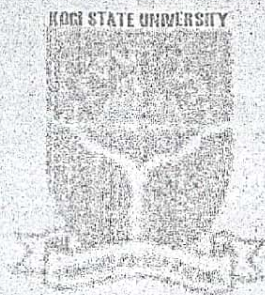


NIGERIAN JOURNAL OF FOOD, DRUG AND HEALTH LAW

VOL.1 NO.1, 2008



**FACULTY OF LAW
KOGI STATE UNIVERSITY
ANYIGBA**

5

REFLECTIONS ON MARRIAGEABLE AGE, CHILD RIGHTS ACT AND THE HEALTH OF THE CHILD IN NIGERIA

BY

OLUFEMI ABIFARIN*/F.F. ABDULRASAQ (MRS.)**/
OLAYEMI SOLA (MISS)***

ABSTRACT

Marriageable age is a very important element in marriage but unfortunately there is no acceptable and universal marriageable age. So also there is no uniform marriageable age in Nigeria and this fact is causing conflict of laws in Nigeria especially with her plurality of legal systems.

This paper examines marriageable age under customary, Islamic and Christian marriage laws with a view to highlighting the divergence and convergence of opinions on the issue. We shall also explore the desirability of unifying marriageable age globally in order to protect parties to marriage and prevent child marriages, which may seriously militate against the health, education and social well being of the child.

INTRODUCTION

Before we go further in this discussion, we shall define what marriage is and later what is marriageable age.

* LL.B (Hons) LL.M, B.L., ACTI, ACI.Arb (UK) Lecturer, Kogi State University, Anyigba

** LL.M (Hons) B.L., LL.M., Faculty of Law, University of Ilorin, Nigeria.

*** LL.B(Hons) B.L., Faculty of Law, Nassarawa State University, Keffi.

Marriage

Today it is difficult to have a universally accepted definition of marriage. Before now the definition of Hyde v. Hyde¹ was accepted subject to modification with regard to Africa and Islam that accepted polygamy.

Marriage has been defined as the legal union of man and a woman in order to live together and often to have children.² Here marriage is seen as heterosexual relationship. It is also described as a legally recognized relationship established by a civil or religious ceremony between two people who intend to live together as sexual and domestic partners.³ This definition seems to include homosexual and transsexual marriages by the reference to the word two people irrespective of sex.

A more comprehensive definition is offered by Jowitt⁴ when he defined marriage as the voluntary Union for life of one man and one woman to the exclusion of all others for the purpose of procreating children entered into in accordance with the rules as to consanguinity or affinity of parties and their capacity to enter into and perform the duties of matrimony and in accordance with the rites or formalities required either by the law of England or the place where the marriage takes place. This definition is comprehensive but did not take case of polygamous, homosexual and transsexual marriages, which have been given legal recognition in various jurisdictions globally. Today, marriage may not necessarily be for the purpose of

¹ 1866 LR P&D 130

² DK Illustrated Oxford Dictionary London 1998.

³ Encarta World English Dictionary Bloomsbury 1999.

⁴ Jowitt's Dictionary of English Law, Second Edition, Sweet & Maxwell, London 1973.

procreation and even when parties intend to cohabit together and enjoy consortium of one another exigencies of work and other factors may prevent, suspend or postpone actual cohabitation and consortium. It has also been stated that marriage by cohabitation can exist between spouses even though there is no legal marriage⁵ their act of living together and sharing domestic life can infer a marriage.

For any marriage to be valid in law, it must satisfy the essential validity of marriage which are commonly accepted as : There must be parties, a man and a woman who wants to marry, they must be of marriageable age, they must have given consent freely to one another, the marriage must not be prohibited by sanguinity or affinity, parties must be able to consummate the marriage, there must be payment of dowry or bride price, parental consent is also necessary when the spouses are below 18 England and 21 in Nigeria.⁶

Marriageable age

As could be seen from the essential validity of marriage, marriageable age is very important and indispensable.

What is marriageable age?

The term or phrase marriageable age is superfluous and a supflusage because the word marriageable is an adjective that etymologically means someone is of an age to marry.⁷ It is also described as suitable for marriage, fit for marriage especially old

⁵ Stroud's Judicial Dictionary, Fourth Edition Vol.3 Sweet & Maxwell, London 1973.

⁶ Bromleg's Family Law Ninth edition, Butterworth, London 1998 p.31. Nwogugu E.I. Family in Nigeria Heinemann Books Lagos 1999.

⁷ Oxford Advance Learner's Dictionary of Current English, New edition, Oxford University Press 2000.

or rich enough to marry or of age,⁸ suitable or ready for marriage or old enough to be married.⁹

If this is the definition of marriageable, then the phrase marriageable age constitute tautology. However in legal parlance either for the sake of emphasis or clarity marriageable age or Age of marriage has been adopted.

MARRIAGEABLE AGE UNDER CUSTOMARY LAW

In Nigeria customary law does not generally lay down any lower limit for marriage or betrothal.¹⁰ Before going further, it is proper to discuss betrothal and distinguish it from marriage. The general age of marriage or marriageable age is maturity of the parties coupled with their financial ability to raise a home. Betrothal in ordinary English sense or an agreement to marry somebody¹¹ but under customary law of Marriage in Nigeria, betrothal is arrangement whereby a young or infant girl is betrothed or promise to be given in marriage to a man or a male child.¹² Girls are usually betrothed at an early age either from birth or even while in the womb yet unborn. In some areas, a father may indicate his desire to secure a child which is 'en rentre sa mer' if born a female, as a wife for his son. This is achieved by sending gifts of firewood to an expectant mother. After the birth of the child, if a female, the intention may be made strengthened by some betrothal gifts made to the mother of the child.¹³ In Ibo custom, such gifts include a ball of white chalk, which the mother robs on the body. Later the claim over the child is further consolidated by occasional presents to the

⁸ New English Dictionary of Thesaurus Goddess and Grosset, New edition, Scotland 2000.

⁹ Encarter supra

¹⁰ Nwogugu E.I Op.cit

¹¹ Oxford Advance Learners Dictionary supra

¹² Nwogugu E.I. supra, Onokah M.C Family Law Spectrum Law Series, Ibadan 2003.

¹³ Ibid

child and her mother and it is also followed by frequent visits by the parents of the intended husband.¹⁴ The betrothal may be with an infant son, while betrothal at birth is known, it is more usual when the girl has attained the age of about five.¹⁵

Although scholars have pointed out the inherent evils of child betrothal as follows:

In the first place, it provides an easy avenue for slave trade as slave traders claim that their child victims are their wives.¹⁶ Secondly, it involves committing a child who is incapable of expressing his or her wish to a marriage arrangement and sometimes, it may involve defiling of an infant.¹⁷ Although in practice cohabitation or consummation does not take place until the maturity of the infant, so the element of defiling is totally absent.

Betrothal is now regulated alongside with marriage in the Eastern part of Nigeria. This is effected by enactment of Age of marriage law cap 6, laws of Eastern Nigeria 1963.¹⁸ This law is made applicable to marriage under customary law.

Marriageable age and age of betrothal are now unified by virtue of this law in the Eastern part of Nigeria.

This law provides that a promise or offer of marriage between or in respect of persons either of whom is under the age of sixteen shall be void,¹⁹ and that no court shall in adjudicating any matter or executing any decree or order recognize any promise or offer of marriage which is avoided by

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Nwogugu E.I supra

¹⁷ Ibid

¹⁸ Section 3(1)

¹⁹ Ibid

law.²⁰ The law also went on to say that ignorance of the parties' ages shall be no defense to any person.²¹

In Yoruba law of western Nigeria, the law regarding age of marriage or marriageable age is not laid down in any legislation.²² The generally accepted native law and custom is the age of maturity of the girl or boy involved in the marriage relationship.²³ Parties must attain puberty and have financial ability to cope with the marriage. The age group system in Yoruba land is also helpful as both male or female child attains, he or she can enter into marriage, since he or she can now fulfill the responsibility of marriage which includes consummation of the marriage and ability to have children.²⁴ Ovia Osese festival is a typical example of age group celebration in Ogori/Magongo, a Yoruba settlement in Kogi Central District of Nigeria. It is an initiation of a girl into puberty and a celebration of chastity as it encourages virginity before marriage.

MARRIAGEABLE AGE UNDER ISLAMIC LAW

Under Islamic law the contractual capacity of an infant depends on his/her physical capacity and maturity. It is not a question of age or number of years but whether or not the person has attained puberty.²⁵ In *Labinjo V. Labake*,²⁶ the court stated that the contractual capacity begins at puberty under customary law. While in *Folata V. Dawomo*,²⁷ it was held under

²⁰ Section 6(2)

²¹ Section 4(2)

²² Nwogugu E.I supra.

²³ Yerokun Olusegun Modern Law of Contract, NRP Publication Lagos 2004, p.72.

²⁴ *Labake v Labinjo* 5NLR 3, *Fola v Dowoma* 1970 NWLR 105.

²⁵ Yakubu Isah Danladi, Principles of Muslim Family Law Enenyo Printing and Publishing Ltd. Lokoja 2005. Ambali M.A., The Practice of Islamic Family Law, Tamaza Publication Zaria.

²⁶ 5 NLR 3

²⁷ (1970) NWLR 105.

Moslem law that maturity is determined by physical maturity or a declaration of the youth in question or failing this by reaching the age of lunar months. Some schools of thought fix marriageable age at 10 if the child has attained puberty.²⁸ The girl must express her desire to get married.²⁹

Islam is predominant in the Northern part of Nigeria. Therefore the Northern Nigeria government enacted Native Authority laws of Northern Nigeria which prescribes twelve years for girls and fourteen years for boys as the marriageable age.³⁰ In this day and age I think we should consider the physical, psychology, physiological and emotional maturity of the parties. A person who should still be under parenthood for training should not suddenly find himself or herself becoming a parent too.

MARRIAGEABLE AGE UNDER THE MARRIAGE ACT

The marriage Act does not define or lay down any mandatory age of marriage or lowest limit of the age of marriage. This vacuum is not only important but also fundamental which requires immediate remedial action. Before 1970 when the matrimonial Causes Act became effective in Nigeria, one school of thought hold the view that the lacunae in the marriage Act could be filled by applying the law and practice for the time being in force in England.³¹ If this view is accepted the English age of marriage prescribed by marriage Act 1949

²⁸ Ruxton F.H. Maliki Law Luzac and Company London p.93.

²⁹ Ibid

³⁰ See Section 2(1) (a) Native Authority (Declaration of Idoma Native Marriage and Custom) Order NALN 63 of 1959, Native Authority (Declaration Tiv) Order NALN 149 of 1995 (Section 2(a)), Section 2(1) of Native Authority (Declaration of Borgu Native Marriage and Custom) Order NALN 52 of 1961 and Section 1(a) of Native Authority (Declaration of Bill) Order NALN 9 of 1964.

³¹ Nwogugu E.I

which is sixteen years would be applicable in Nigeria. Whatever may be the validity of this point of view, the possibility of its application has been lost since the 1970 matrimonial Causes Act came into force banning the application of English law. The other point of view is to the effect that the common law rule will apply to age of marriage.³² Both by cannon law and at common law a valid marriage could be contracted only if both parties had reached the legal age of puberty, which is fixed at fourteen for boys and twelve for girls.³³ If either party was under this age when the marriage was contracted, it could be avoided by either party when that party reached the age of puberty but if the marriage was ratified (as it could impliedly be by continued cohabitation) it became irrevocably binding.³⁴ It is perhaps surprising that this remained the law until well into the present century. In the words of Pearce J. "According to modern thought, it is considered socially and morally wrong that person of an age at which we now believe them to be immature and provide for their education should have the stresses, responsibilities and sexual freedom of marriage and the physical strain of child birth. Child marriages by common consent are believed to be bad for the participants and bad for the institution of marriage."³⁵

This change of thought in England led to the passing of Age of Marriage Act of 1929 section one (now reenacted as section two in the Marriage Act 1949) effected two changes in law. First, it was enacted that a valid marriage could not be contracted unless both parties had reached the age of sixteen

³² Adesanya S.A. Law of Matrimonial Causes, Ibadan University Press 1973.

³³ Harrod v Harrod 1854 1 K&J 469 ER 344.

³⁴ Rogers M.E. Family Law, Blackstone Press Ltd, London 1998.

³⁵ Ibid

and second, any marriage in which either party was under this age was made void and not voidable as before.³⁶

However the problems identified by Pearce J. do not seem to be affected by marriage age. The proportion of people marrying at a young age has steeply declined while sex experience among young people has increased in recent years.³⁷

In England age of majority has also been reduced from twenty one to eighteen by the family law Reform Act 1968. The implication of this law is that any one aged 18 or over may now marry without the consent of any other person in England. Thus, the earlier condition of seeking or getting parental consent in writing for any one under twenty one years has now been reduced to any one under 18 years.³⁸

MARRIAGE OF PERSON UNDER THE AGE OF 18 IN ENGLAND

If either party to the marriage is over the age of 16 but under the age of 18, certain persons normally required to give their express consent to the marriage or are given a power to dissent from it.³⁹ The purpose of this provision is, of course, to prevent children from contracting unwise marriages and that property do not get to the hands of unreasonable suitors. Today the object is to cut down the number of potentially unstable unions. Should the marriage be solemnized without consent, the damage would have been done, consequently, lack of consent will normally not make the marriage void. But this is not the case if the parent or other publicly descends on the publication of banns which will then be void.⁴⁰

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Broomley's Family Law supra

⁴⁰ Ibid

The law relating to those consent is required was extremely changed by the Children Act 1989. Normally, it will be that of each parent with parental responsibility and each guardian if any.

Hence the unmarried father cannot withhold consent unless he has acquired parental responsibility by means of a parental responsibility agreement or order.⁴¹ But if a residence order is in force with respect to the child, the consent required is that of the person or persons with whom the is living or is to live under the order and not that of parents or guardians. If a court order is in force, the local authority designated in the order must consent in addition to parents and guardians. If it is impossible to obtain the necessary consent or more particularly if the consent is withheld the consent of the court may be obtained instead.⁴² The court for this purpose is the high court sitting as family proceeding court.

The above represents the changing law and policy of England on age of marriage or marriageable age. But the underlying policy is the need to protect the interest of parties to the marriage both physically, morally and educationally. Thus puberty per se is not the underlying factor.

As we have mentioned earlier the position on marriageable age in marriages under the marriage Act is not clear. Both the marriage act and the Matrimonial Causes Act did not define or set marriageable age.

Section 3(1) provides that subject to the provisions of this section, a marriage that takes place after the commencement of this Decree is void in any of the following cases but not otherwise, that is to say, where(a)...(e) either of

⁴¹ Ibid

⁴² Ibid

the parties is not of marriageable age. This Act did not say more than this. What then is marriageable age under Christian marriage in Nigeria?

Having concluded that the matrimonial causes Act excluded the application of the law of England for the time being in force in Nigeria, then the common law rule remains the only viable option. The common law rule as laid down in *Harrod v Harrod*⁴³ that set marriageable age at fourteen for boys and twelve for girls. This reasoning is logical considering the applicability of the doctrines of common law, equity and statute of general application in Nigeria. The Marriage Act also required parental consent to marriage of any person under the age of twenty one⁴⁴ but by virtue of child Rights Act, parental consent will only be necessary for marriage of any person below the age of 18⁴⁵ now.

Ironically, Section 29(4)(a) and (b) of the Constitution provides the full age meaning the age of 18 years and above, and any woman who is married shall be deemed to be of full age. The provision that any woman who is married shall be deemed to be of full age has the effect of ratifying or approving and otherwise illegal marriage where a girl of between 10 and 17 years is married either forcefully or with her consent. This is a bad provision in the Constitution.

THE CHILD RIGHTS ACT AND MARRIAGEABLE AGE

The Child Rights Act was enacted in Nigeria because of the United Nations Convention of the Rights of the child which

⁴³ (1854) 1 K&D 467 ER 344.

⁴⁴ Section 27 of Marriage Act 2003. Section 22 of the Act bans child betrothal. Section 25 imposes a fine of 5000,000 on anyone who marries a child or a child betrothed to.

⁴⁵ Section 21 Child Rights Act 2003.

was adopted on 24th November 1989. Because it is United Nations Convention, which means an agreement between the nations of the world, it does not become binding on Nigerians until it has been enacted by the National Assembly. This was done by the National Assembly in 2003.⁴⁶

This Act prohibits the marriage of a female child who is under 18 years old. The tenure of the Act is not confined to marriage under the Act or Christian marriage but rather it is intended to cover both customary and Islamic law marriages. The Act also defines a child as somebody who is below the age of 18.⁴⁷ By necessary implication, anyone below the age of 18 in Nigeria whether male or female is not of a marriageable age and therefore, cannot conduct a valid marriage.

This Act is expected to be adopted pr domesticated by all the 36 states of the federation however only 14 states of the federation have adopted or domesticated the Act. These states are in the Southern parts of Nigeria. The Northern states have refused to adopt it because of the contradictions in the Act and the attempt of the Act to modify certain religious beliefs in Nigeria.

According to Aliyu Umar,⁴⁸ the Attorney General and Commissioner for Justice in Kano state, the National Assembly that served between 1999 and 2003 did not look at the Act thoroughly to see the level of contradictions in the Act before passing it. According to him, the Act prohibits the marriage of a female child who is under 18 years old.

⁴⁶ Section 12 of 1999 Constitution of Nigeria

⁴⁷ Section 13

⁴⁸ Child Rights Act is more to modify Islam, Christianity – Justice Commissioner, Sunday Trust 2 March 2008 p.48.

Two things must come into focus on this particular provision. One is the issue of marriage and the second is the right of some other people to get married before the age of 18. And where marriage is concerned if you look at the legislative lists, (Exclusive and concurrent) the federal government can only legislate on Christian marriage or marriage under the Act while customary and Islamic marriages fall under residual list which only states can legislate upon. Therefore fixing of marriageable age for all types of marriage in Nigeria especially as it pertains to customary and Islamic marriages will be void to the extent of its inconsistency with the Constitution. He went further to state that item 61 of the Executive legislative list, of the Constitution provides that the National Assembly can make laws on marriages which are contracted under the marriage Act. It specifically prohibited the National Assembly from enacting laws on marriages which are to be consummated under Islamic or customary law. So to the extent that the law in many opinions provides that no person can marry a female child who is under 18 years runs contrary to the provisions of the Constitution because they are enacting and providing for a marriage institution which is under Islamic and customary law. As much as the issue raised by the learned Attorney General is correct, and others in the court just as other states in the south have done in cases of creation of local government⁴⁹ and attempt by the National Assembly to regulate state control of local government finances.⁵⁰

However, the point must be made that the Act is a response to global call for better condition and treatment of children. Children have rights that must be protected by all and

⁴⁹ Attorney General of Lagos State v Attorney General of the Federation (2004), 18 NWLR (pt.904) 1.

⁵⁰ Attorney General of Abia State & Others v Attorney General of the Federation (2002) 3 SCNJ 058

sundry and welfare of children should be paramount to any civilized and decent society. Even Islam is not averse to the right of the child. Part of the rights of the child in Islam is his right to life, love and affection and right to education among others.⁵¹ The general object of the Child Rights Act is not contrary to these rights. It is rather to ensure that a child is physically matured and socially, emotionally and educationally balanced and matured before going into marriage because marriage turns each partner in marriage to parent after child birth. Can a child or infant or a minor be a good parent? The dictum of Pearce J. will be relevant here. Other scholars regarded marriage of minor as child abuse which the United Nations, African Union and other regional bodies frown at and have made copious legislations to discourage it.⁵²

CHILD MARRIAGE AND ITS HEALTH AND SOCIAL CONSEQUENCES

A critical protection problem facing girls in Nigeria is the wide spread practice of early arranged marriages. A huge number of girls are married off by their parents in their early teens, when they are too young for their consent to be sought of given. In many cases, they are married to much older men, sometimes men old enough to be their fathers or grand fathers. The 1999 Nigerian Demographic and Health Survey (NDHS) reported that in 26.5 percent of couples, there is an age difference of 15 or more years between husband and wife.⁵³

⁵¹ Umaru Daliru, Child Rights in Islam, Week Trust 26 April 2008 p.40

⁵² Babalola Abegunde, Child Abuse in Nigeria: A Legal Appraisal, University of Ado-Ekiti Law Journal Vol.2 2003 p.270. Olaide Gbadamosi, Child Sexual Abuse: Consequences, Legal Frameworks and Prevention Strategy, Philosophical Legacy on Issues on Nigerian Public Law, Suleiman Ikpechukwu Orji ed. Published by the Department of Public law and Jurisprudence, Uthman Danfodio University, Sokoto, 2007 p.26

⁵³ Children's and Women's Right in Nigeria: A wake up call, UNICEF 2001 p.200.

Among the numerous implications with its attendant heightened risks of maternal mortality and morbidity.

The 1991 census gave a detailed breakdown of the ages at which females are married in Nigeria. It gives the staggering information that 2 percent of Nigerian married woman had entered into marriage by the age of 10. By 12 years old, 8 percent were married. The proportion married then rises rapidly in the mid-teens, with more than a quarter married by the time they were 14, 40 percent by the age of 15 and 64 percent by the age of 18. The median age of marriage for female was found to be 16.5 years.⁵⁴

By 1999, the Nigerian Demographic and Health Survey (NDHS) was showing a slightly higher median age of female marriage (17.9 years for woman age 25-49 at the time of the survey) the NDHS revealed large zonal variations in the mean age of marriage with females in the North marrying on average about five years earlier than those in the south. In the Northwest, the median age of female marriage was 14.6 years and in Northeast, it was only slightly higher, at 15.0 years. Clearly the problem of early marriage is by far most serious, in the Northern part of the country.⁵⁵

Child marriage is justified by parents on the ground that it forestalls promiscuity, which is assumed to be a risk immediately girls reach puberty. In addition, there may often be a hidden economic motive such as the enticement of bride price or the desire to establish or cement alliances with rich and powerful families.⁵⁶ Early marriage also reflects low appreciation

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

of girls education and may also be seen by some parents as alternative to meeting the continued cost of education.

This practice is an unambiguous violation of CEDAW, UN Convention of Rights of the child, African charter on the Rights and welfare of the child and Child Rights Act.

Article 16 of CEDAW provides that "both partners have the same right freely to choose a spouse and to enter into marriage only with their free and full consent". Furthermore, the same Article states that "the betrothal and marriage of a child shall have no legal effect". It adds that states shall take all necessary action, including legislation, to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. Despite Nigeria's registration of CEDAW, these obligations have not been put into effect. There is still no official minimum age of marriage in many parts of Nigerian and there is no compulsory registration of marriage. This makes it easy for parents to marry off their daughters at a premature age without any risk of legal sanction. Correcting this anomaly should be done on the highest priorities.

DISADVANTAGES OF EARLY MARRIAGES

Early marriage is harmful to girls in numerous ways. Besides leading in many instances to the withdrawal of girls from school, it thrusts upon them marital and reproductive responsibilities for which they are neither physically nor mentally mature to carry out. The 1999 NDHS indicated that 27 percent had given birth before they were 18 years old and 3.5 percent had given birth before they were 15 years old. About 22 percent of teenagers aged 15-19 were either already mothers or pregnant with their child. In the zones where girls tend to marry early, these figures for each child bearing were also found to be much higher than the national averages. In the Northern, over

50 percent of girls aged 15-19 were either already mothers or pregnant compared with about 8 percent in the southern Zones.⁵⁷

Early pregnancy is also said to be one of the main cause or reason for the much higher maternal mortality and greater prevalence of conditions such as VVF/RVF in Northern Nigeria. Research in Zaria has found that maternal mortality among women younger than 16 is six times higher than for women aged 20-24.⁵⁸ VVF arises from obstructed and prolonged labour.

This occurs when an under aged girl goes into labour, her pelvic bones are not yet sufficiently developed to allow the passage of the baby's head. As a result, the foetal head presses on the surrounding tissues and organs. If this continues for long, the pressure can lead to fistula, in the form of holes between the vagina and the rectum. The continual leakage of urine and or faeces by vicious results usually in their being rejected by their husbands and socially ostracized. Many end up resorting to begging for survival.⁵⁹ The number of cases in the country is estimated to be between 80,000 and 150,000 with 70 percent in the Northern part of the country.⁶⁰ The incidence of VVF is also estimated at 2 per 1000 deliveries. The harmful traditional practices study reported that 80-90 percent of wives with VVF are divorced by their husbands.⁶¹ This double jeopardy for the women, they are suffering physically and emotionally for no

⁵⁷ Ibid

⁵⁸ Labin L-S & K. Kiragu, the Health Consequences of Adolescent Sexual and Fertility behaviour in Sub-Saharan Africa in Studies in Family Planning Vol.29 No.2.

⁵⁹ Sambo A. National Council of Women Societies of Nigeria and the Crusade on V.V.F., NCWS Lagos.

⁶⁰ Sambo A. The Role of National Taskforce on V.V.F on the Prevention and Control of V.V.F in Nigeria NCWS Lagos.

⁶¹ Ibid

fault of theirs. They are also deserted at their hours of need and support.

International and Regional Convention on the Rights and welfare of the child and its impact on Marriageable age

The United Nations Convention on the Rights of the child adopted by the U.N General Assembly in resolution 44/25 November 1989 at New York defines a child as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.⁶² Under the municipal laws of most member nations, the age of majority is fixed at 18 years.

The convention provides that in all actions concerning children where undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be primary consideration.⁶³ It also protects the child from abuse and neglect,⁶⁴ prohibits sexual exploitation of the child.⁶⁵

The African Charter on the Rights and welfare the child in more positive, direct and affirmative in its provisions on the rights and welfare of the child.

The charter defines the child to mean every human being the age of 18.⁶⁶ The charter provides that there shall be non discrimination against any child,⁶⁷ the best interest of the child

⁶² Article 1 of UN Convention on the Rights of the Child 1989.

⁶³ Article 3

⁶⁴ Article 19

⁶⁵ Article 34

⁶⁶ Article 2 of African Charter on the Rights & Welfare of the Child, 1989.

⁶⁷ Article 3

should be paramount on any action on the child,⁶⁸ the child shall have a right to education,⁶⁹ right to parental care and protection⁷⁰ etc.

The article on protection against harmful social and cultural practices provides that states parties to the present charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular (a) and those customs and practices discriminatory to the child on the grounds of sex and other status.

Child marriage and the betrothal of girls and boys shall be prohibited and effective action including legislation shall be taken to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory.⁷¹

In compliance with this charter and UN Convention and Child Rights Acts 2003 enacted by the National Assembly in Nigeria made provisions to the effect that "No person under the age of 18 years is capable of contracting a valid marriage, and, accordingly, a marriage so contracted is null and void and of no effect whatsoever"⁷² and no parent, guardian or any other person shall betroth a child to any person. A betrothal in contravention of subsection (1) of this section is null and void.⁷³ It went further to say that a person who marries a child or to whom a child is betrothed or who promotes the marriage of a child or who betroths a child commits an offence and is liable on conviction

⁶⁸ Article 4

⁶⁹ Article 11

⁷⁰ Article 19

⁷¹ Article 21

⁷² Section 21 of Child Rights Act 2003

⁷³ Section 22

to a fine of N500,000 or imprisonment for five a term years or both such fine and imprisonment.⁷⁴

The Child Rights Act of 2003 is in conformity with the universally accepted age of marriage and it has taken into consideration the best interest of the child in all aspects like right to health, education, dignity and right to protection from sexual abuse. The incidence of VVF which is common in the Northern part of Nigeria could be prevented if this law is domesticated by all the states of the federation. Even though Islam allows a girl to marry as from age of ten, it is only a permissible age not a mandatory age of marriage. Puberty per se is not the only factor to be considered. As it is today in Nigeria, being a federation, the Child Rights Act will only be applicable to marriages and children of marriages celebrated under the Marriage Act whereas, state law in this regard will only apply to marriages and children of marriages celebrated under customary and Islamic laws.

THE CASE OF HAUWA ABUBAKAR

A famous ruling by the High Court of Kaduna upheld the right of a father to "compel his virgin daughter into marriage without her consent and even if she had not attained puberty" Supposedly in line with Maliki School of Islamic law, which had been invited by the lower court. One such virgin was Hauwa Abubakar whose gruesome murder made headlines in 1987. at the age of nine, her father married her off to one Mallam Shehu Garba Kuruwa, a 40 year old cattle dealer to whom he owed money. For two years she refused to go and live with her putative husband but she was taken to his house when she began to menstruate at the age of twelve. Still not content to

⁷⁴ Section 23

accept her lot, she twice ran away and was twice forcibly returned. On the third occasion, Mallam Shehu pinned her down and chopped off her legs with a poisoned cutlass resulting to her death.

The ensuing public outcry forced the then Military Administrator of Bauchi State to issue a decree empowering the government to prosecute any parent who withdrew their daughters from school in order to marry them off.⁷⁵

CONCLUSION

We have stated the various laws regulating marriageable age in Nigeria under customary Islamic and Christian marriages. We have also shown the disparities in these laws including its hardships on the girl child especially and children in general. The new position under the Child Rights Act is also examined. We wish to conclude this paper on a very important note that since 18 years seem to be the universally accepted age good for the marriage of any person. That age is also universally accepted as the age majority, same is recommended for all types of marriages in Nigeria including Islamic marriage. Nigeria being a member of United Nations Organization and African Union we have a duty or obligation to respect conventions and charters ratified by our National Assembly or government.

⁷⁵ Children and Women's Rights in Nigeria: A wake up call, Published by UNICEF 2001 p.201.

HARMFUL TRADITIONAL PRACTICES: FEMALE GENITAL MUTILATION IN NIGERIA

By

HAKEEM IJAIYA*

INTRODUCTION

In Africa, the subjection of girls and women to harmful traditional practices is legendary and Nigeria is no exception. These inhuman, discriminatory and sometimes dangerous practices span the female life cycle, from childhood through adolescence to marriage, matrimonial relationship, widowhood and old age. At each stage, the woman is subjected to practices that degrade and diminish her humanity. The starting point is the prevalent traditional practice of son preference. This is directly traceable to the patrilineal system of many communities, in which inheritance is by male descent. The girl child is regarded as a bad investment because she will marry outside the family. Consequently, less emphasis is placed on the girl's education she may be married off at any early age, without even a thought about obtaining her consent¹.

Two of the most serious harmful traditional practices affecting Nigerian girls and women are female genital mutilation

* Hakeem Ijaiya, M.Phil (Law) Head, Department of Private and Property Law, Faculty of Law, University of Ilorin, Nigeria. Email: hakeemijaiya@yahoo.com.

¹ Reference to these problems does not imply any sweeping generalization than all traditional cultural practices are negative or harmful to women and children. Clearly there are numerous examples of positive traditional practices, from breastfeeding to the supportive environment for children provided by the extended family. But pride in the positive values of traditional culture should not bind us to certain harmful realities. See UNICEF, Protection Rights in Children's and Women's Rights in Nigeria: A Wake-up Call. Situation Assessment and Analysis, 2001 p. 185 at p. 195.