage.¹⁰⁵

Free and Compulsory education for the girl child seems to a goal that has yet to be achieved in the North and certain factors account for inaccessibility to free compulsory education. Another critical factor that contributes to inaccessibility of compulsory education is lack of access to justice based on cost of litigation. It is expensive to engage the service of a lawyer and filing of courts processes involves payment of filing fees.¹⁰⁶ Thus, due to cost of living in the country, it is rarely affordable for a girl child to bear the cost of enforcing her right. This cost increases as legal practitioners also occasionally charge appearance fees in addition to the professional fee.¹⁰⁷ Hence, the court system becomes too expensive and out of reach of majority of Nigerians, especially the girl child.¹⁰⁸

Another factor that impacts on free and compulsory education is the high rate of insecurity in Northern Nigeria. Due to insecurity, children are kept off the school for weeks and sometime years as has been reported in Kachia, Zango-kataf, Birnin Gwari and Igabi areas of Kaduna State.¹⁰⁹ Since 2014 which marks the beginning of attacks on schools, teachers are afraid to return to the class rooms while parents are scared to send their children to school for fear of kidnapping.¹¹⁰ This has resulted to rise in number of out-of-school children even as governments in the North have closed down school out of fear of banditry and kidnapping. This clearly shows that activities of bandits in the North severely impact on the education of the girl child and truncate the right to free and compulsory education. This has been confirmed in a study on impact of banditry activities on girl education in the south zone of Sokoto State.¹¹¹ The high rate of insecurity in the region therefore justifies the call for suspension of boarding schools in the North. Since the safety of

¹⁰⁵ Olufunmilayo Oyelude and Gunmi Oseni, "Early Marriage: A Barrier to Education and Leadership in Africa", [2022] (24) Global Journal of Applied, Management and Social Sciences, 194.

¹⁰⁶ A.H. Diram and Yusuf Muhammad Yusuf, "Appraisal of Factors Impeding Access to Justice in Northern States of Nigeria", [2019](12),142.

¹⁰⁷ Ibid, 143

¹⁰⁸ Kaka, G.E, "Domestic Violence and the Criminal Justice System in Nigeria" , [2020](1)(1), Annur Chambers Annual Journal of Contemporary Issues in Sharia and Comparative Law, 352.

¹⁰⁹ Benjamin Aleka Tanko and Tanko Linus, "Impact of Insecurity on the Education of the Girl-Child: The Role of Basic Educations in Nigeria", [2023](11)(4), International Journal of Innovative Psychology & Social Development, 99-100. <https://www.seahipublications.org/wp-content/uploads/2023/11/IJIPSD-D-11-2023.pdf>. Accessed on 6/06/2024 at 2:00pm

¹¹⁰ Gloria Samdi Puldu and Rwang Patrick Stephen, "Insecurity and Girl- Child Education in North-East Nigeria: A Case of Chibok and Dapchi Quagmire", (2022)(6)(2), *Wukari International Studies Journal*,9.

¹¹¹ Balbasatu Ibarahim, et al, 'The Effects of Banditry Activities on Girl Child Education in Sokoto South Senatorial Zone, Sokoto State Nigeria,' *The Beam: Journal of Arts & Sciences*, 7.

teachers and students cannot be guaranteed, the right to free compulsory education is at great risk.¹¹²

Finally, there are laws such as UBEC Act, CRA and Child Right laws of various States guaranteeing right to education and provision for free compulsory education in Nigeria. However, the problem lies in enforcement of the laws establishing institutions with mandate to ensure access to free and compulsory education. In terms of implementation, provision of funds by government is critical. For instance, in Kaduna state, funding for basic education is managed by an Education sector Plan (ESP) which is a long and medium term strategy that connects the framework with the budget process. This framework identifies the objectives of the state government and links them with the budget for realizing the objectives.¹¹³ However, the budgetary allocation of N115.4 billion on education in Kaduna state which represents 25.19% is supported by the UNESCO benchmarks for education financing.¹¹⁴ Similarly, Kano State allocated N125.88 billion representing 28.78% of the total budget to education thus exceeding the 26% benchmark prescribed by UNESCO.¹¹⁵ However, some of the states with low budgetary allocation for education in the North are Sokoto, Kebbi, Katsina, and Zamfara States with 14.06%, 14.95%, 15.13%, and 12.0% respectively which shows that education financing in these states fall short of the 26% benchmark of UNESCO.¹¹⁶ Therefore, it is glaring that less budgetary allocation for education in the means low funding for education financing in these states.

1.6 CONCLUSION

This paper examined culture of child marriage in the Northern Nigeria which is as multi-dimensional as it is complicated. It represents a critical point at which different legal system clash in a bid to determine the validity of the practice. It is established that practice of marriage with a child has been prohibited by various international human rights instruments including the CRC.

¹¹² Okanezi Bright and Ogeh Obitor W.M, 'Insecurity in Northern Nigeria and its Impact on the Education of the Populace', [2023](5)(3) *International Journal of Advances in Engineering and Management*, 1893.

¹¹³ <https://cseaafrica.org/wp-content/uploads/2019/07/Financing-Basic-Education-in-Nigeria-3-1.pdf>. Accessed on 6/06/2024 at 5:05pm

¹¹⁴ <https://www.thecable.ng/n115bn-for-education-n71bn-for-health-uba-sani-presents-2024-budget-to-kaduna-assembly/>. Accessed on 6/06/2024 at 5:20pm

¹¹⁵ <https://blueprint.ng/kano-why-education-has-lion-share-in-2024-budget-commissioner/>. Accessed on 6/06/2024 at 5:30pm

¹¹⁶ <https://x.com/StatiSense/status/1761128525942181942?mx=2>. Accessed on 6/06/2024 at 5:39pm.

This treaty has been domesticated in Nigeria with the enactment of the CRA, and most states in Nigeria have also adopted the Child Right laws. However, the Constitution has recognized Islamic law and recognized the application of customary law to marriage including traditional marriage. Nonetheless, Islamic law and customary law seem to recognize the practice of Child Marriage and do not provide age of majority of the girl. In fact, some of the Child Rights laws such as Child Protection Laws of Niger, kano, Zamfara, and Kastina State seem to permit the practice of Child Marriage.

This effective strategy to ending the practice of child marriage is by promoting the right to free compulsory education of the girl child. It is imperative to note that even though the right to education is not justiciable under the Constitution, the recent trend is tilting towards the recognition and enforcement of the right to free and compulsory education. More so, there are certain challenges militating against the realization of the girl child's right to free and compulsory education. Such factors include lack of access to justice, poverty, inadequate budgetary allocation to basic education, and insecurity. It is believed that if these problems are addressed, the right to free compulsory education will be guaranteed and protected, and this will in turn reduce the prevalence of child marriage in the affected societies.

However, this paper argued that compulsory education is not a silver bullet as it cannot adequately tackle child marriage in Northern Nigeria. In fact, the right to education of the girl child is not adequately protected because it is not enforceable under Nigerian Constitution. Secondly, the laws and customary laws relating to Marriage in Nigeria are archaic and have not defined age of marriage. This lacuna in the laws encourages child marriage in Nigeria, especially Northern Nigeria. Finally, there is inconsistency between the CRA and the Child Rights laws of some Northern States which have encouraged culture of marriage with children in Northern Nigeria. Based on the foregoing findings, it is recommended that right to education should be justiciable and enforceable in Nigeria to enable the girl child enforce their right to education. Secondly, the laws relating to marriage should be amended to provide for 18 years as age of marriage in Nigeria and to reflect international instruments and laws which prohibit child marriage. Finally, the Child Right Laws of the Northern States should be amended to clearly prohibit child marriage and their provisions should reflect the provisions of the CRA and CRC.