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**INTERNATIONAL HUMAN RIGHTS ABUSE AS IT AFFECTS WOMEN AND
THE GIRL-CHILD IN NORTHERN NIGERIA.**

By

Isioma Morka-Christian

A Thesis

Submitted to the Faculty of Graduate Studies
through the Faculty of Law
in Partial Fulfillment of the Requirements for
the Degree of Master of Laws
at the University of Windsor

Windsor, Ontario, Canada

2018

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**INTERNATIONAL HUMAN RIGHTS ABUSE AS IT AFFECTS WOMEN AND THE GIRL-CHILD IN
NORTHERN NIGERIA.**

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August 9, 2018

DECLARATION OF ORIGINALITY

I hereby certify that I am the sole author of this thesis and that no part of this thesis has been published or submitted for publication.

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ABSTRACT

*“The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community”.*¹

Despite the significant of human rights and Nigeria as a state party and signatory to many international and African instruments that protect the human rights and dignity of its citizens, including declarations of equality for women and children,² the northern Nigerian women and girls struggle with gender inequality and gender-based violence. These inequalities have impacted negatively on their health, education, economics, security, and dignity. Women and the girl child are expected to practice the culture and religious beliefs of silence, submit in their roles as daughters and wives, and accept the deprivation of their equal employment and educational opportunities.

To expose the inadequate enjoyment of human rights by women and the girl-child in northern Nigerian society, this thesis will illustrate the cases of child marriage and seclusion in northern Nigeria to demonstrate issues of infringement on the socio-economic rights of women; freedom of fair hearing, movement, health, sexual and reproductive rights; right to choose or have consent on whom to marry; right to life and personal liberty; and right to education, etc.

¹ The World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UGAOR, 25 June 1993, A/CONF.157/23, at, Part I, para 18.

² These include: the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; the *Convention on the Elimination of All Forms of Discrimination Against Women*; the *African Charter on Human and Peoples Rights*; the *Protocol to the Charter on Human and Peoples Rights on the Rights of Women in Africa*; the *African Charter on the Rights and Welfare of the Child*; the *Convention on the Rights of a Child*; and the *Child Rights Act*. Further discussion of these instruments will be found at Chapter III of this thesis, *below*.

DEDICATION

This Master of Laws thesis is dedicated to my mother, Mrs Philomina Udoka Aghede Ehikwe, a Legal Practitioner and lecturer at Faculty of Law, Ambrose Alli University, Ekpoma, Edo State, Nigeria. This is for her motherly care, support, encouragement, and constant love which have sustained me throughout my academic advancement and my life in general.

ACKNOWLEDGEMENTS

I would begin by thanking my thesis advisor Prof. Paul D. Ocheje of the Faculty of Law at the University of Windsor. Prof. Ocheje offered guidance and support as he directed me in the style of my own writing and ideas. At times, this thesis felt insurmountable, and while overwhelmed he was there to offer advice and direction. Prof. Ocheje considered my thesis as a priority in his busy schedule.

My most profound gratitude to the academic and non-academic staffs of the Faculty of Law, at the University of Windsor. For their considerable assistance and excellent service. My appreciation also extends to Dr Laverne Jacobs, Dr Anneke Smit, Karen Momotiuk, and Francine Herlehy; I appreciate their prompt support, advice, and dedication to the success of my Master's program at WindsorLaw.

I am also very appreciative of my external readers, Professor Jesse Ovadia (Political Science) and Professor Sujith Xavier (Law). Thank you for your willingness to share of your knowledge and insightful suggestions.

I would also like to thank Britney De Costa for voluntarily agreeing to be my second reader, her kind gesture was extended many times when provided me with her edited version and comments.

I also want to thank my family and friends who have given me support on this journey; they were huge motivators, they continually supported me in my thesis completion.

Finally, I will like to acknowledge the support of my mother, Mrs, Philomina Aghede Udoka Ehikwe and sister, Victory Morka. I immensely appreciate your efforts toward my success.

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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child 1999
AFRICAN CHARTER	The African Charter on Human and Peoples' Rights 1986
AFRICAN CHARTER	African Charter on Human and Peoples' Rights 1981
1999 CONSTITUTION	Constitution of the Federal Republic of Nigeria 1999
CSW	Commission on the Status of Women 1946
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women 1979
CRA	The Child Right Act 2003
ICCPR	The International Covenant on Civil and Political Rights 1966
ICESCR	The International Covenant on Economic, Social and Cultural Rights, 1996---
UDHR	Universal Declaration of Human Rights 1948
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
ICCPR	International Covenant on Civil and Political Rights 1966
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women 1979
UN CRC	Convention on the Rights of the Child 1989
UBC	Universal Basic Education Commission 1999
UN	Charter United Nations, Charter of the United Nations 1945
UNGAOR	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962
UNCRC	Convention on the Rights of the Child 1989
VIENNA CONVENTION	Vienna Convention on the Law of Treaties 1969

PROLOGUE

As a Nigerian and an international student in Canada, who is about to conclude her Master of Laws degree, I believe in the value of education for everyone, especially for the girl-child because I am aware of some of surrounding factors, which opposes the enjoyment of human rights of the girl-child and women in Nigeria. Gender inferiority as one of the opposing factors backed up by culture and religious because its cores and recalling elements against the female gender in the society are adequate education, early marriage and lack of economic participation. Whenever I am asked by my colleagues and friends about what motivated me to research on thesis that connects to the abuse of human rights of the girl-child and women, my answer are, I am passionate about the researching on problems facing the girl-child in northern Nigeria and it will give me insights, bring about awareness and create a future solution to these abuses. In addition, I always remind my colleagues and friends that the world is changing and now accommodating the value of gender equality, notwithstanding that we that are aware of the truth must not be silent on the things that matter, because according to Martin Luther King Jr in his quotes on silence:

"Our lives begin to end the day we become silent about things that matter." and

*"The ultimate tragedy is not the oppression and cruelty by the bad people but the silence over that by the good people."*³

As a young girl from the southern part of Nigeria, I always knew I am privileged to be educated, but I never knew how unlucky most girls are on the issues of education, child marriage and the general concept of inferiority. Child marriage as one of the topics in this thesis, is an issue I am aware takes place in most states in Nigeria but didn't imagine the degree of the practice or its

³ Bill Murphy Jr. "17 Inspirational Quotes by Martin Luther King Jr. About Speaking Up When It Matters" (12 January 2018), online: < <https://www.inc.com/bill-murphy-jr/17-inspirational-quotes-by-martin-luther-king-jr-about-speaking-up-when-it-matters.html>>

impacts on the girl-child. This thesis reminds me of my maternal grandfather quote that: *“the education of his girl-child is a worthy asset, compared to buying of farmlands. A girl who is educated will not only make her father proud, she will also ensure her generation is educated”*. My grandfather who has six female children was criticized by his friends and other members of the community about his decision to educate his daughters. My grandfather always say that he wasn't affected by the resentment the community had on the education of a girl-child, instead he made sure that his daughter (my beloved mother) became the first female lawyer in my community. I may not be the girl-child that friends and family opposed her education, but I am sure that if my mother was not educated, I am certain I will not be educated.

One interesting challenge about this thesis is the sensitive nature of choosing this topic and its connection to the experience of the adolescent Hausa girls I met in Abuja Nigeria in 2015. In September 2015 I had my encounter with three Hausa girls, they were age 12, 13, and 15. I remember my first encounter with them. They approached me by knocking at my fenced gate, then they asked me if I had a job or any house chores for them to do for a fee, which I answered in affirmation. When they were done with the job, they asked if they can come in every other weekday, I was surprised because I expected them to be at school at their ages. My surprise resulted in a conversation with them, and that conversation gave birth to the chapter on child marriage because I got to find out that they were all child brides with children. They shared their experiences by explaining how they couldn't continue their education because of marriage, how they are maltreated in their husband's houses and their desires to be educated. Although their stories are not included as part of this thesis, nevertheless it motivated this thesis.

The writing of this thesis exposed the deep-rooted abuses of the girl-child and culture as one concept and the root cause of inferiority of the girl-child. In this topic, I was able to connect

my everyday experience of gender inequality through these sayings: *“You may be educated but that doesn’t change the fact that your place as a woman is in the kitchen and in your husband’s bedroom”*. *“Educating female children is a waste because they will end up competing with men in the professional industry and they will make bad wives”*. *“Educated women are not good wife materials because they are too wise, they know their rights and are not submissive”*. *“A woman is inferior, and the man is superior, so only men deserve adequate education and income making jobs”*. *“As a woman your aspiration of becoming a professor is unreality, you are expected to focus on becoming good housewives not acquiring certificates that cannot be used in the kitchen”*. *“A good girl is not expected to socialize; she should be at home, so that her mother can teach her how to be a good housewife”*. Etcetera

As a young Nigerian, I am aware that cultural practice promotes inferiority of the female gender and has made women and girls live through the experience by promoting early marriage over education. I am also aware that discussion or critics on child marriage and seclusion of women in northern Nigeria is mostly perceived as xenophobic or Islamophobic because the discussion connects to culture and Islamic religion, but that is not my intention. My intention for this thesis is to highlight the challenges and limitations that confront the implementation of international human rights law to address the abuse and violations of women’s and children’s rights. It is my hope that this research will provide students, parents, governments, academics, human rights activists, and religious leaders, enough knowledge of the effects of child marriage and the practice of seclusion.

The objective of this research is to raise awareness on the need for gender equality and thus bringing in both private organization as well as government agencies and ministries into tackling this gender menace especially in the northern part of Nigeria and to enlighten all stakeholders,

especially lawmakers whose responsibilities include making laws to help eliminate the oppression, inequality and subordination the girl child and women in northern Nigerian are enduring. I decided to use this thesis to create awareness because I believe in the value and increase of educated female children in Nigeria and Africa. I also believe researching and addressing the factors challenging the rights of the girl-child is the first step to take to achieve my ambition.

CHAPTER I

1. INTRODUCTION

1.1. Background

Women's rights are a great concern to many, especially those that are deprived of their human rights and equality. Everyone is entitled to equality; equality of rights and freedoms, without distinction or discrimination based on gender.⁴ According to Fatou Diop Sall, a women's rights activist and Professor of Sociology at Gaston Berger University, "[a]ll human beings are supposedly, 'born free and equal,' but equality is not natural, it is a construction that is defined by race, gender, class, economic power and political context."⁵ Gender-based inequalities are acts or prejudices against a targeted group based on gender.⁶ Gender inequality includes acts of discrimination and exclusion of a particular gender to employment, education, access to income and social amenities.⁷ Gender inequality is visible and prominent in Nigeria, as women are discriminated against in every sector of society, denied equal access to education, ownership of property, and equal representation in government.

1.1.2. Women in Nigeria

Women constitute about 50% of Nigeria's 186 million population.⁸ The 2012 Gender in Nigeria Report ("2012 Gender Report") stated that 80.2 million women and girls in the country

⁴ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 [*UDHR*].

⁵ Sylvia Cutler, "Women's Rights and West African Traditions" (30 January 2015), *Brigham Young University: Humanities* (blog), online: <<https://humanities.byu.edu/womens-rights-and-west-african-traditions/>>.

⁶ Amy Parziale, "Gender Inequality and Discrimination" in *Encyclopedia of Business Ethics and Society*, vol 1 by Robert W Kolb (Thousand Oaks, CA: SAGE Publication) at 978-981.

⁷ Damilola Taiye Agbalajobi, "Women's participation and the political process in Nigeria: Problems and prospects" (2010) 4:2 *Afr J Pol Sci & Intl Rel* 75.

⁸ Nigeria Data Portal, "Nigeria - Population Census – 2006" (n.d.), online: <<http://nigeria.opendataforafrica.org/xspplpb/nigeria-census>>.

are suffering as a result of gender inequality in the economy, education, politics, health, access to justice, and almost all areas of human development.⁹ In the rural agricultural workforce, 60-79% are women, but less than 5% have access to their own land.¹⁰ The 2012 Gender Report also highlighted the following:

- a. Nigeria ranked 118 out of 134 countries in the Gender Equality Index;
- b. 80% of women in eight northern Nigeria states are unable to read, compared with 54% of men;¹¹
- c. Nigeria has one of the lowest rates of female entrepreneurship in sub-Saharan Africa;
- d. There are higher numbers of women in casual, low-skilled, low-paid or informal sector employment; the high paying jobs in the country are predominantly occupied by men.
- e. Only four per cent of females completes secondary school in the northern zones.
- f. More than two-thirds of fifteen- to nineteen-year-old girls in northern Nigeria are illiterate (unable to read a sentence); this was compared to less than ten per cent in the south that is illiterate.
- g. Over half of all women in the north are married by the age of sixteen and are expected to bear a child within the first year of marriage.
- h. Women are politically underrepresented; only seven out of 109 senators and 25 out of 360 representatives are women.¹²

⁹ Ojoma Akor, "Nigeria: Gender Inequality - the Way Out" *Daily Trust* (8 June 2012), online: All Africa <<http://allafrica.com/stories/201206080211.html>>.

¹⁰ *Ibid.*

¹¹ In Jigawa state, 94% of women, compared to 42% of men, are illiterate.

¹² Premium Times, "Only 7 female senators in 8th National Assembly" *Premium Times* (29 May 2015), online: <<https://www.premiumtimesng.com/news/top-news/183932-only-7-female-senators-in-8th-national-assembly.html>>.

- i. The ideology of most men and women (especially elder women and men) in Nigeria is that it is reasonable for a husband to beat his wife if she burns the food, refuses sex, or goes out without his permission.
- j. Nearly half of unmarried women in parts of southern Nigeria have experienced physical violence.

The subordination of women in Nigeria in some cases begins at birth. Violence and subordination against women in Nigeria are experienced by women of all classes. The menace of physical, economic, psychological, social, and sexual abuse affects the educated, uneducated, rich and poor women.¹³ As confirmed by the data from the 2008 Nigeria Demographic and Health Survey, the cultural practice of child marriage and lack of girl child education among young women between 20–25 years, is most prevalent in north-east and north-west Nigeria¹⁴ when compared with southern Nigeria.¹⁵¹⁶

1.1.3. Northern Nigeria

The Federal Republic of Nigeria is comprised of 36 states and the Federal Capital Territory, with four major languages (English (official), Yoruba, Ibo, and Hausa) from 400 tribes.¹⁷ Nigerians

¹³ Ine Nnadi, “An Insight into Violence against Women as Human Rights Violation in Nigeria: A Critique” (2012) 5 J Pol & L 48 at 48.

¹⁴ The north-east and north-west make up the core of northern Nigeria.

¹⁵ Matan Kwarai, *Insights into Early Marriage and Girls’ Education in Northern Nigeria* (Action Health Incorporated, 2011) at 8-9 [Kwarai].

¹⁶ Africa Check, “Education for the Girl Child in Northern Nigeria” (3 July 2017), online: Africa Check <<https://africacheck.org/wp-content/uploads/2017/03/July-info-graphic.pdf>>: the 2008 Nigerian Demographic and Health Survey noted that 68% and 74% of women and girl children in north-east and north-west Nigeria have no formal education. This means only five percent of women in these two Northern zones, have completed secondary school, while over 25% of girls in the southern zones have completed secondary school. The proportions completing higher educational levels, (more than secondary) are much lower; three percent of women in the northern zones compared with 13% in the south-east and 16% in the south-west.

¹⁷ Akinwale S Akinsola & Thompson A Dauda, “Northern Nigeria and the Challenges of Population Grow with Deteriorating Land Mass Coverage” n.d Kaduna Polytechnic Journal, online: <https://www.academia.edu/33198845/NORTHERN_NIGERIA_AND_THE_CHALLENGES_OF_POPULATION_GROW_WITH_DETERIORATING_LAND_MASS_COVERAGE>:

practice three main religions: Islam, Christianity, and Indigenous beliefs.¹⁸ Northern Nigeria is estimated to have a population of 75,025,166. Nigeria's population was 140 million people as of 2006, so northern Nigeria makes up about 51% of the population of Nigeria.¹⁹ The northern part of the country is dominated by the Hausas, Fulanis, Nupes, Tivs, and Kanuris ethnic groups, and most people practice the religion of Islam.²⁰ The northern parts of Nigeria are pre-eminently occupied by Hausa and Fulani people. A Hausa-Fulani community amalgamation in northern Nigeria came as a result of the antiquity known as the Fulani Jihad and the Sokoto Caliphate in the early nineteenth century.²¹ The Hausa community constitutes one of the largest and most dominant ethnic groups in northern Nigeria, and the language spoken as *lingua franca* is also called Hausa.²²

The Hausa community in northern Nigeria practices Islam (Islam originally entered most parts of northern Nigeria known as the Hausa land in the late eighth century).²³ The people who do not practice Islam in northern Nigeria are referred to as the non-Muslim groups, and they mostly reside in the southern part of northern Nigeria. Some of the non-Muslims states are the Kogi, Plateau, and Taraba states, the southern part of the Kaduna state, and the Benue state.²⁴ The 36 states in

Nigeria is a diverse multi-cultural, ethnic and religious diverse country. Kano is a city in Northern Nigeria and the capital of Kano State. Kano is the largest city in northern Nigeria. It has a population of around 3,600,000.

¹⁸ "Nigeria country profile" *BBC News* (10 October 2017), online: <<http://www.bbc.com/news/world-africa-13949550>>; National Population Commission, "Nigeria Current Estimated Population" (n.d.), online: Government of Nigeria <population.gov.ng/>; Muslims make up 50% of the population, Christians, 40%, and traditional religions, 10%.

¹⁹ Chidi Anyaeche, "The 2006 Nigeria Census Figures" (11 January 2007), online: Nigeria World <www.nigeriaworld.com/articles/2007/jan/112.html>.

²⁰ Northern Nigeria has 14 Muslim-dominated Hausa states, except for the Plateau and Kaduna states which have a large population who are Christians: "Ethnicity in Nigeria" *PBS News Hour* (5 April 2007), online: <https://www.pbs.org/newshour/arts/africa-jan-june07-ethnic_04-05>.

²¹ The jihad was a conflict between Fulani evangelists and the nominally Muslim Hausa on the Fulani Muslims' failure to observe their claims of a true Islamic belief: Catherine M Coles & Beverly Mack, *Hausa Women in the Twentieth Century*, eds (Madison, Wis: University of Wisconsin Press, 1991) at 6 [*Hausa Women*].

²² The Hausa language is thus one of the most widely spoken languages in West Africa and Africa as a whole.

²³ This was noted by historical sources of the late eighth century, such as the Kano Chronicle, who stated that before the dominance of Islam in northern Nigeria, females were allowed to participate actively in formal leadership positions in society: *ibid*.

²⁴ Mohammed Sanni Abdulkadir, "Islam in the Non-Muslim Areas of Northern Nigeria, C.1600-1960" (2011) 1:1 *Ilorin J Religious Stud* 1 at 5.

Nigeria are divided into various regions, comprised of the northern region, the south-south, the south-west and the south-east regions. The northern Nigerian geopolitical zones and states are:²⁵

- a) North Central (Niger, Kogi, Benue, Plateau, Nassarawa, Kwara, and the Federal Central Territory);
- b) North East (Bauchi, Borno, Taraba, Adamawa, Gombe, and Yobe); and
- c) North West (Zamfara, Sokoto, Kaduna, Kebbi, Katsina, Kano, and Jigawa).

Presently, any discussion about the Hausaland refers to a large ethnic group of people inhabiting the Kano, Katsina, Sokoto, Kebbi, Jigawa, Kaduna, Nasarawa, Niger, Plateau, Bauchi, and Yobe states.²⁶ These large ethnic groups share close cultural ties and have practices that discriminate against women.

1.2. Statement of the Problem

Religious practice and culture have significant influence on the deep-rooted foundation of gender inequality and human rights abuse that has incapacitated northern Nigerian women over the years. The 36 states in Nigeria are governed by the 1999 Constitution.²⁷ Federal and state laws made by the Legislature (e.g., the National Assembly, consisting of the Senate and House of Representatives and the State House of Assemblies), customary laws, Islamic laws, and laws of regulatory agencies (such as the National Agency for Food and Drug Administration and Control, or “NAFDAC”).²⁸ Customary and Sharia law are incorporated as part of the state laws. The rights of women in Nigeria are clearly laid out in the 1999 Constitution, particularly in Chapter IV,

²⁵ Teslim Opemipo Omipidan, “The six Geopolitical Zones in Nigeria with their States” (17 March 2016) *OldNaija* (blog), online: < <https://oldnaija.com/2016/03/17/the-six-geopolitical-zones-in-nigeria-with-their-states/>>.

²⁶ Abiodun Olukayode Olotuah & Damilola Esther Olotuah, “Space and Cultural Development in Hausa Traditional Housing” (2016) 5:9 *Intl J Engineering Sciences & Research Technology* at 655

²⁷ *Constitution of the Federal Republic of Nigeria* 1999, (as amended), entered into force on 29th day of May 1999. [1999 Constitution]

²⁸ Adedunmade Onibokun, “Introduction to Nigerian Legal System” (2013) *Legalnaija Blawg* (blog), online: <www.legalnaija.com/2013/09/introduction-to-nigerian-legal-system-1.html>.

“Fundamental Rights”, which recognizes that every Nigerian citizen, regardless of gender, has the right to freedom of expression, right to freedom from discrimination, right to acquire and own immovable property, right to freedom of movement, right to life, right to personal liberty, and right to dignity of the human person.

However, it is unfortunate to admit here that the rights stated in the 1999 Constitution have remained “paper tigers”,²⁹ mere written statements that have no practical bearing on the lives and conditions of Nigerian women because of culture, customs, and religious interpretations. The manifestation of the statutory, customary, and religious practices in the governing system has reinforced the practice of gender inequality against the female gender in Nigeria. The customary and religious system of laws and practices has established its roots in opposition to the rule of law that governs the citizens of Nigeria in the north. The success of Sharia law can be seen in its stronghold on the jurisprudence of Nigeria.³⁰

Discrimination against women in Nigeria is endemic and can be seen in aspects of customary law practices, Sharia law, and some constitutional provisions. Nigeria operates as a male-dominant society where women and the girl child are regarded as second-class citizens.³¹ The dominate Hausa culture, and conservative Islamic and Christian values, are a core determinate of the status of the girl child and women in northern Nigeria. There is a deep-rooted social attitude reinforcing the position of women in the home and society based on a religious valuation which stresses women’s innate inferiority and confinement to domestic roles. Culture, and religious interpretation are the reality of female subjugation and patriarchal power and the truncated social position of

²⁹ Something that appears threatening but is ultimately ineffective.

³⁰ OECD Development Centre, *Social Institutions and Gender Index: Nigeria* (OECD Development Centre, 2014), online: <<https://www.genderindex.org/wp-content/uploads/files/datasheets/NG.pdf>>.

³¹ B E Uwameiye & Iserameiya F E, “Gender Based Violence against Women and Its Implication on the Girl Child Education in Nigeria” (2013) 2:1 Intl J Academic Research in Progressive Educa & Dev at 221.

women through the imposed conditions of seclusion and child marriage has affects their economic role in society.

The two problems of discrimination and subordination of women and the girl child this thesis will discuss are child marriage and seclusion of women in northern Nigeria.

1.2.1. Child Marriage

Child marriage is a worldwide problem, not exclusive to northern Nigeria. Child marriage is as a worldwide abuse, has affected more than 650 million women, with an estimated 12 million girls under the age of 18 that are married each year.³² In our world of 1.1 billion girls, 22 million are already married, and there is a risk of hundreds of millions - up to 280 million - girls becoming brides before they reach the age of 18. As our population increases, women married in childhood will grow from more than 700 million today to approximately 950 million by 2030 - that is, if there is no reduction in the practice of child marriage.³³ Nigeria ranked 11th in the international ranking of countries with the highest rate of the practice of child marriage at 44%.³⁴ Nigeria is soon expected to have the highest number of child brides in Africa: although there has been a decline of 1 percent, per year in child marriage over the past three years in the country, the number of girls married or in a union before they are 18 years of age is expected to double by the year 2050.³⁵

In 2015, according to the Federal Ministry of Women Affairs and Social Development, “an estimated 6 million girls were married by age 15, and 36 million girls were married by age 18

³² UNICEF, “Child protection from violence, exploitation and abuse: Child Marriage” (5 March 2018), online: UNICEF <https://www.unicef.org/protection/57929_58008.html>.

³³ United Nations Children’s Fund, *Ending Child Marriage: Progress and prospects* (New York: UNICEF, 2014) at 5 [*Ending Child Marriage*].

³⁴ Girls Not Brides, “Child Marriage around the World: Nigeria” (n.d.), online: <<https://www.girlsnotbrides.org/child-marriage/nigeria/>>.

³⁵ *Ending Child Marriage*, *supra* note 33 at 7.

nationwide.”³⁶ In proportion to the rest of the world, northern Nigeria has one of the highest rates of child marriage at 65%.³⁷ Also, in 2015 the prevalence of child marriage in the north-west and north-east regions was 48% for girls married by the age of 15, and 78% who were married by the age of 18. Females in the northern states of Nigeria, especially in the north-west and north-east, are married five years earlier than those in the southern states, where women are better educated.³⁸ Child marriage in northern Nigeria is primarily associated with illiteracy. Child marriage is a human rights abuse, and it is internationally recognized that children are to be protected from violence, exploitation and abuse. Child marriage affects and challenges the education and development of children in Nigeria. Its prevention and elimination will cause significant positive changes to the social, economic, and health sectors in Nigeria.

1.2.2. Seclusion

Purdah, or seclusion (*Kulle*), is connected to a northern Nigerian Islamic interpretation about how women should dress and stay indoors to protect men from sexually harassing her. It is widely practiced in the northern part of Nigeria, especially the rural areas.³⁹ It means restricting married women from going out or being given permission from a male member of the family to go out. It is a form of subordination of women as it perceives women’s sexuality as potentially destructive to men. Seclusion creates a problem of lack of access to education, healthcare, freedom of association and movement, and economic participation. Secluding women enables men to be in

³⁶ The Federal Ministry of Women Affairs and Social Development, *National Strategy to End Child Marriage in Nigeria* (Federal Ministry of Women Affairs and Social Development, 2016), online: Girls Note Brides <<https://www.girlsnotbrides.org/resource-centre/national-strategy-end-child-marriage-nigeria-2016-2021/>>.

³⁷ *Ibid* at 10.

³⁸ *Ibid*.

³⁹ Japan International Cooperation Agency Planning Department, *Country WID Profile (Nigeria)* (Japan International Cooperation Agency Planning Department, December 1999) at 6, online: <https://www.jica.go.jp/english/our_work/thematic_issues/gender/background/pdf/e99nig.pdf>.

control of women's lives.⁴⁰ Kano, the largest city in the northern part of Nigeria, and the centre of the country's Islamic practices have over 95% of married women living in Purdah.⁴¹ Seclusion of women promotes and increases high rates of unemployment in women and poverty in the country.⁴²

This thesis is the reality of female subjugation and patriarchal power is embroidered directly and indirectly through cultural and religious practices. The symbolic statements girls receive from a young age have effectively and sharpen the idea of inferiority in themselves just because they are female. As a girl child grows up, she is made aware of her inferior gender status as she is told to behave like a woman, not to rebuke her brother for any wrongdoing in the house. When she rebukes her brother, her parents might admonish her by saying: "Can't you see you are a woman, while he is a man?" or a woman cannot rebuke a man.⁴³ She is told you must obey men because you are a woman and no matter what you do, you are going to a man's house.⁴⁴

Limiting the movement of someone impacts more than their exclusion and seclusion, it also affects their education, their role in the community and limits their socioeconomic position. The study of these practices creates the need for addressing the pervasiveness of patriarchy and gender inequality, in culture and religious practices, through the recognition of the value of respecting women and children's human rights.

⁴⁰ Barbara J Callaway, "Ambiguous Consequences of the Socialization and Seclusion of Hausa Women" (1984) 22:3 Journal of Modern African Studies 429 at 433 [Socialization and Seclusion].

⁴¹ *Ibid* at 431.

⁴² Collins Nweze, "Poverty rate in the North is alarming, says Sanusi" *The Nation* (26 October 2017), online: <<http://thenationonline.net/poverty-rate-north-alarming-says-sanusi/>>.

⁴³ It is said in Hausa Language as: "*ke mace ce, gidan wani zaki*", which means, "after all you are a woman"

⁴⁴ "Barbara J. Callaway, *Muslim Hausa Women in Nigeria: Tradition and Change (Contemporary Issues in the Middle East)* (Syracuse University Press, 1987) at 435 [Callaway]; In Hausa Language, "no matter what you do, you are going to a man's house." Is said: "*komai abinki, gidan wani zaki*"

1.3. Research Methodology

The research methodology adopted in this research is the qualitative legal research method where secondary and primary resources will be analyzed. Most contemporary international and national knowledge about the gender inequalities in northern Nigeria will be derived primarily from religious texts (the Quran), and the international and national (Nigeria) law texts, such as international treaties, and national constituted statutory laws and law reports. There will be desk research, analysis of materials from organizations and legal practitioners, working on cases of infringement of human rights of women and children. Scholarly books, online news reports, and journals will also be examined. These sources will inspire the knowledge and application of textual analysis and the exposure to issues of human rights abuses that pertain to women and the girl-child in northern Nigeria.

1.3.1. Research Questions

The two central questions in this thesis are:

- (1) What are the gender inequalities and human rights abuses that are perpetrated against women and the girl child in northern Nigeria; and
- (2) How can the Nigerian government and individual actors envision a direction for social change that will eliminate gender inequality against women and the girl child in northern Nigeria?

1.4. Outline

This thesis is organized into six chapters. Chapter two commences with literature review and theories on status of women, inferiority and gender roles. This chapter highlights Charles Darwin's theory on the superiority of men of the 19th century, the status of women as slaves, restriction, prohibition and limitation of the general freedom of human beings that is protected in

old institutions and customs. The theory on gender ideologies and gender roles as an embedded system called a worldview, was also explained as one of the reasons for gender inequality and the domination of men.

Chapter three undertakes a review of the national and international human rights laws that protects and prohibit abuses and discrimination against women and the girl-child.

Chapter four explains the abuse of child marriage as sexual abuse and deprivation of right to education. This chapter discusses child marriage as a cultural practice of the Hausa-Fulani ethnic communities, a practice that showcased the inferiority of the girl-child and deliberate abuse of rape supported by religion.

The discussion in chapter five focuses on the limitation of movement and economic rights against women in northern Nigeria, as a result of seclusion. Seclusion was discussed as a misinterpretation of the Quran, as an aspect of Purdah and it is a power tool the men in northern Nigeria use to reinforce the concept of gender roles of women in the family.

Chapter six is the concluding part of the thesis and it focuses on the approaches that can be effective in the changing of the narrative of abuse of the girl-child and women in northern Nigerian. This chapter discussed the feminist standpoint theories as explained by Dorothy Smith and Patricia Hill Collins as directions for social change through which the elimination of gender inequality, human abuses, and oppression of women and the girl child can be achieved.

CHAPTER II

1. LITERATURES AND THEORIES

Social structures are constructions of social practice and contributions of the human society.

⁴⁵Gender inequality is the classification of women that devalues them in favour of the social domination of men.⁴⁶ In many societies, the social status and gender roles of women are intertwined with gender inequality, where women are socially constructed as a group to be the subordinates of men.⁴⁷ The fundamental premise for this literatures review is to understand status and gender as contributing factors for unchallenged abuses and violations of human rights in northern Nigerian against women and the girl child. The literatures will give us an understanding of the status of women and gender roles of women in northern Nigerian society from an academic point of view. The question this section will answer is: why are women dominated by men and why do men feel confident that women are their subjects? The answer, as will be shown, is that men consider women's status and gender roles in society as inferior. I will explain the scholarly and theoretical explanation of men's superiority, women's status as slaves, and the gendered cultural roles of women in northern Nigerian society.

1.1. Charles Darwin's Theory of the Superiority of Men

The recognition of the superiority of men was part of the prominent late 19th century writings of Charles Darwin who based his theory of women as intellectually and physically inferior to men on the theory of evolution and the survival of the fittest.⁴⁸ Darwin's argument on men's

⁴⁵ Judith Lorber, *Paradoxes of Gender* (Yale University Press, 1994) at 56 [Lorber].

⁴⁶ *Ibid* at 62.

⁴⁷ *Ibid* at 61.

⁴⁸ Jerry Bergman, "The history of the teaching of human female inferiority in Darwinism" (2000) 14:1 Journal of Creation 117 ["Jerry Bergman"].

superiority over women was based on natural selection⁴⁹ and an understanding of men as being the protectors and providers for women since they were more experienced in war.⁵⁰ In Darwin's theory, the inferiority of women was compared to that of weaker species as men were seen as protectors of women and children.⁵¹ Darwin's theory, especially the ideas of natural and sexual selection is one of the reasons women's inferiority and men's superiority in mental development and evolution has been justified.⁵²

As explained by Darwin, evolution theory involves the possession of women by strong men because men are the keepers of menageries (captive animals).⁵³ Because of this theory, Darwin advocated for men's education in the laws, customs and traditions of their nations as a youth because he viewed their brain as impressive, and having a higher standard of excellence, embodied in the skills meant for leadership.⁵⁴ Darwin claimed that women's smaller brains made them eternally primitive, and biologically and intellectually inferior to men.⁵⁵ Women are considered to be less selfish and have tenderness because of their maternal instincts. Women are not seen to need education since it is believed that education is meant to prepare the ambitious and powerful men, and society should allow men to compete with one another,⁵⁶ not with women who have small brains and inferior intellect.⁵⁷ Darwin's theory has been used by people, like

⁴⁹ Charles Darwin, *The Descent of Man and Selection in Relation to Sex*, 2nd ed (London: John Murray, 1888) at 60 [Darwin].

⁵⁰ Jerry Bergman, *supra* note 48 at 106.

⁵¹ The theory of the evolution of species by natural selection advanced by Charles Darwin.

⁵² Jerry Bergman, *supra* note 48 at 106; Darwin, *supra* note 107 at 565.

⁵³ Charles Darwin, *The Origin of Species By Means of Natural Selection or The Preservation of Favored Races in The Struggle for Life In Two Volumes*, Volume I (New York, D. Appleton and Company) at 108.

⁵⁴ Darwin, *supra* note 49 at 563.

⁵⁵ Jerry Bergman, "Darwin Taught Male Superiority" (1 January 2007), online: Answer in Genesis <<https://answersingenesis.org/charles-darwin/darwin-taught-male-superiority/>>.

⁵⁶ Darwin, *supra* note 49.

⁵⁷ Darwin, *supra* note 49 at 4.

Female children are referred to Nigerian pidgin English slang as "fish brain" to signify lower intelligence compared to men.

Joseph LeConte, a leading evolutionist at the time, to oppose women's suffrage because he considered women incapable of rationally handling political office which required emotional detachment and clear logic.⁵⁸

1.2. The Status of Women (Slaves)

Women are dominated by men because of what the status of women entails. The status of women, or the female status, as a view made by John Stuart Mill, refers to women's gender position, power, value, and existing social relations with men. The status of women in society is a subject of discussion for most scholars focused on the progress towards equality with men in society and their economic and political rights.⁵⁹ The status of women is impacted by the privileging circumstances that encourage inequality and barriers based on the perceived inferiority of women,⁶⁰ resulting in disparities in access to strategic resources and lack of same control in the economic and political spheres.⁶¹ John Stuart Mill understands the fundamental premises of inequality based on the status of women in society are: (1) the right of men to rule and the duty of women to obey; and (2) the impulsion of marriage on women.⁶²

The right of men to rule women seems like the most natural ground to exercise unjust authority and force against women.⁶³ Men are regarded as having supremely natural dominion over the inferior class of society. The domination of men over women is usually based on the idea that mankind has both free nature and the slaves' nature.⁶⁴ The status of women is seen as natural based

⁵⁸ Lester D. Stephens, "Evolution and women's rights in the 1890s: the views of Joseph LeConte" (1976) 38:2 *The Historian* 241

⁵⁹ Peggy R. Sanday, "Toward a Theory of the Status of Women" (1973) 75:5 *American Anthropologist*, New Series 1682 [Sanday].

⁶⁰ John Stuart Mill, *The Subjection of Women* (New York: Frederick A Stokes Company, 1911) at xiii [Mill].

⁶¹ Sanday, *supra* note 58 at 1683.

⁶² Mill, *supra* note 60 at xiii.

⁶³ *Ibid* at 26.

⁶⁴ *Ibid* at 25.

on the assertion that women have a slave nature, so they should obey and submit to the braver and manlier men.⁶⁵ In this view, it is unnatural for men to consider women to be among the privileged class or independent of their authority.⁶⁶ The principle that regulates existing social relations between men and women is that the chief hindrance to equality is admitting power or privilege on one side, and limitation on the other.⁶⁷ Men “cling to the theories that justify their passion and legitimize their personal interest,” just like the slave-owners of the Southern United States maintained and justified that the dominion of the white man over the black man is natural and that the black man is marked for slavery and is naturally incapable of freedom.⁶⁸

The status of women as slaves makes it unlikely for women to be collectively rebellious to the power of men.⁶⁹ To justify the inability for collective rebelling, and the continued domination of women, “inferior mental capacity (or personal faculties)” of women is cited.⁷⁰ The claim is that women, on average, are less gifted than men and a smaller number of women are fit for occupations and functions that involve low intellectual character.⁷¹ This view makes it is easy for society to maintain that the most eminent women are ineffective or inefficient because men rule society, create the rule of law, and have the support of the existing authority (government).⁷² Men do not want competition from women, so to protect their desire for less competition and to lessen the value of women in the society, they forbid women to be employed.⁷³ In most societies, fewer women are employed because of institutional preference for men. If women are given a fair

⁶⁵ *Ibid* at 26.

⁶⁶ *Ibid* at 22, 27.

⁶⁷ *Ibid* at 1.

⁶⁸ *Ibid* at 24-25.

⁶⁹ *Ibid* at 31.

⁷⁰ *Ibid* at 108.

⁷¹ *Ibid* at 109.

⁷² *Ibid* at 108.

⁷³ *Ibid* at 108, 110.

opportunity to compete for positions and in industries that are typically dominated by men, then there will necessarily be fewer men in those positions and industries. A society that rejects the service of a competent individual on the basis of gender is doing itself a great disservice and can be said to condone injustice and unfairness.⁷⁴ The equality and human rights of everyone include the right to choose their occupation and not to be confined to a position or occupation on the basis of gender.⁷⁵

1.2.1. Slavery and the Patrician Men

This status of slavery is deeply rooted and protected in old institutions and customs that restrict, prohibit and limit the general freedom of human beings.⁷⁶ The old system (customs and traditions) believes that to be born a girl instead of a boy or a commoner instead of a nobleman shall decide the person's position through life and social positions.⁷⁷ The commoner's job in life is to wait for instructions from superior wisdom.⁷⁸ The subjection of women as a universal custom has become a norm or an unnatural experience which people become used to.⁷⁹ This norm promotes men's ideal character as one of self-will and government of self-control, while women's ideal character is one of submission and yielding to the control of men. This mentality of influence and control defines women according to a belief that they are to live for others, abnegate themselves, be attracted or affectionate only to their husbands and children, and be dependent on their husbands.⁸⁰ This includes the subjection of women to a life of meekness, submissiveness and resignation of her will as a human being into the hands of a man. A woman's pleasures and

⁷⁴ *Ibid* at 111.

⁷⁵ *Ibid*.

⁷⁶ *Ibid* at 2, 4.

⁷⁷ *Ibid* at 39.

⁷⁸ *Ibid* at 3.

⁷⁹ *Ibid* at 27.

⁸⁰ *Ibid* at 32.

privileges (freedom) are given either as a gift or at the willingness of her husband, because her principal object of human pursuit, consideration, political and social ambition can only be sought or obtained through him, the male figure - her husband, father, and brothers - if he permits.⁸¹

Women ought to find favour in the eyes of some aristocrat or patrician.

The patrician (men) dominate women because women can be compelled by society to marry and produce children. Society closes doors of advancement against them because it is believed that most women will not agree to marry and produce children when they are advanced or shown the door of advancement.⁸² Some women are forced into marriage by men who do not support equal freedom for women, so women are conditioned to marry.⁸³ Some women are taken by force or regularly sold by their fathers to a husband. The father has the power to dispose of his daughter in marriage at his own will and pleasure, without any regard for her future. There is no requirement of the word “yes” or consent, other than a required form of acceptance from the girl. In fact, it is practically impossible for the girl to refuse compliance if her father insists on forced marriage. If she disobeys her father, she could invoke long-term repudiation of herself, as he is the sole tribunal and the law.⁸⁴ Men, as fathers and husbands, are seen as lords over women, and women are bondservants to their husbands, just as slaves are legally obligated to their masters.⁸⁵

If we are to relate the position of married women in society with the class of a slave in the society, the married women’s status is the same with that of the slave, and like slaves, women are not permitted to own property, so any property and income which she labours for, is entirely

⁸¹ *Ibid* at 33.

⁸² *Ibid* at 59-60.

⁸³ *Ibid* at 61.

⁸⁴ *Ibid* at, 64.

⁸⁵ *Ibid* at 65.

subjected to her husband who is her master. In some societies, women cannot acquire property, and if a woman purchases any property, instantly the property becomes her husband's.

The domination of men continues to exist because women live in a society where men have the legal power to dictate the form of education and religion of their children, and wives, upon divorce or death of her husband, receive nothing and have no say because they have no legal claim to their children.⁸⁶ A woman's joint or personal possession is taken and equalized with the position of women as a slave.⁸⁷ Like a slave, the laws give husbands or masters the rights to whip and administer punishment on wives for disobedience. There are customs or unwritten laws that forbid education for women and recommend restrictions on professions and skilled trades that will advance women.⁸⁸ In a society where women are slaves, there are principles or laws where the principal object of human pursuit and all objects of social ambition for women depends on the decision of a man (s).⁸⁹ The representation or status of women in relation to men as one where they must be meek, submissive and objects of sexual attraction to men is slavery.⁹⁰

1.3. The Status by the Quran on Hausa Women.

The status of Hausa women aligns to the question of women status as addressed by the Quran and the male dominated society. There is a premise stated above that the status of women is rooted in domination of men. The question is, according to the Quran what is the qualifying status of Hausa women, as explained by Hausa feminist Asghar Ali Engineer? Northern Nigeria abuses of women is a cultural and religious issue, so knowing what the Quran constitute as the rights and status of women plays a crucial role in determining the oppression by men⁹¹. To answer

⁸⁶ *Ibid* at vii.

⁸⁷ *Ibid*.

⁸⁸ *Ibid* at viii.

⁸⁹ *Ibid* at x.

⁹⁰ *Ibid* at xi.

⁹¹ Asghar Ali Engineer, *The Rights of Women in Islam* (New York: ST Martin's Press, 1992) at iii [Asghar]

the question- the status of women is inferior, while the men is superior because the Quran is conflicting on its stands on equality.

The Quran demands for women to be submissive and perform of “*sajda*”- prostration when greeting their husband,⁹² notwithstanding that women biological status are equal to men. Women should always concede some degree of superiority of men in its social context,⁹³ because a man social status is more superior, because Quran states that” Men are maintainer of women as Allah has made some excel and others”⁹⁴. As noted by Asghar, Quran 4: 35 states women status as a concept of a weaker sex - “*izzat*”- and she ought to be protected by the man who is superior.⁹⁵ To prove submissiveness the Quran, expect the woman to lower her gaze and restraining her sexual passion, expect if her husband permits.⁹⁶

1.4. Cultural Gender Roles

Gender roles, also known as gender ideologies, is one of the reasons for gender inequality and the domination of men. Gender roles as an embedded system is called “worldview” by Wilhelmina Kalu & Ogbu U Kalu.⁹⁷ Gender ideology as a worldview among Nigerian people is embedded in their environment, culture and norms. The privileging circumstances of gender roles for men that are intertwined with gender inequality are a tradition. Gender roles for women and men come from the traditional setting and the modern socioeconomic and political conditions that have affected the perception and status of women in the communities.⁹⁸ Gender roles in the traditional setting portray the conception of a hierarchical superiority and inferiority that is woven

⁹² Asghar citing Ahmad Ali, AL Quran- A Contemporary Translation (Delhi 1987) p. 78

⁹³ Asghar, *supra* note 91 at vi

⁹⁴ *Ibid* at 45 n 51

⁹⁵ *Ibid* at 5

⁹⁶ *Ibid* at 86

⁹⁷ Wilhelmina Kalu & Ogbu U Kalu, “Nigeria” in Leonore Loeb Adler, ed, *International Handbook on Gender Roles* (Greenwood Press, 1993) at 234 [Kalu & Kalu].

⁹⁸ *Ibid* at 229.

throughout and understood as a value system for the society.⁹⁹ This inferiority has made Hausa men feel that they can dominate women.

The value system in a society is the way people perceive and explain the way things are done in their environment, their families, and at the religious and community level. Gender roles that marginalize women are cyclical, as life moves from birth and death. Nigeria has a culture of deity (agents of Supreme Being) worship that signifies power, authority, and control by males to whom women must pay obedience as daughters and wives.¹⁰⁰ The notion of early superiority or self-worship as monarch, where women are the subject, has been inculcated in men from childhood.¹⁰¹ The power men have allowed them to dominate the hierarchy of political groups, social relationships, economic sustenance, and protection of the well-being of individuals and lineages. An example of this is that in most cultures, women can cultivate land and develop small capital yielding occupations such as weaving, pottery and salt making but they do not inherit land (even in matrilineal communities), except through her male child's name.¹⁰² Indeed, there are substantial gender disparities in the ownership, control, and use of land. Land rights are controlled by men or kinship groups, which themselves are controlled by men, and women have access mainly through a male relative, even in a matrilineal society like Ghana, especially in the Volta Region of Ghana.¹⁰³

1.4.1. The Worldview of Gender Roles

The worldview of gender roles as described by Wilhelmina Kalu and Ogbu U. Kalu is that male and female socialization, and gender roles are initiated by families from birth through a higher

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid* at 230: Older women are treated as men.

¹⁰¹ Mill, *supra* note 60 at 178.

¹⁰² Kalu & Kalu, *supra* note 97 at 231.

¹⁰³ Mary Kimani, "Women Struggle to Secure Land Rights: Hard fight for access and decision-making power" (2008) 22:1 Africa Renewal: Special Edition on Women 10.

preference for male babies because of a desire for the maintenance of a family name. Young women begin to struggle with the image of the female gender from puberty, and this were boundaries of behaviours, and sex-role preferences become acuter in the family. In the mid-1950s, a typical educational level for women was either teacher training college or homemaking, as early educational facilities for female children were focused on home economics, hygiene and home management, rather than academics.¹⁰⁴ Gender roles for young males in traditional Nigerian society involves the initiation of adult lifestyles that signify authority in traditional and religious values, while the young females are trained to play domestic roles, engaging in homestead cooking, child rearing, body beautification, and artisan skills because lower education and unequal socioeconomic status are expected for female children.¹⁰⁵ Gender ideology functions as a lens that solidifies inequality in the household. In households where gender ideologies exist, gender inequality is manifested in the function of household labour.¹⁰⁶ There is a belief that the employment of a married woman destabilizes the marriage and upsets the traditional marriage norms and the husband's marital satisfaction.¹⁰⁷

Inequality in paid employment for married women is regarded as a solution for marital stability as it directs women to focus on household labour, children and their husband.¹⁰⁸ The performance of household labour (72% for employed wives and 81% for unemployed wives) is significant, as it is related to the traditional roles of the wife.¹⁰⁹ There is inequality (and domination) in gender ideologies that promote the idea that women ought not to be employed or

¹⁰⁴ Kalu & Kalu, *supra* note 97 at 234.

¹⁰⁵ *Ibid* at 232, 234.

¹⁰⁶ Theodore N Greenstein, "Gender Ideology, Marital Disruption, and the Employment of Married Women" (1995) 57:1 *Journal of Marriage and Family* at 33.

¹⁰⁷ *Ibid* at 31.

¹⁰⁸ *Ibid* at 32.

¹⁰⁹ *Ibid*.

earn income, while society and the community put no restriction on the man to earn income from paid employment.¹¹⁰ Women are therefore economically dependent on men because they are limited to unpaid labour in the home.¹¹¹ Traditionally, it is unexpected and seen as unreasonable for men to share in the division of domestic or household labour.¹¹² The expectation is that woman, should they seek employment, stay in the home so that they are able to concentrate on traditional homemaking responsibilities.¹¹³

Inequality in gender roles is also emphasized through the taboo or dread of premarital pregnancy of a daughter. Premarital pregnancy attracts a social stigma and dance of shame for the girl.¹¹⁴ Traditionally, children are desired, but there is an emphasis on a marital ethos of a female's subservience. Parents prevent premarital pregnancy in young girls, restrictive measures in the form of child marriage and limited outings are put in place immediately after first menstruation. These actions are only applied to the girl child and do not affect the male child.¹¹⁵

From the above, it is safe to say that women are dominated by men, and most men are able to claim power and authority from the mere fact that they are born male.¹¹⁶ Social institutions have made it easier for men to flatter themselves and qualifies them with the rights and knowledge to control women by regarding her as a slave.¹¹⁷ Women are dominated by men because there is an expectation that women be submissive to men. Most men believe in the inferiority of women, so they are confident that women are their subjects, and as Kings, they believe they cannot be denied

¹¹⁰ *Ibid* at 41.

¹¹¹ *Ibid* at 34.

¹¹² *Ibid* at 40.

¹¹³ *Ibid* at 31.

¹¹⁴ Kalu & Kalu, *supra* note 97 at 235.

¹¹⁵ *Ibid* at 235-236.

¹¹⁶ Mill, *supra* note 60 at 176.

¹¹⁷ *Ibid* at 57.

worship and service. Gender roles, born out of traditions and family practice, is one of the reasons why women are dominated. A man that is used to seeing his father beat and subject his mother and sisters to untold hardship will believe it is in his right to do so as well. The status of slavery of women in society may not have been directly spelt out. However, the expectation of women's meekness, submissiveness, and entire dependence on the commandment men implies it.¹¹⁸ Human beings do not automatically outgrow what they are taught from childhood. In fact, most of us build upon what we are taught, and this is also the case with men who feel they can dominate women because they have been taught that women are inferior.¹¹⁹

1.5. Effect of Superiority, Inferior Status, and Gender Roles

The status of an individual, a group or an institution influences its (or their) perceived relevance in the society. Status and gender roles can cause socioeconomic inequality because it can determine power, wealth, education and political rights.¹²⁰ Gender status can make subjects or groups powerless. The status of women as slaves makes it unlikely that they will collectively rebel, so there continues to be explicit discrimination by men in the control of social and organizational resources.¹²¹ This resource control by men has been sustained by legal constraints that value meritocratic hiring policies. These rules or laws act as barriers that prevent women from pursuing male-dominated industries traditionally.

¹¹⁸ *Ibid* at 32.

¹¹⁹ *Ibid* at 179.

¹²⁰ Cecilia L Ridgeway, "Why Status Matters for Inequality" (2013) 79:1 American Sociological Review 1.

¹²¹ *Ibid* at 4.

Superiority and inferior status affect young children (especially girls) in their cognitive abilities, financial security, sexual behaviour, and life-changing choices.¹²² Women often experience limitations in their pursuit of progress because of their defined gender roles, including motherhood expectations and responsibilities.¹²³ Family responsibilities are significant hurdles for women when it comes to career and educational advancement, because of the influence of gender roles. The cultural gender role of motherhood for women is a contributing factor to gender bias in the educational sector among boys and girls.¹²⁴ The achievement of rights to education for most girls is imaginary because there are evident gender disparity and bias, justified by women's confinement to marriage and motherhood. Parents and family members are more likely to invest in education when it comes to sons rather than daughters, as educated women and girls are perceived to be stubborn, less valuable and not willing to abide by their father's, brother's, or husband's will.¹²⁵

The gender roles of women in schools which is often connected to their natural affinities with children, teaching, housekeeping, has forced many women into lesser paying jobs, such as primary school teachers, nursing home attendants, agricultural positions, small-scale food processing roles, secretarial duties, clerical duties, note-counting in banks, cleaners and other middle level professional occupations. Because men are more educated, they dominate the public and private job sectors.¹²⁶ The expected ceiling of education for most female children is primary,

¹²² Nkechi Catherine Onwuameze, *Educational opportunity and inequality in Nigeria: Assessing social background, gender and regional effects* (PhD Dissertation, University of Iowa, 2013) at 35.

¹²³ Uzoma Aja-Okorie, "Women Education in Nigeria: Problems and Implications for Family Role and Stability" (2013) 9:28 *European Scientific Journal* at 275.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*; The difficulty in women's education is compounded by the negative attitude of parents toward female education.

¹²⁶ *Ibid.*

secondary or, at most, teaching college, because of girls drop-out from school earlier than their male counterparts.¹²⁷

Summary

Many societies, including northern Nigerian communities, follow Darwin's theory, believing that male physical and intellectual attributes are enough for him to be superior and that women's superiority only comes in the form of their sexual attractiveness or appeal to men.¹²⁸ The consequences of the theory of evolution on the perceived differences between men and women have defined their social roles and confined women to housekeeping and child rearing. This social confinement has also aided the legal and customary limitations on the education of young girls and the employment of women.¹²⁹ To challenge the domination of men in society, laws and customs should be changed and decided by women based on their own experience. Inequality and dominating attitudes should not be taught to children.¹³⁰ The same domestic chores that are given to female children should also be given to the male child.

Women's nature is not a debate where mankind can interfere and conclude that the natural vocation of a woman is that of a wife and mother.¹³¹ Women are equal to men, and there is no need for law or social inculcation to exclude them from the same opportunities as men.¹³² Men should cease from painting women as eccentric when they demand or express themselves. Most women

¹²⁷ *Ibid* at 274; More than two thirds of 15-19-year-old girls in northern Nigeria are unable to read a sentence. Education is linked to employment, so ensuring women's education in society increases their chances of getting higher paying jobs.

¹²⁸ Jerry Bergman, *supra* note 48 at 106.

¹²⁹ *Ibid*.

¹³⁰ Mill, *supra* note 60 at 177.

¹³¹ *Ibid* at 59.

¹³² *Ibid* at 58.

are free-spoken and are willing to express their real sentiments. What is needed is for the social institutions to admit the same free development of originality in women as it does for men.¹³³

Women should be allowed to be man's legal and socially equal because she is his natural equal.¹³⁴

The society, community and family should allow the free use of women's intellectual abilities and skills, by giving them access to the education and equal opportunities in business, public or social affairs and political positions typically occupied by men.¹³⁵ To break the chain of dependency of women on men and to limit the widening sphere of domination of men against women, women must be educated and employed.¹³⁶ Bringing an end to the current and perpetuating gender roles in society involves men and women working together to overcome the stifling confines of societal dictations of what women should do and what they should not do. They should remove active and unwritten barriers that limit women breaking forth into industries that are traditionally male-dominated.¹³⁷

¹³³ *Ibid* at 55-58.

¹³⁴ Catharine A Mackinnon, *Toward A Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) at 42. [*Toward A Feminist Theory of the State*]

¹³⁵ Mill, *supra* note 60 at 181.

¹³⁶ *Ibid* at 184.

¹³⁷ Nian Hu, "If We Want Equality, Then We Must Stop Perpetuating Gender Roles" *Harvard Political Review* (21 March 2015), online: <harvardpolitics.com/harvard/want-equality-must-stop-perpetuating-gender-roles/>.

CHAPTER III

1. LEGAL FRAMEWORK

Examination of Domestic and International Human Rights Laws and Treaties – Legal Framework for the Protection of the Girl Child and Women’s Rights in Northern Nigeria

Under the banner of human rights, women and children constitute a minority group. This chapter offers a comprehensive look at the law and treaties that promote human rights and the advancement of women's and children’s rights. Different laws and treaties have been developed to accelerate the equality between men and women, as well as to prevent the violation and abuses of those rights by individuals, organizations, communities, states, and others. International human rights laws and treaties drafted by the African Union as well as Nigerian laws are aimed at securing equality between women and men and eliminating all forms of discrimination against women and the girl child. These laws, treaties and conventions will be expanded upon below.

1.1. International Human Rights Laws

International human rights treaties and other legal instruments are documents on inherent human rights at the social, regional and domestic levels. They are instruments that reflect particular human rights concerns and mechanisms for protection of those rights. The protection of human rights in most states have also been adopted as parts of their constitutions or other legal documents or regulations. The backbones of international human rights law are the international treaties and the customary laws of states.¹³⁸

1.1.1. The United Nations

¹³⁸ United Nations Human Rights Office of the High Commissioner, “Professional Interest: International Human Rights Law” (n.d.), online: United Nations <www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

The United Nations as an intergovernmental organization was founded on October 24, 1945, and it was at this time that it adopted the Charter of the United Nations (“UN Charter”) for fundamental guarantees of human rights.¹³⁹ The UN Charter was signed on 26 June 1945,¹⁴⁰ in San Francisco, at the conclusion of the United Nations’ Conference on International Organizations. The preamble of the UN Charter states:

“We the people of the United Nations Determined...

- *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*
- *to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*
- *to promote social progress and better standards of life in larger freedom.”*

Article 1 of the UN Charter stipulates that “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” is the second purpose of the United Nations.¹⁴¹ Article 13 mandates the General Assembly “assist in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”¹⁴² Article 55 stipulates the universal respect for, and observance of, human rights and fundamental freedoms.¹⁴³

¹³⁹ OHCHR, *Women’s Rights are Human Rights* (New York: United Nations, 2014) at 4, online: <<https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>.

¹⁴⁰ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI [*UN Charter*].

¹⁴¹ *Ibid* at art 1.

¹⁴² *Ibid* at art 13(b).

¹⁴³ *Ibid* at art 55(c).

1.1.2. What Does the Term “Rights” Mean?

A right is an entitlement to concepts, such as justice, or ownership of property or some interest in the property, real or personal. Rights include various freedoms as well as protection against interference with the enjoyment of life and property.¹⁴⁴

1.1.3. Definition of Human Rights

Human rights are universal and are not dependent on nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Human beings are entitled to human rights equally, without any form of discrimination.¹⁴⁵ The Universal Declaration of Human Rights (“UDHR”), in its preamble, recognizes the basic principles of human rights through dignity, equality, and fairness,¹⁴⁶ along with the inalienability of these rights.¹⁴⁷

The affirmation of human rights as stated in the UDHR are universal standards recognized by all peoples and all nations.¹⁴⁸ The thirty articles of the UDHR highlight various rights that human beings are entitled to, all of which have been confirmed and agreed upon by the United Nations’ member states. The promotion and observation of fundamental human rights and

¹⁴⁴ *A Law Dictionary, Adapted to the Constitution and Laws of the United States*, 1856, *sub verbo* "right"; online: <<https://legal-dictionary.thefreedictionary.com/right>>.

¹⁴⁵ United Nations Human Rights Office of the High Commissioner, “What are Human Rights?”(n.d.), online: United Nations <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>>.

¹⁴⁶ Equality and Human Rights Commission, “What is the Universal Declaration of Human Rights?” (4 May 2016), online: <<https://www.equalityhumanrights.com/en/what-are-human-rights/what-universal-declaration-human-rights>>.

¹⁴⁷ *UDHR*, *supra* note 4.

¹⁴⁸ *Ibid.*

freedoms by a member state are to ensure that its citizens' human rights are not violated.¹⁴⁹ States are obligated to respect, protect and fulfil human rights through the ratification of international human right treaties.¹⁵⁰

The fundamental characteristics of human rights agreed upon through the UDHR are:¹⁵¹

- ❖ Human rights are universal; they belong to everybody in the world;
- ❖ Human rights are inalienable; they cannot be taken away from anyone;
- ❖ Human rights are indivisible and interdependent, and governments must respect them.

The core values of human rights that the UDHR established are the principles of non-discrimination, protection of human rights by states, the rights to life, liberty and security, fair hearing, the right to have full consent in marriage as intending spouses, the rights to vote and be voted for in public office, the right to social amenities, access to education and economic, social and cultural rights. These rights apply to all people irrespective of race, gender and nationality, as all human beings are born free and equal in dignity and rights.¹⁵²

In addition, the principles of human rights encourage the awareness of individual autonomy, equality, and choice in the practice of religious and cultural norms.¹⁵³ Human rights ideals align with social justice for individuals in their communities and are ratified by state governments into domestic laws.¹⁵⁴ The human rights system challenges states' ability not protect their citizens (in

¹⁴⁹ *Ibid.*

¹⁵⁰ United Nations, "Universal Declaration of Human Rights: The Foundation of International Human Rights Law" (n.d.), online: United Nations <<http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>> ["Foundation of International Human Rights Law"].

¹⁵¹ Amnesty International Canada, "International Human Rights Principles: What Are Human Rights?" (n.d.), online: Amnesty international <<https://www.amnesty.ca/our-work/issues/international-human-rights-principles>>.

¹⁵² *UDHR*, *supra* note 4.

¹⁵³ Sally Engle Merry, *Human Rights & Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) at 4.

¹⁵⁴ *Ibid.*

this context women and the girl child) from violence, extrajudicial killings, and lack of social and economic rights and development.¹⁵⁵ Human rights also challenge the claim that culture and religious belief is a justification for violence against women and children because the interpretation of culture and religious belief is not static.¹⁵⁶ Under international law, domestic laws are to be compatible with signed treaties, obligations and duties to protect and guarantee human rights. When domestic laws or legal proceedings and agencies fail to ensure that international human rights standards are respected, implemented and enforced at the local level, there are mechanisms and procedures available to the individual whose rights were violated.¹⁵⁷

Below are the existing international and national laws and treaties that are available for the protection of women' and the girl child's rights in Nigeria.

1.2. International Laws and Treaties for Women's and Children's Rights

1.2.1 The United Nations Treaties

A treaty, as defined by the Vienna Convention on the Law of Treaties,¹⁵⁸ is “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”¹⁵⁹ Treaties are binding legal obligations where a State has not only signed but also signed its intention to ratify the document. Ratification legally, politically and

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* at 28.

¹⁵⁷ UDHR *supra* note 4; The UDHR is also known as the Foundations of International Human Rights Law

¹⁵⁸ *Vienna Convention on the Law of Treaties*, 23 May 1969 1155 UNTS 331 (entered into force 27 January 1980) [*Vienna Convention*].

¹⁵⁹ *Ibid* at art 2(a).

morally obligates state parties to adhere to the treaty. States can also lodge reservations or declarations to a treaty.¹⁶⁰

The United Nations has various signed international treaties, laws and conventions to improve the status of women and children.¹⁶¹ The United Nations' human rights system has nine core international human rights instruments with monitoring bodies that promote and protect human rights. Regarding the status of women and children specifically, we will look at four of the nine instruments, of which Nigeria is a state party to all four.¹⁶² State parties or members who have assented to or signed any treaty have an obligation to take steps to ensure that everyone in the state enjoys the rights set out in the treaty.¹⁶³

The treaties that set international standards for the protection and promotion of human rights for women and the girl child are:

- i. The International Covenant on Economic, Social and Cultural Rights;¹⁶⁴
- ii. The International Covenant on Civil and Political Rights;¹⁶⁵
- iii. The Convention on the Elimination of All Forms of Discrimination against Women;¹⁶⁶ and
- iv. The Convention on the Rights of the Child.¹⁶⁷

¹⁶⁰ Right to Education Initiative, "International law" (2018), online: < <http://www.right-to-education.org/page/international-law>>..

¹⁶¹ Renee Holt, "Women's Rights and International Law: The Struggle for Recognition and Enforcement" (1991) 1:1 CJGL.

¹⁶² United Nations Human Rights Office of the High Commissioner, *The United Nations Human Rights Treaty Systems* (Fact sheet) (New York: United Nations, 2012) at 1.

¹⁶³ United Nations Human Rights Office of the High Commissioner, "Human rights treaty bodies", (n.d.), online: <www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

¹⁶⁴ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) [ICESCR].

¹⁶⁵ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR].

¹⁶⁶ *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) [CEDAW].

¹⁶⁷ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990, ratified by Nigeria on 19 April 1991 [UN CRC].

1.2.2. The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) is vital to protecting the human rights of women and the girl child. ICESCR was one of two international treaties, along with the UDHR, that make up the ‘International Bill of Human Rights.’¹⁶⁸ The Covenant reiterates the substantive rights guaranteed in the UDHR, emphasizing procedure on non-discrimination on the basis of sex, and the equal right of men and women to the enjoyment of economic, social and cultural rights.¹⁶⁹ Some of the ICESCR’s articles that are relevant to the challenges of women and the girl child in northern Nigeria include:

- Article 2: the right to non-discrimination and full realization of rights through legislative measures;
- Article 3: the equal right of men and women to the enjoyment of economic, social and cultural rights;
- Article 6: the right of everyone to employment opportunities; the right to work includes technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development;
- Article 10: the protection of the family, mothers, children and young persons from economic and social exploitation and discrimination;
- Article 11: the right to an adequate standard of living, including adequate food;

¹⁶⁸ LSE: Centre for Women, Peace + Security, “International Covenant on Economic, Social and Cultural Rights” (n.d.), online: <<http://blogs.lse.ac.uk/vaw/int/treaty-bodies/international-covenant-on-economic-social-and-cultural-rights/>>.

¹⁶⁹ ICESCR, *supra* note 164 at arts 2:2; 3.

- Article 12: the right to health;
- Article 13: the right to adequate, equal and accessible education for all;
- Article 14: compulsory primary education; and
- Article 15: the right to participate in cultural life.¹⁷⁰

1.2.3. The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) was adopted in 1979 by the UN General Assembly as an international bill of rights for women specifically.¹⁷¹ CEDAW is the culmination of the work of the United Nations’ Commission on the Status of Women (“CSW”), established in 1946 to promote the advancement of women throughout the world. CSW works to raise awareness on the status of women around the world and convenes meetings on legal measures to protect the human rights of women and the economic and social development of women.¹⁷² CEDAW, as its name implies, works towards the elimination of any discrimination against women that violates the principles of equality of rights and respect for human dignity.

CEDAW is the primary and most comprehensive document that elaborates on: discrimination of women; the status of women in areas of political, economic, social and cultural rights; and the promotion of human rights of women.¹⁷³ CEDAW defines discrimination against

¹⁷⁰ *Ibid*: The right to participate in cultural life means constant social activities; mingling with other people, not a life of seclusion, withdrawal into solitude, or removal from social contact and activity.

¹⁷¹ CEDAW, *supra* note 166.

¹⁷² United Nations Division for the Advancement of Women, “The United Nations Commission on the Status of Women: 60 Years of Work for Equality, Development, and Peace” (n.d.), online: United Nations <<http://www.un.org/womenwatch/daw/CSW60YRS/index.htm>>.

¹⁷³ CEDAW, *supra* note 166 at 13.

women as, “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁷⁴

CEDAW has made it clear that State parties to the convention have the following duties:

Article 2: State parties must condemn discrimination against women in all its forms by:

- establishing legal protections for the rights of women on an equal basis with men;
- eliminating discrimination by persons and organizations;
- repealing all national penal provisions which constitute discrimination against women;
- abolishing existing laws, regulations, customs and practices which constitute discrimination against women.

Article 5: State parties should eliminate prejudices and customary practices which are based on the superiority and inferiority of gender, by modifying social and cultural patterns and practices.

Article 6: State parties must suppress all forms of trafficking of women and the exploitation of prostitution of women.

Articles 7 and 8: State parties must ensure women’s rights to participate in political activities and representation.

Article 9: State parties must grant women equal rights with men to acquire, change or retain their nationality.

Article 10: State parties must ensure the right to accessible education, including the reduction rate of school drop-outs by female students. Women and female children must have access to

¹⁷⁴ *Ibid* at art 1.

programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.

Article 11: State parties must guarantee equal employment opportunities and free choice of profession.

Article 12: State parties must eliminate discrimination against women in the field of healthcare.

Article 13: State parties should eliminate discrimination against women in other areas of economic and social life in order to ensure equality of men and women. Women should be able to exercise their rights to family benefits.

Articles 3 and 14: State parties must ensure the economic development of women, especially those in rural areas.

Article 15: State parties shall accord to women equality before the law; for example, women should have the same legal capacity with men in contracts, procedures in courts and tribunals, and freedom of movement.

Article 16: States parties have a duty to take appropriate measure to eliminate discrimination against women in all matters relating to marriage and family relations.

Nigeria became a state party to CEDAW after signing the convention on 23 April 1984 and ratifying the agreement on 13 June 1985, obligating the country to obey the articles stated above.

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1.2.4. The International Covenant on Civil and Political Rights

¹⁷⁵ *Ibid.*

The International Covenant on Civil and Political Rights (“ICCPR”),¹⁷⁶ the UNDHR, and the ICESCR are three documents that make up the ‘International Bill of Human Rights.’

State parties to the ICCPR pledged recognition and respect to the inherent dignity, equality and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. The state parties to the ICCPR undertake to ensure the equal rights of men and women to the enjoy all civil and political rights and the fulfilment of individual rights.¹⁷⁷

1.2.4.1. What Does the ICCPR Guarantee or Prohibit?

The ICCPR guarantees the inherent right to life that shall be protected by law and liberty.¹⁷⁸ The covenant prohibits the act of slavery or servitude in any form, which would include, for example, child marriage and seclusion of women and prohibits subjecting anyone to torture or to cruel, inhuman or degrading treatment or punishment.¹⁷⁹ The ICCPR confers the protection of the family on the State. The ICCPR recognizes the right of men and women of marriageable age (i.e., anyone who is not a minor or child) to marry. The right to marry, according to the ICCPR, shall be entered into with free and full consent, and not under undue influence or forced consent.¹⁸⁰

1.2.4.2. The Convention on the Rights of the Child

The Convention on the Rights of the Child (“UNCRC”) as an international treaty, is the framework for the human rights of children. As stated by former President of the United Nations General Assembly, and Nigerian representative, Joseph N Garba, “the adoption of the Convention,

¹⁷⁶ *ICCPR, supra note 165*

¹⁷⁷ *Ibid* at art 3.

¹⁷⁸ *Ibid* at arts 6, 8.

¹⁷⁹ *Ibid* at arts 7, 8.

¹⁸⁰ *Ibid* at arts 23(1)-(4).

the Rights of the Child has gone from a declaration of purpose into what will become a binding piece of international legislation.”¹⁸¹

The UNCRC proclaims that every child is entitled to fundamental and special care and assistance from the family, society and State.¹⁸² The UNCRC recognizes that a child should grow up in a harmonious family environment, in an atmosphere of happiness, love and understanding.¹⁸³ The UNCRC defines a child as every human being below the age of eighteen years, unless the national laws where that child is residing or law applicable to the child recognizes an earlier date of majority.¹⁸⁴

Under the UNCRC, state parties undertake to ensure respect for the civil, political, economic, social and cultural rights of children. State parties agree to guarantee the realization of children’s rights of health,¹⁸⁵ education,¹⁸⁶ legal, civil, and social services.¹⁸⁷ The State parties shall ensure that children, no matter the race, colour, sex, language, or religion, are not discriminated against or punished on the basis of their identity.¹⁸⁸ Any action taken by the state, family, court of law and legislative bodies must be in the best interest of the child. Protection and care and anything necessary for their well-being should be taken into consideration when drafting statutory rule as well as in administrative measures.¹⁸⁹ Every child has the inherent right to life,¹⁹⁰

¹⁸¹ U.N CRC, “Audiovisual library of International Law: Historical Archives Statement”, n.d. online: <<http://legal.un.org/avl/ha/crc/crc.html#>>

¹⁸² *UN CRC*, *supra* note 167 at Preamble.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid* at art 1.

¹⁸⁵ *Ibid* at art 24.

¹⁸⁶ *Ibid* at art 28.

¹⁸⁷ U.N CRC, “Audiovisual library of International Law: Introductory Note” n.d Online: <<http://legal.un.org/avl/ha/crc/crc.html>>

¹⁸⁸ *UN CRC*, *supra* note 167 at art 2.

¹⁸⁹ *Ibid* at art 3.

¹⁹⁰ *Ibid* at art 6.

the right to have views, expressions, and thoughts and to express those views freely.¹⁹¹ No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.¹⁹²

The state must protect the girl-child from all forms of physical, mental, and sexual abuses, whether the child was in the care of parent(s), or legal guardian when that abuse took place.¹⁹³ Under the UNCRC, state parties undertake to protect and prosecute any case of the inducement or coercion of a child to engage in any form of sexual exploitation and sexual abuse.¹⁹⁴ There should be legislative, social, and educational measures made available by the state for prevention, identification, reporting, referral, investigation, treatment and follow-up of any abuse of the child.¹⁹⁵ Every child has the right to social, economic, physical, and healthy development.¹⁹⁶

1.3. African Laws and Treaties for Women and Children

The universalization of human rights in every sphere of human endeavour has spread to Nigeria (West Africa) and Africa as a continent. Nigeria has, for a long time, accepted the need for constitutional law and treaties that legally guarantee the human rights of its citizens. Fortunately, women and children are included in these statutory guarantees of human rights, even if their human rights in practice are being abused to this day. The regime of human rights documents and instruments for individuals in Africa and Nigeria can be said to be founded on basic universal human rights standards, such as inherent dignity, freedom, equality, justice, and peace. These human rights are guaranteed to everyone without distinction of any kind, including

¹⁹¹ *Ibid* at arts 12-14.

¹⁹² *Ibid* at arts 37, 39.

¹⁹³ *Ibid* at art 19.

¹⁹⁴ *Ibid* at art 34.

¹⁹⁵ *Ibid* at art 19(2).

¹⁹⁶ *Ibid* at arts 6, 18,24, 29, 32.,

on the basis race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹⁹⁷

This section will identify and explore the instruments and constitutional laws that promote women's and children's, including the girl child's, rights. African human rights instruments and Nigerian laws that guarantee protection of human rights and empowerment of women and children include: the African Charter on Human and Peoples' Rights,¹⁹⁸ the African Charter on the Rights and Welfare of the Child,¹⁹⁹ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,²⁰⁰ the Constitution of the Federal Republic of Nigeria,²⁰¹ and the Child Rights Act.²⁰²

1.3.1. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights ("African Charter") states that member states of the Organization of African Unity ("OAU") are parties to the Charter which recognizes that every individual is entitled to rights, freedom, and equality before the law and protection.²⁰³ Arbitrarily depriving the right to life and any form of exploitation or degradation of man, particularly: slavery; the slave trade; torture; and cruel, inhuman or degrading punishment and

¹⁹⁷ *UDHR*, *supra* note 4 at art 2.

¹⁹⁸ *African Charter on Human and Peoples' Rights (Banjul Charter)*, OAU, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [*African Charter*].

¹⁹⁹ *African Charter on the Rights and Welfare of the Child*, OAU, Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999 [ACRWC].

²⁰⁰ *African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, CAB/LEG/66.6 (11 July 2001), 1 *Afr. Hum. Rts. L.J.* 40 (2003) [*Protocol to the African Charter on the Rights of Women*]

²⁰¹ *1999 Constitution*, *supra* note 27.

²⁰² *The Children's Rights Act*, An Act to Provide and Protect the Rights of a Nigerian Child and other Related Matters 2003, Act No 26 A/451 [*CRA*].

²⁰³ *African Charter*, *supra* note 198 at arts 1-3.

treatment, are prohibited.²⁰⁴ Freedom of movement and liberty is guaranteed under the African Charter.²⁰⁵

State parties to the African Charter shall ensure every individual has the right to education,²⁰⁶ ensure the elimination of discrimination against women, and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.²⁰⁷ No one has the authority or justification for the domination of one person over another, because everyone is equal and deserves equal respect.²⁰⁸ The right to economic, social and cultural development shall not be deprived of any individual.²⁰⁹

1.3.2. The African Charter on the Rights and Welfare of the Child

In its preamble, the African Charter on the Rights and Welfare of the Child (“ACRWC”) noted, with concern, the uniqueness of the African child in situations of socio-economic, cultural, and traditional exploitation. Children were recognized to need care and to harmoniously develop in a family environment and an atmosphere of happiness, love and understanding. Everyone, including the family, community, the society and the state, has a role to play in the promotion and protection of the rights and welfare of the child.²¹⁰ Any custom, tradition, or cultural or religious practice that is inconsistent with the rights, duties and obligations of the ACRWC should be discouraged by the state.²¹¹

²⁰⁴ *Ibid* at arts 4, 5.

²⁰⁵ *Ibid* at art 6.

²⁰⁶ *Ibid* at art 17.

²⁰⁷ *Ibid* at art 18.

²⁰⁸ *Ibid* at art 19.

²⁰⁹ *Ibid* at art 22.

²¹⁰ ACRWC, *supra* note 199 at Preamble.

²¹¹ *Ibid* at art 1(3).

State parties have an obligation to eliminate harmful social and cultural practices that prejudice the health, life, welfare, dignity, and development of the child.²¹² Customs and religious practices that are discriminatory to the child on the grounds of sex, gender, or other status should also be eliminated by the state.²¹³ Anyone under the age of eighteen is a child according to the ACRWC.²¹⁴ 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 years²¹⁵

Children are to be protected by the state from all forms of sexual exploitation and sexual abuse.²¹⁶ Specific legislative, administrative, social and educational measures should be put in place to protect the child from all forms of torture, inhuman or degrading treatment and sexual abuse.²¹⁷ Every child has the right to education,²¹⁸ and every child who is capable of communicating his or her own views has the right to express his or her opinion freely, in all matters, and to disseminate his or her opinion. The rights of a child should not be deprived for any reason.²¹⁹

1.3.3. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (“Protocol to the African Charter on the Rights of Women”)²²⁰ is an instrument

²¹² *Ibid* at art 21(1)(a).

²¹³ *Ibid* at art 21(1)(b).

²¹⁴ *Ibid* at art 2.

²¹⁵ *Ibid* at art 21(2).

²¹⁶ *Ibid* at art 27.

²¹⁷ *Ibid* at art 16.

²¹⁸ *Ibid* at art 11.

²¹⁹ *Ibid* at art 7.

²²⁰ *Protocol to the African Charter on the Rights of Women, supra note 200*

by the member states of the OAU drafted to reaffirm African States' commitment to the principles of gender equality as enshrined in the Constitutive Act of the African Union,²²¹ including peace, freedom, dignity, justice, solidarity and democracy for women in Africa. The instrument's aim is to reaffirm states' solemn commitment to eliminate all forms of discrimination and harmful practices against women and to promote equality between women and men through appropriate legislative, institutional, and other measures.²²² "Women" means persons of the female gender, including the girl child.

1.4. What is Discrimination, Harmful Practices and Violence against women?

The Protocol to the African Charter on the Rights of Women defines discrimination against women *"to mean any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life."*²²³ Harmful practices *"means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity";*²²⁴ and violence against women *"means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war."*²²⁵

1.4.1. Rights Protected under the Protocol to the African Charter on the Rights of Women

²²¹ *Organization of African Unity, Constitutive Act of the African Union, 2000, at art 4 (i)*

²²² *Protocol to the African Charter on the Rights of Women, supra note 200 at art 2.*

²²³ *Ibid* at art 1(b).

²²⁴ *Ibid.*

²²⁵ *Ibid.*

The Protocol to the African Charter on the Rights of Women states that state parties to the instrument should have laws in their national constitutions and other legislative instruments that combat all forms of discrimination against women.²²⁶ These laws should be able to curb and eliminate all forms of discrimination, particularly those cultural and traditional harmful practices²²⁷ which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men.²²⁸ State governments also have the responsibility to protect women and girls who are at risk of being subjected to harmful practices or all other forms of violence, abuse, and intolerance.²²⁹

Women and the girl child are human beings, so state parties shall ensure they enjoy the right to dignity, protection and free development of their personalities, without any exploitation or degradation that may come in the form of violence, particularly sexual and verbal violence.²³⁰ Violence and other harmful practices against women can cause or lead to death, and this is against the rights to life and security of women and girls. States parties shall take appropriate and effective measures to protect women's and girls' right to life and security by prohibiting all forms of violence against women, including unwanted or forced sex, regardless of whether the violence takes place in private or public.²³¹

²²⁶ *Ibid* at art 2(a)-(c).

²²⁷ *Ibid* at art 5.

²²⁸ *Ibid* at art 2(2).

²²⁹ *Ibid* at art 5.

²³⁰ *Ibid* at art 3.

²³¹ *Ibid* at art 4.

The minimum age of marriage for women shall be eighteen years, and no marriage shall take place without the free and “full consent” of both parties.²³² Women and men shall have the same rights to seek separation, divorce or annulment of a marriage.²³³

Women and men have an equal right of protection and benefit before the law. The state has a duty to provide adequate access to judicial and legal services for women and to promote and protect the rights of women.²³⁴ States’ law enforcement organs should be able to effectively interpret and enforce gender equality rights at local, national, regional and continental levels.²³⁵

The Protocol to the African Charter on the Rights of Women states that women and the girl child have equal rights to education as men. The promotion of literacy among women is the duty of the state.²³⁶ The state is to ensure that girls are enrolled in school and women who leave school prematurely and are unwilling to go back to school are trained in disciplines or professions in institutions and organizations provided by the state.²³⁷ The state has an obligation to try every measure to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.²³⁸

1.4.2 National Laws

1.4.2.1. The Constitution of the Federal Republic of Nigeria

²³² *Ibid* at art 6.

²³³ *Ibid* at art 7.

²³⁴ *Ibid* at art 8.

²³⁵ *Ibid*.

²³⁶ *Ibid* at art 12.12

²³⁷ *Ibid* at art 12(2)

²³⁸ *Ibid* at art 12(1)(a).

The Federal Republic of Nigeria is a state based on the principles of democracy and social justice.²³⁹ The Constitution of the Federal Republic of Nigeria (“1999 Constitution”) is supreme, and its provisions are binding on individuals in Nigeria and its citizens.²⁴⁰ Sovereignty belongs to the people of Nigeria from whom the government, through the 1999 Constitution, derives its powers and authority.²⁴¹ The 1999 Constitution promotes the principles of freedom, equality and justice for all persons in the country.²⁴² According to the 1999 Constitution, the power to make laws is vested in the National Assembly for the Federation.²⁴³ The National Assembly consists of a Senate and a House of Representatives.

The security and welfare of the people is the primary duty of the government in accordance with the provisions of the 1999 Constitution.²⁴⁴ In furtherance of social justice, the 1999 Constitution states that every citizen has equality of rights, obligations and opportunities before the law.²⁴⁵ Also, the 1999 Constitution recognizes the human dignity and the independence, impartiality and integrity of the courts of law.²⁴⁶

1.4.2.2. The 1999 Constitution and Human Rights

The fundamental rights of every Nigerian citizen and resident, according to 1999 Constitution, are:

- a. the right to life;²⁴⁷

²³⁹ *1999 Constitution, supra* note 27 at s 14.

²⁴⁰ *Ibid* at s 1.

²⁴¹ *Ibid* at s 14(2)(a).

²⁴² *Ibid* at s 17(1).

²⁴³ *Ibid* at s 4.

²⁴⁴ *Ibid* at s 14(2)(a),(b).

²⁴⁵ *Ibid* at s 17(2)(a).

²⁴⁶ *Ibid* at s 17(2)(e).

²⁴⁷ *Ibid* at s 33: Save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

- b. the right not to be subjected to torture slavery or servitude and inhuman or degrading treatment;²⁴⁸
- c. the right to personal liberty;²⁴⁹
- d. the freedom of thought, conscience and religion;²⁵⁰
- e. the freedom of expression, freedom to hold opinions and to receive and impart ideas and information without interference;²⁵¹
- f. the right to acquire and own immovable property anywhere in Nigeria;²⁵² and
- g. the right to freedom from discrimination; no Nigerian citizen shall be discriminated on account of sex, or on any other ground whatsoever.²⁵³

It is the duty of the government to protect children, young persons, women and everyone else, against any exploitation, including sexual exploitation.²⁵⁴ The government, through its policies, shall ensure that everyone, no matter their gender, has rights to equal, free, compulsory and universal education.²⁵⁵

1.4.2.3. The Child Rights Act

The Child Rights Act("CRA") is the Nigerian domestication of the UNCRC,²⁵⁶ which they signed on 26 January 1990 and ratified on 19 April 1991.²⁵⁷ The enactment of the CRA by Nigeria was

²⁴⁸ *Ibid* at s 34.

²⁴⁹ *Ibid* at s 35.

²⁵⁰ *Ibid* at s 38.

²⁵¹ *Ibid* at s 39.

²⁵² *Ibid* at s 43.

²⁵³ *Ibid* at s 42.

²⁵⁴ *Ibid* at s 17(3)(f).

²⁵⁵ *Ibid* at s 18: In Section 18(3), it says, "Government shall strive to eradicate illiteracy."

²⁵⁶ *UN CRC*, *supra* note 167.

²⁵⁷ *Vienna Convention*, *supra* note 158: "Article 2(b) "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty; (c) "Full powers" means a document...Article 12(1) The consent of a State to be bound by a treaty is expressed by the signature.

in accordance with article 1, subsection 1, of the ACRWC,²⁵⁸ and article 7, subsection 2, of the UNCRC.²⁵⁹ These treaties require state parties to take constitutional, legislative or other measures to ensure the implementation of the rights of the child in their national law. The CRA was drafted to ensure the best interests of the child be considered by individuals, public or private bodies, institutions or services, courts of law, or administrative or legislative authorities. The enactment of UNCRC through the CRA²⁶⁰ was done in accordance with the 1999 Constitution,²⁶¹ which states in section 12 that: “No treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.”²⁶² Consequently, under Nigerian laws, treaties are mainly implemented by express legislative assent.

The CRA incorporates and consolidates of all the rights and laws relating to children into one single legislative draft.²⁶³ The contents of the CRA stipulate the duties and obligations of government, parents, organizations and other governmental or non- governmental authorities.²⁶⁴

1.5. Rights and Protections Guaranteed by the Child Rights Act

The CRA qualifies a person who is yet to attain eighteen years of age to be a child.²⁶⁵ Every child has the right to survival and development,²⁶⁶ and every child is entitled to enjoy the best attainable state of physical, mental and spiritual health.²⁶⁷ No child shall be denied the freedom of thought,

²⁵⁸ ACRWC, *supra* note 199 at art 1.

²⁵⁹ UN CRC, *supra* note 167 at arts 7, 45.

²⁶⁰ CRA, *supra* note 202.

²⁶¹ 1999 Constitution, *supra* note 27.

²⁶² *Ibid.*

²⁶³ The Child Rights Act is in addition to the rights guaranteed under Chapter IV of the 1999 Constitution.

²⁶⁴ UNICEF, *Information Sheet: The Child's Rights Act* (Fact sheet) (UNICEF, August 2007), online: <https://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf>.

²⁶⁵ CRA, *supra* note 202 at ss 16 (a), 227: “age of majority” means the age at which a person attains the age of eighteen years.

²⁶⁶ *Ibid* at s 4.

²⁶⁷ *Ibid* at s 13(1).

conscience and religion.²⁶⁸ Parental control, when exercised, must not be harmful to the child and shall not override any child's freedom of movement, interest in education, or the safety and welfare of the child.²⁶⁹ Every child has the freedom from discrimination in any form or for any reason, such as race, sex, or religion.²⁷⁰ Every child deserves to be treated with respect and dignity of person.²⁷¹ To treat the Nigerian child with dignity and respect means the child should not be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, and sexual abuse, in the form of torture, inhuman or degrading treatment or punishment.²⁷²

Slavery or servitude of any child, while in the care of a parent, legal guardian or school authority or any other person or authority having care of the child is prohibited.²⁷³ Free, compulsory and universal basic education is the entitlement of every Nigerian child, so the Nigerian government, parent and guardian must make it available and possible for children to enjoy that right.²⁷⁴ Pregnancy shall not deprive the education of any child, and any female child who becomes pregnant should be given the opportunity to continue her education after delivery.²⁷⁵

The marriage of a child below eighteen years is *ab initio* null and void and of no effect whatsoever.²⁷⁶ Only persons eighteen years and above can contract to a valid marriage. Betrothal and child marriage are forbidden.²⁷⁷ Persons who marry a child or promote child marriage and betrothal of a child commits an offence and is liable on conviction to a fine of five hundred

²⁶⁸ *Ibid* at s 7.

²⁶⁹ *Ibid* at s 9.

²⁷⁰ *Ibid* at s 10(1).

²⁷¹ *Ibid* at s 11.

²⁷² *Ibid* at s 11(a),(b)

²⁷³ *Ibid* at s 11(d).

²⁷⁴ *Ibid* at s 15(1)-(3).

²⁷⁵ *Ibid* at s 15(5).

²⁷⁶ *Ibid* at s 21.

²⁷⁷ *Ibid* at s 22(1),(2).

thousand Naira (\$1,389 USD or \$1,799 CAD), imprisonment for a term of five years, or both.²⁷⁸

Child marriage that has been consummated is sexual abuse or sexual exploitation of a child. No person shall have sexual intercourse with a child²⁷⁹ as a child does not have the capacity to consent to sex.²⁸⁰ Sexual intercourse with a child is an offence of rape and is liable on conviction to imprisonment for life.²⁸¹

The CRA also sets out responsibilities for the government and parents to provide a suitable environment for children to survive and develop.²⁸² The CRA empowers courts with competent jurisdiction in Nigeria to make protective and supervisory orders in respect of children. The orders by the court are to be made for children in need of care and protection as an established child justice system.²⁸³

However, the enactment of the CRA at the federal level does not mean it is binding on the 36 states in Nigeria. Individual states in Nigeria are expected to domesticate the CRA as state laws that protect children's rights. States are given the exclusive responsibilities and jurisdiction to enact laws that define their region because the law on the right of the child is not included in the exclusive list of the 1999 Constitution. State laws on the rights of children are expected to conform to the rights stated in the UNCRC.²⁸⁴

Summary

²⁷⁸ *Ibid* at s 23.

²⁷⁹ *Ibid* at s 31(1).

²⁸⁰ *Ibid* at s 31(3)(b).

²⁸¹ *Ibid* at s 31(2).

²⁸² *Ibid* at s 14.

²⁸³ Nkoyo Toyo, "Revisiting Equality as a Right: The Minimum Age of Marriage clause in the Nigerian Child Rights Act, 2003" (2006) 27:7 Third World Q 1302 [Toyo].

²⁸⁴ Olayinka Silas Akinwumi, "Legal Impediments on the Practical Implementation of the Child Right Act 2003" (2009) 37:3 Intl J Leg Info 10 at 387.

These are the relevant provisions of international human rights laws and treaties that protect women and children in the northern states of Nigeria. When existing human rights documents are considered, not all applicable laws specifically address the peculiar needs of children and women, but the legal frameworks explained above for the protection of women and children's human rights are written in numerous documents and cover a broad reach of issues that they are currently facing in society. Women and children do not only have inherent human rights, but the documentation of their rights has also been prioritized. These treaties also prove that abuse of the human rights of women and the girl child is not a problem of inadequate laws, but instead, implementation of such laws.

CHAPTER IV

1. CHILD MARRIAGE

1.1. Child Marriage in Northern Nigeria as Sexual Abuse, and Hindrance to the Girl Child's Education

“If every girl is valued and given the same opportunities as boys; if she is free from not only child marriage but from all forms of violence and discrimination, amazing things can happen – not only for the girl whose life is changed forever but for the entire world, which becomes safer, happier and more balanced.”²⁸⁵

“I want every girl on the planet to have the same opportunities that I have had, and that my daughters are having, to fulfil their potential and pursue their dreams.”²⁸⁶

The above quotes from Yasmeen Hassan and Michelle Obama resonate with the issue I discuss below: child marriage in northern Nigeria. Child marriage is a fundamental issue in Nigeria, especially in northern Nigeria. According to the United Nations International Children's Emergency Fund (“UNICEF”), the estimated rates of child marriage in Nigeria are as follows: 43% of girls in Nigeria are married before the age of eighteen, while 17% of girls are married before the age of fifteen.²⁸⁷ The practice of child marriage is more prevalent amongst some cultural groups, particularly the Hausa-Fulani where 48% of girls are married by the age of fifteen, and 78% are married by age eighteen.²⁸⁸ Child marriage is an arranged marriage where a girl, when she reaches puberty, is married to an adult man who indicates his interest in marrying her and pays

²⁸⁵ Yasmeen Hassan, Global Executive Director, Equality Now: Equality Now, *Protecting the Girl Child: Using the law to end child, early and forced marriage and related human rights violations* (Equality Now, January 2014), online: <https://www.equalitynow.org/sites/default/files/Protecting_the_Girl_Child.pdf> [Equality Now].

²⁸⁶ Michelle Obama: Refinery 29, “Michelle Obama Talks to a Girl from Nepal about Why Education is Vital” (8 March 2018), online: <<https://www.refinery29.com/2018/03/192860/michelle-obama-nirupa-nepal-girls-education>>.

²⁸⁷ Girls Not Brides, “Child Marriage around the world” (2016), online: Girls Not Brides <<http://www.girlsnotbrides.org/child-marriage/nigeria/>>.

²⁸⁸ Tim S Braimah, “Child marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the protection of children against child marriage” (2014) 14 AHRLJ 474at 475 [Braimah].

a given amount to her family. Child marriage forces girls into adulthood without considering their physical and emotional maturity. Child marriage is a form of oppression because it promotes the inferiority of the girl child to the male child and abuses the girl child by exposing her to sexual abuse and hinders her ability to receive an education. Children are to be protected from sexual abuse and their right to education should not be hindered by anything or anyone.

In this chapter, I will explore the abuses caused by child marriage along with the girl child's right to education and the right to be protected from sexual abuse. This exploration will show how child marriage is sexual abuse and an infringement on the right to education of the girl child in northern Nigeria, revealing an ongoing cycle of subordination and human rights abuses. The Penal code or Islamic view on child marriage, marital rape, cases of sexual abuse as it affects young girls, access and rights to education and protections against sexual abuses and exploitations under the Child Rights Act ("CRA"), the African Charter on the Rights and Welfare of the Child ("ACRWC"), and other applicable legal instruments will be discussed.

1.1.1. Definition of Marriage

Marriage is a consensual and contractual relationship recognized by law.²⁸⁹ Statutory marriage and customary marriage are the two types of marriages that are legally recognized in Nigeria.²⁹⁰ Islamic law marriage is a type of customary marriage in Nigeria. Customarily, marriage becomes effective when the dowry is paid which is the acceptance of a bride's "price" from the husband by the girl's family. Laws enacted to regulate marriages in Nigeria do not prescribe the age for contracting a customary marriage and this, to an extent, encourages child marriage and child betrothal in the country.²⁹¹

²⁸⁹ *Merriam-Webster, sub verbo "marriage"*.

²⁹⁰ *The Marriage Act*, Laws of the Federation of Nigeria 1999, Chapter 218, at s. 35

²⁹¹ Osifunke Ekundayo, "The Nigerian Child Rights Act 2003: Its Strengths and Weaknesses" (2014) 2:11 Intl J Humanities & Soc Stud 181.

1.1.2. What is Child Marriage?

Child marriage is a formal or informal union or contract of marriage where one or both parties are below the age of eighteen.²⁹² Child marriage is rooted in a belief in the inferiority of women to men, or girls to boys, and it is a form of gender inequality. Child marriage takes place in northern Nigeria when a girl starts menstruating.²⁹³ Puberty, which can begin anywhere between the ages of ten and sixteen years, is considered a matured age for girls to go into marital life, and, in most cases be withdrawn from school. The Hausa traditional age of marriage for girls is around eleven or twelve years, with some marriages occurring at even younger ages.²⁹⁴

Child marriage is motivated by patriarchal cultural values, pedophilic desires of men to legally have sex with underage girls, and the desire to control female sexuality, freedom and the totality of her life. Since girls are not usually valued by parents and the community, they are considered a burden on the family and therefore a waste of finances in terms of food, clothing, shelter, and education. Child marriage is seen as easing the economic hardship of raising a girl, and a transferring of the burden to the child bride's husband, who is in some cases older than the girl.²⁹⁵ Sometimes, child marriage is used to repay debts, manage disputes or promises, settle social, economic alliance, or invest in the education of a son. There is economic value seen in child marriage because when a female child is married, the family of the groom or husband brings money or goods as dowry to the girl's family.²⁹⁶ Sometimes this dowry may be high, and sometimes it

²⁹² Girls not Brides, "About Child Marriage" (n.d.), online: Girls Not Brides <<https://www.girlsnotbrides.org/about-child-marriage/>>.

²⁹³ Braimah, *supra* note 288 at 475.

²⁹⁴ Schildkrout Enid, "Schooling or Seclusion" (June 1984) Cultural Survival Quarterly Magazine.

²⁹⁵ Girls Not Brides, "Why Does Child Marriage Happen?" (n.d.), online: Girls Not Brides <<https://www.girlsnotbrides.org/why-does-it-happen/>>.

²⁹⁶ *Ibid.*

may be lower, depending on the income of the husband's family or the arrangement reached by the husband's family with the bride's family.

The majority of child marriage victims resist the arrangement, while some acquiesce and consider it the will of Allah.²⁹⁷ Child marriage is not expressly written in the Qur'an. However, it is a practice by the Prophet Muhammed, who married 'Ā'ishah bint Abī Bakr, also known as Aisha when she was six years old and consummated the marriage when she was nine years old, as reported in the Hadiths.²⁹⁸ According to the Muslim communities who practice child marriage, they are adhering to Islam and the practice of the Prophet Muhammed. The Hausa-Fulanis in northern Nigeria strictly adheres to every written word in the Qur'an and the lifestyles of the Prophet Muhammad's Sunnah.²⁹⁹ Islam is essential to the lives of most northern Nigerians and culture and traditions of the Hausa-Fulanis are practised alongside the Islamic religion. Child marriage is a harmful traditional practice by paedophiles who take advantage of the poverty conditions of families who have female children.³⁰⁰ Child marriage as a pedophilic attitude of men in northern Nigeria is concealed directly and indirectly in Hausa culture's stress on the purity and virginity of girls.³⁰¹ A girl's virginity reflects on her family's honour, so parents will marry out their daughters to retain their family honour and protect their child from sexual immorality.³⁰²

²⁹⁷ Annabel S Erulkar & Mairo Bello, *The Experience of Married Adolescent Girls in Northern Nigeria* (Abuja, Nigeria: Population Council, 2007), online: <www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/PopulationCouncil24.pdf> [Erulkar & Bello].

²⁹⁸ WikiIslam, "Qur'an, Hadith and Scholars: Aisha" (n.d.), online: WikiIslam <https://wikiislam.net/wiki/Qur%27an,_Hadith_and_Scholars:Aisha>: Narrated Surah: The Prophet wrote the (marriage contract) with 'Aisha while she was six years old and consummated his marriage with her while she was nine years old and she remained with him for nine years (i.e. till his death).

²⁹⁹ Braimah, *supra* note 288 at 482.

³⁰⁰ Timawus Mathias, "Poverty as the face of Northern Nigeria" *Daily Trust* (16 September 2015), online: <<https://www.dailytrust.com.ng/news/opinion/poverty-as-the-face-of-northern-nigeria/110889.html>> [Mathias].

³⁰¹ Kayode Olatunbosun Fayokun, "Legality of Child Marriage in Nigeria and Inhibitions Against Realisation of Education Rights" (2015) 5:7 *US-China Education Review* 460 at 461.

³⁰² Laura Davids, "Female Subordination Starts at Home: Consequences of Young Marriage and Proposed Solutions" (2007) 5 *Regent J Intl L* 299 at 304. [Davids]

1.1.3. Causes of Child Marriage in Northern Nigeria

The general causes of child marriage in northern Nigeria include a high level of ignorance and poverty; the authority of the girl child's father; the supremacy of men over women; high illiteracy rates; and culture, beliefs, and social pressures.

1.1.3.1 High level of ignorance and poverty: A report by the World Bank released in 2014 explained that northern states in Nigeria have high poverty rates, especially the north-west, which has a poverty rate of 76.8%, and the north-east which has a poverty rate of 80.9%.³⁰³ In 1999, the Federal Office of Statistics revealed that 77% of residents in the north-east, and 70% of those in the north-west lived below the poverty line, which means they were living on approximately \$1.40 a day (at 1996 prices and exchange rates).³⁰⁴ Economic hardship makes parents desperate and increases the rate of child marriage. Fathers trade the girl child to husbands to reduce their own economic vulnerability. Child marriage is a strategy for economic survival and escapes from poverty according to most parents. Sometimes the husband of the child bride becomes the provider of the child bride's family.³⁰⁵ However, it is ignorance on their part because they are unaware that child marriage entrenches and reinforces the cycles of intergenerational poverty, as these girls will not be educated and in future, they will be seen as a burden on the same family.³⁰⁶

1.1.3.2. The authority of the girl child's father: The practice of child marriage takes place in the form of an arranged marriage and betrothal of a young girl at an early age.³⁰⁷ Child marriage takes place without consultation and consent from the child bride who sometimes is forced to marry a man three times her age. The decision and the eliciting or forced compliance of the girl child to

³⁰³ Mathias, *supra* note 300.

³⁰⁴ Paulina Makinwa-Adebusoye, *Hidden: A Profile of Married Adolescents in Northern Nigeria* (Action Health Incorporated, 2006), online: <<http://www.actionhealthinc.org/publications/docs/hidden.pdf>> [*Hidden*].

³⁰⁵ Braimah, *supra* note 288 at 483.

³⁰⁶ Africa Check, *supra* note 16

³⁰⁷ Federal Ministry of Women Affairs and Social Development, *supra* note 36 at 19

marry her husband is undertaken by her father, uncles and brothers. Submission to her husband's will and the command is also enforced by the bride's father who makes sure that the child does not return home after the marriage. In an interview conducted by the Population Council in 2007, a fourteen-year-old girl with three years education, who was married at the age of thirteen, had two pregnancies and had lost her first child), explained that she agreed to marry her husband because her father threatened to separate and divorce her mother if she objected to the marriage.³⁰⁸ Fathers of child brides often defend themselves by saying that they give their daughter away for marriage because of poverty. From childhood, a girl child is told that man's word is the last command, so she must respect every word from any man, be it her father, husband or male in-laws.³⁰⁹ Girls are bound to respect their fathers' wishes for them to get married at an early age, even if they have ambitions to pursue education.

1.1.3.3 Supremacy of men over women: Women cannot make decisions independent of their male relations or husband - they need permission. In child marriage, mothers have little or no say in the predicament of their daughters. Men also believe that women do not have the same capabilities as men, so women need husbands to take care of their needs.

1.1.3.4. High illiteracy rates: Most households in north-east and north-west Nigeria have little or no education. In the north-west, 72% of women and 50% of men have no education, and in the north-east 68% of women and 50% of men are uneducated.³¹⁰

1.1.3.5. Culture, beliefs and social pressures: A father who is afraid that no man may marry his daughter after or when she is educated, may give his daughter away for marriage early. Some expect her to continue her education after marriage, but unfortunately, most girls stop schooling

³⁰⁸ Erulkar & Bello, *supra* note 297 at 6.

³⁰⁹ Federal Ministry of Women Affairs and Social Development, *supra* note 36 at 19

³¹⁰ *Hidden*, *supra* note 304 at 10.

after marriage. Child marriage is a harmful practice based in deep-rooted norms on the lower status of women, beliefs in preserving the virginity of girls before marriage and limiting the education and power of girls to prevent stubbornness.

1.2. The Practice of Child Marriage as a Human Rights Abuse Against the Girl Child in Northern Nigeria

The practice of child marriage is an abuse of its victims, and it continues to abuse the girl child in northern Nigeria. It is a violation of human rights because it deprives girls of autonomy and choice over their bodies and their lives.³¹¹ Children are entitled to the respect of their human rights. The value placed on human rights is promoted as the universal and fundamental freedom of every person, and this includes the girl child.³¹² Human rights are inalienable, and they cannot be taken away from anyone.³¹³ Child marriage is a form of gender discrimination and inequality.³¹⁴ Child marriage in northern Nigeria legitimizes human rights violations and abuses of girls under the guise of culture, honour, tradition, and religion. The abuse of the girl child's human rights is possible because in Nigerian society it is a norm to discriminate against girls from birth, in marriage and throughout their entire lives.³¹⁵ This discrimination of the girl child is based on a patriarchal system in operation in Nigeria, where girls are trained to be good housewives and men are viewed as the conqueror or superior being in the family. Girls who are victims of child marriage are excluded from the decision-making process, and as a result, they end up married to men who are not their choice of spouse.

³¹¹ United Nations Human Rights Office of the High Commissioner, "Child and forced marriage: A violation of human rights" (3 November 2016) online: United Nations

<http://www.ohchr.org/EN/NewsEvents/Pages/ChildForcedMarriage.aspx#sthash.mgOe2rfA.dpuf> >.

³¹² UDHR, *supra* note 4 at Preamble

³¹³ *Ibid.*

³¹⁴ Human rights Watch, "*Discrimination, Inequality, and Poverty—A Human Rights Perspective*" (Background Papers accepted under the "Addressing Inequalities" Global Thematic Consultation in 2012), January 11, 2013

³¹⁵ Equality Now, *supra* note 285.

Under international law, marriages without the full and free consent of both parties are a violation of human rights.³¹⁶ The marriage of a Nigerian girl child who is below the age of eighteen is a fundamental violation of human rights³¹⁷ because it is void of the free and full consent of the child as it is an international convention that free and full consent for marriage cannot be given before the legal age of 18.³¹⁸ Child marriage takes away the child's right to express their views freely, the right to be protected from harmful traditional practices, and the right to education.³¹⁹ Child marriage as a violation of human rights, as it often results in early pregnancy and social isolation, additional barriers to education and poor vocational training.³²⁰ Child marriage violates the girl child's right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices.³²¹ Nigeria has tried to stamp out child marriage with the enactment of the CRA,³²² the signing and ratifying of the Convention on the Rights of the Child ("UN CRC"),³²³ the ("ACRWC"),³²⁴ as well as through other instruments.

³¹⁶ *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, GA Res 1763A (XVII), UNGAOR UN Doc A/5217 (1962) at art 1.

³¹⁷ Population Council, "Child Marriage Briefing Nigeria" (August 2004), online:

<www.popcouncil.org/uploads/pdfs/briefingsheets/NIGERIA.pdf> [*Child Marriage Briefing*].

³¹⁸ See among others, Article 16 of the UDHR; Article 10 of the International Covenant on Economic, Social and Cultural Rights; Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 1 of the Convention on the Rights of the Child; Section 277 and Paragraph 16(1) of the schedule for interpretation of the Child Rights Act of Nigeria; Article 6 of the Protocol to the African Charter on the Rights of Women; and Article 2 and Article 22(2) of the African Charter on the Rights and Welfare of the Child.

³¹⁹ Rangita de Silva-de-Alwis, "Child Marriage and the Law: Legislative Reform Initiative Paper Series" (2008)

United Nations International Children's Emergency Fund Working Paper, online:

<[https://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law\(1\).pdf](https://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf)>

³²⁰ United Nations Child Fund, "Monitoring the Situation of Children and Women: Child marriage is a violation of human rights, but is all too common" *UNICEF Data* (March 2018), online: <<https://data.unicef.org/topic/child-protection/child-marriage/#>>.

³²¹ UNICEF, *Early Marriage a Harmful Traditional Practice a Statistical Exploration* (Unicef, 2005) at 1 online:

<https://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf>.

³²² CRA, *supra* note 202.

³²³ *UN CRC*, *supra* note 167.

³²⁴ *ACRWC*, *supra* note 199

Child marriage in northern Nigeria is due to poor implementation of the law, which ought to protect young girls from sexual violence, exploitation, and abuse.³²⁵

The practice of child marriage affects the welfare, dignity, healthy growth and development of the child.³²⁶ The girl child in northern Nigeria is protected under the ACRWC in Article 21(2),³²⁷ which states that:

Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Child marriage among the Hausa-Fulanis has a firm root in Islamic practice, notwithstanding that it is illegal in Nigeria as stated in sections 21, 22 and 23 of the CRA, which state:³²⁸

21. 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.

22. (1) No parent, guardian or any other person shall betroth a child to any person.

(2) A betrothal in contravention of Subsection (1) of this section is null and void.

23. A person—

(a) who marries a child; or

(b) to whom a child is betrothed; or

(c) who promotes the marriage of a child; or

³²⁵ The United Nations Children's Fund, *Child Protection Information Sheet: What is Child Protection?* (UNICEF, May 2006), online: <https://www.unicef.org/protection/files/What_is_Child_Protection.pdf>.

³²⁶ ACRWC, *supra* note 199 at art 21(1)(a).

³²⁷ *Ibid* at art 21(2).

³²⁸ CRA, *supra* note 202 at ss 21-23: the CRA is an agglomeration of the rights of Nigerian children in terms of their protection and welfare.

(d) who betroths a child commits an offence and is liable on conviction to a fine of x500,000 (five hundred thousand Naira)³²⁹ or imprisonment for a term of five years or to both such fine and imprisonment.

According to the CRA, it is illegal for parents to give away a child that is below eighteen years for marriage.³³⁰ Any husband who consummates his marriage with a girl under eighteen has committed an offence which is punishable by imprisonment or a fine or both.³³¹ It is considered rape or unlawful sexual activity with a girl who cannot be legally considered his wife under the provisions of the CRA.³³² The enactment of the CRA at the federal level, however, does not mean it will be binding on the thirty-six states in Nigeria. Individual states in Nigeria are expected to domesticate the Act as state laws that protect children's rights. States are given the exclusive responsibility and jurisdiction to enact laws that define their region. This year, 2018, marks the eighteenth anniversary of the enactment of the CRA in Nigeria, yet only twenty-four states have adopted and re-enacted their respective child rights laws, hence there continues to be a practice of child marriage in northern Nigeria.³³³

Child marriage as a violation of the rights of the girl child and should be recognized as a form of slavery. Child marriage forces the child bride to be in a slave-like marriage where her master is her husband. These girls are subjected to experiences of domestic servitude, sexual

³²⁹ 500,000 Naira is equivalent to \$1,799 Canadian at a rate of 277.98 CAD to 1 Naira. This fine is not equivalent to the violation of child marriage to the girl-child.

³³⁰This imprisonment can be avoided because the CRA law that imposes sanctions on child marriages and betrothal, the used the conjunction 'or' to indicate that those who contravene the CRA may escape jail by only paying the stipulated fine of 500,000 Naira.

³³¹ Braimah, *supra* note 288 at 480; CRA *supra* note 202, at ss 23 (d)

³³² Toyo, *supra* note 283 at 1302.

³³³ Oluwaseun Ajaja, "Revisiting the Child Rights Act" (28 April 2016), online: <<http://punchng.com/revisiting-child-rights-act/>>: Adamawa, Bauchi, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara states are yet have a law conforming to the CRA.

slavery, and violations to their right to health and education.³³⁴ The practice of child marriage is an infringement and violation on the human rights of the girl child, and can be understood as such from multiple perspectives, including as sexual abuse, and as an infringement on the right of the girl child in northern Nigeria to get proper education, both of which will be further discussed below.

1.2.1. Child Marriage in Northern Nigeria as Sexual Abuse

Child sexual abuse can be defined as any sexual contact between an adult and a child that includes touching with the intention of sexually arousing the child or providing sexual arousal to the abuser, and overt sexual contact such as oral-genital contact, kissing, fondling of genitals or stimulation of genitals or intercourse.³³⁵ Sexual abuse and rape in child marriage include coerced sexual contact of all forms and forced penetration. Girls are sexually abused by their husbands within the context of marriage.³³⁶ In the north-west and north-east of Nigeria, married girls between the ages of fifteen and twenty-four were recorded to have the highest rates of sexual activity at 80% and 72%, respectively.³³⁷ In northern Nigeria, the conversation about the sexual experience for young girls is considered taboo, but it is not taboo to initiate sex with a girl as young as thirteen within a marriage.³³⁸

Child marriage is the forceful initiation of a child into sexual relations and sexual initiation within marriage and is legal under customary practices in northern Nigeria and Sharia law. In an interview with the Population Council in 2007, a fourteen-year-old respondent who was married

³³⁴ United Nations Human Rights Office of the High Commissioner, “Not a single girl should be forced to marry - UN experts” (12 October 2012), online: United Nations <<https://www.ohchr.org/EN/NewsEvents/Pages/IntDayGirlChild.aspx>>.

³³⁵ American Association for Marriage and Family Therapy, “Childhood Sexual Abuse” (n.d.), online: <https://www.aamft.org/AAMFT/Consumer_Updates/Childhood_Sexual_Abuse.aspx>.

³³⁶ *Child Marriage Briefing*, *supra* note 317 at 2.

³³⁷ Erulkar & Bello, *supra* note 297 at 4.

³³⁸ *Ibid.*

to her husband (a man with two wives) when she was thirteen had already been pregnant twice and lost her first child. At that time, she only had three years of education. The girl was asked to describe her first sexual experience as a child bride:

*“The first time I had sex with my husband, I felt serious pains and was bleeding. I had to tell my auntie, and she gave me some medicine then I told her that I would never allow him to do that to me again. My auntie told me that if I stop after the first time, the wound will never heal. At that time my husband was a stubborn man, and anytime he came to have sex with me, I just started crying. He would tell me that Allah is a blessing and rewarding me so I should not be crying.”*³³⁹

Child marriage and sexual abuse have become an accepted practice to sexually defile, dominate and control another human being in northern Nigeria. These girls’ sexual abusers are called ‘husband’, and they are praised by the girl’s family and the community because they paid a dowry. Sometimes their husbands defend their sexual abuse by saying that the girls consented to have them as husbands. Autonomy and consent are two words that child marriage does not resonate with. Child marriage is a contract or an agreement, but where female children are forced to marry, often by their father, they are not given a choice to say no. Children who nod in response when their fathers asked them if they consent often do so out of fear of the repercussions of not answering in the affirmative, this is not consent as it is given under duress and with undue influence.

Another child bride, Aisha, a nine-year-old girl from Gusau Zamfara, was rushed to Zamfara's Faridat Yakubu general hospital after her husband took her virginity on her wedding night. When asked by Monica Mark, the interviewer, what happened to her, Aisha did not have the words. She said, “All she knew was her husband did something ‘painful from behind’.”³⁴⁰

³³⁹ *Ibid* at 5.

³⁴⁰ Monica Mark, “Nigeria's child brides: 'I thought being in labour would never end'” *The Guardian* (2 Sep 2013), online: < <https://www.theguardian.com/global-development/2013/sep/02/nigeria-child-brides-religion>>.

Aisha has little or no knowledge of what sex entails, and she has to face this sexual abuse as part of marriage. Can we say that she consented to an act which she does not understand or know what it entails? The answer to this question is, of course, no, she cannot. These girls are just developing, and these men just want to take advantage of their childishness. The children in most cases were not given a choice to say no. Consent means “approval”³⁴¹, and the real consent of the parties in this circumstance means consent is obtained without duress or fraud.³⁴² Consent involves full awareness and capacity to understand what you are consenting to and a child of eleven, or even sixteen, does not have this ability.³⁴³ Children, in this case, do not have the adequate ability to understand the effect of what they are consenting to and hence it cannot be said that they gave consent to be married at their young age.

These children are not aware of the essentials of marriage, and they are not fully capable of always understanding the costs of their choices. At the age of eleven, or the age of sixteen, a child’s knowledge of what marriage is about is little, so they do not have a full understanding of the contract or vows of marriage. The defence of consent evoked by a husband is, therefore, wrong and cannot be used.³⁴⁴

1.2.2. Conflict of Laws on the Age of Marriage

The Constitution of the Federal Republic of Nigeria (“1999 Constitution”), in Section 29(4)(a), states that full age means the age of eighteen years and above,³⁴⁵ however, on the age

³⁴¹ *Merriam-Webster*, *sub verbo* "consent".

³⁴² Mandyen Brenda Anzaki, “Law in Society: The Legal Requirements of Marriage Under Nigeria’s Marriage Act”, *The Lawyers Chronicle* (n.d.), online: <<http://www.thelawyerschronicle.com/the-legal-requirements-of-marriage-under-nigerias-marriage-act/>>.

³⁴³ Udoka Okafor, “The Practice of Child Marriage in Nigeria” *Huffington Post* (blog) (12 April 2014), online: <https://www.huffingtonpost.com/udoka-okafor/the-practice-of-child-mar_b_5133881.html>.

³⁴⁴ *Ibid.*

³⁴⁵ *1999 Constitution*, *supra* note 27

limits of marriage for a girl, section 29(4)(b) states that “any woman who is married shall be deemed to be of full age.”³⁴⁶

This section of the 1999 Constitution encourages the practice of child marriage by refraining itself from clarity, because interpreting it literally it means that when a child of thirteen is married, she is then deemed an adult and her husband who married her as a child is deemed to have an adult for a wife. Section 29(4)(b) is not only a contradiction against the age of eighteen as the age of a valid marriage stipulated in the CRA,³⁴⁷ but it also jeopardizes cases of child marriage under the law because of the supremacy of the 1999 Constitution. Section 1(1) and (3) of the 1999 Constitution state that:³⁴⁸

1. (1) This Constitution is supreme, and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria;

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

The 1999 Constitution in Section 262 has granted the Sharia Court the jurisdiction in civil proceedings involving the following:

(a) any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;

³⁴⁶ *Ibid.*

³⁴⁷ CRA, *supra* note 202 at s 21.

³⁴⁸ 1999 Constitution, *supra* note 27.

*(b) where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant.*³⁴⁹

The conflict here is that Sharia Court uses the Penal Code and Hausa customary law to discriminate against women and the girl child in northern Nigeria when they adjudicate cases. The Penal Code of Nigeria does not stipulate the legal age for marriage but only affirms, in section 282(2) that, “sexual intercourse by a man with his own wife is lawful if she has attained puberty.”

³⁵⁰ Section 50 of the Penal Code says that a child between the ages of seven and twelve years should be deemed to have sufficient maturity and understanding of the nature and consequence of the offence he/she committed.³⁵¹ This section does not explicitly set the legal age of marriage as twelve years old, but it implies that a child of twelve may be deemed to have sufficient maturity. Importantly, twelve is the age of puberty for some girls, and thus puberty may be used as a sign of maturity.³⁵² Connecting age of maturity with age of puberty can mean that the Penal Code age of maturity age is the same as the age of puberty as stated in section 282(2).

Under the customary law in Nigeria, a wife cannot conceive of the idea or vocalize that her husband has raped her. It is an abominable phrase that can bring about discriminatory treatment against the woman by the community because no one will believe her or support her, and she will be accused of depriving her husband of his right to her body.

³⁴⁹ 1999 Constitution, *supra* note 27 at s 262.

³⁵⁰ *The Penal Code Act, 1960*, Chapter 53 Law of the Federation (LFN), s 282 [*Penal Code*];

³⁵¹ *Ibid.*

³⁵² Steven Dowshen, “For Parents: Talking to Your Child About Menstruation.” Online: (2014) KidsHealth from Nemours <<https://kidshealth.org/en/parents/talk-about-menstruation.html>>

1.2.2.1. Shariah Law or Penal Code as Justification of Sexual Abuse in Child Marriage

Sexual exploitation as abuse is usually against persons who are vulnerable in society.³⁵³

Child marriage opens the door of sexual violence, abuse and exploitation of the girl child in early marriage and is one of the most severe levels of violation experienced by victims as an infringement on their rights. It not only affects the physical health of the child, but it also affects their emotional well-being. It is well-known that parents want to protect their children's interests but, unfortunately, most parents in northern Nigeria base their decision on early marriage on cultural and religious practices. They impose child marriage to prevent their daughter from having premarital sex. The act of premarital sex is against Islamic law. Any girl or woman caught committing fornication or adultery has committed a criminal offence which attracts flogging or death by stoning, respectively.³⁵⁴

As explained by Alhaji Abdullahi, the district head for Zaria to Annie Bunting,

*“Girls get married very early for so many reasons, either they develop fast, or the husband-to-be may be over-anxious to marry the girl, and he wants the girl with him. The time of marriage depends on the body build and age or both. Or sometimes it depends on the girl; if the relatives are too poor to maintain the girl, [or] she may be too loose as a result they may have to get her married so they won't get embarrassed.”*³⁵⁵

³⁵³ The joint Save the Children UK / UNHCR assessment report, *Introduction to Sexual Exploitation and Abuse (SEA) in West Africa*” course pack, (2002,) online: <<http://www.pseataaskforce.org/uploads/tools/1329320411.pdf>>

³⁵⁴ Toyo, supra note 283 at 1303: Under Sharia law a child can be criminally responsible for his/her actions at the age of fifteen. In dispensing Sharia punishments, children who reach puberty earlier than eighteen years will be regarded as adults. In January 2001, Bariya Ibrahim Magazu, who was between thirteen and seventeen years of age, was subjected to 100 strokes of the cane in public in Zamfara State, after she gave birth to a child without being married.

³⁵⁵ Annie Bunting, “Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue” (2005) 14:1 Soc & Leg Stud 17.

A girl who is forced to give up her right to control when and whom she wants to be sexually involved with is sexually abused.³⁵⁶ Child marriage in northern Nigeria does not give girls the opportunity to feel prepared for sexual relations with their husbands or anyone else before they force them into marriage. The parents of the girls base their preparation on the girls' body build (puberty) or age. Sometimes these children are raped by their husbands if they refuse access to their bodies. Rape is an act that requires lack of respect and dignity of the child. Section 31 of the CRA explains having sexual intercourse with a child as an offence of rape,³⁵⁷ but the Penal Code of Nigeria does not recognize rape when committed in marriage.

In section 282(1) of the Penal Code, "rape" is defined as:³⁵⁸

282. (1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

³⁵⁶ O Iyabode, "Child Bride and Child Sex: Combating Child Marriages in Nigeria (2011) 2 Nnamdi Azikiwe U J Intl L & Juris 87 at 90.

³⁵⁷ CRA, *supra* note 202 at s 31.

³⁵⁸ Penal Code, *supra* note 350 at s 282:

The Penal Code explains that "mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape." Section 357 of the *Criminal Code Act*, Chapter 77, Laws of the Federation of Nigeria 1990, this law (took effect 1st day of June 1916), that operates in Southern, Western and Eastern part of Nigeria also exempts perpetrators of rape within marriage from punishment by stating: "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, **by personating her husband**, is guilty of an offence which is called rape".

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

In addition to the above section, and to further show that the Nigerian Penal Code does not recognize marital rape, section 282(2) states that:³⁵⁹

282. (2) *Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.*

In the Sharia Penal Codes, rape is a crime punishable by death, if the offender is married, or by flogging, if the offender is unmarried, but it is not a crime within a marriage. These sections of the Penal Code stated above not only justify child marriage but also justify sexual abuse against the child bride.

The Penal Code and customary law justify the act of sexual abuse in child marriage, and the payment of the bride price³⁶⁰ is the justification that the marriage has taken place - a woman remains unmarried until the husband pays her bride price.³⁶¹ A child bride cannot refuse to be sexually abused by her husband. If she does refuse, she can be disciplined by him because she is perceived as a sexual tool and property to him. Domestic violence by husbands against their wives is recognized as lawful by the Qur'an.

Section 55 of the Penal Code states:³⁶²

³⁵⁹ *Ibid* at s 282(2).

³⁶⁰ Bride price, also known as bride token, is an amount of money, property or other form of wealth paid by a groom or his family to the parents of the woman or girl (usually her father, uncle or brother), he has just married or is about to marry. It explains why girls from poor families are the most vulnerable to the practice of child marriage.

³⁶¹ Omorodion Ruth, "Without Bride Price, There Is No Marriage" *The Nigerian Observer* (15 August 2015), online: <<http://nigerianobservernews.com/2015/08/without-bride-price-there-is-no-marriage/>>.

³⁶² *Penal Code*, supra note 350 at s 55(1)(d); s 241: "grievous hurt includes emasculation, permanent loss of sight, ability to hear or speak, deprivation of any member or joint, destruction or permanent impairing of the powers of any member or joint, facial disfigurement, bone fracture or tooth dislocation."

55. (1) “Nothing is an offence which does not amount to the infliction of a child, pupil, grievous hurt upon a person and which is done... (d) by a husband for the purpose of correcting his wife such husband and wife being subject to any customary law in which the correction is recognized as lawful.”

The exemption of marital rape by Penal Code was not made in error. Instead, it was drafted to give legal immunity to a man who marries an underage child as his bride. The justification for this exemption is based on the belief that any marriage contract entered by a woman or a girl child, even without her consent, is a covenant or permission of unrestricted acts of intercourse and she cannot subsequently revoke the permission.³⁶³ I would like to note here that customary law in Nigeria recognizes a woman’s and a married girl child’s body as the property of her husband. So, under customary law, a child who is married cannot seek recourse from her family or the public when her husband violates her sexually because, legally, her body belongs to him.³⁶⁴ The legal exemption of marital rape from the Penal Code disregards the physical, emotional and health consequences that the girl child will experience. It also removes legal consequences for the abuser because the Penal Code is the code of laws on crimes, offences and their punishment.³⁶⁵ Child marriage robs the girl child of the right to control her body, and the Penal Code and customary laws reinforce that this right now belongs to her husband.

These practices of sexual possession are the reality of gender inequality against women in northern Nigeria, and the distinctive power and dominance of men over women³⁶⁶ are supported

³⁶³ Duru Onyekachi, “Nigerian Legal Position on Spouse Rape” n.d. Legal Essay Series 4 at 2

³⁶⁴ *Ibid.*

³⁶⁵ *Nulla poena sine lege* is a legal principle that says that no one can be punished for doing something that is not prohibited by written law.

³⁶⁶ *Toward a Feminist Theory of the State*, *supra* note 134 at 127.

in law through the legalization of rape when the rapist is the victim's husband.³⁶⁷ The possession of the right to sex in marriage is a policy of the state to ensure the embodiment and male control of women's bodies. A society empowers the enforcement of male dominance of women and gender inequality through law by eroding the victim's experience and their vantage point of sexual violation by adjusting laws to the social fact that men's right to sexually abuse their wives is acceptable.³⁶⁸ As explained by Catherine A. Mackinnon, the exemption of marital rape emphasizes the legal and social acceptance that men's experience of intimacy is more important than women's experience of sexual violation in marriage.³⁶⁹ It also highlights male supremacy and women's inferiority in the community and the social system.

Another right of the northern Nigerian girl child that is abused in child marriage is the deprivation of the right to good health. Every child in Nigeria is entitled to enjoy the best attainable state of physical and mental health.³⁷⁰ Brides who are expectant or nursing mothers have the right to get appropriate health care.³⁷¹ However, this is contrary to what is happening in northern Nigeria, where pregnant women are subjected to "Gishiri cut" or "Yankan Gishiri."³⁷² In an interview by the Women's Rights Advancement and Protection Alternative ("WRAPA"), Mary Abacha, a nurse at the women and children's hospital in Sokoto State in northern Nigeria, said: "Many young girls from the age of twelve to sixteen years, who come here to give birth to their

³⁶⁷ Catharine A MacKinnon, "Feminism Marxism, Method and the State: Toward Feminist Jurisprudence" (1983) 8:4 U Chicago Press J 644

³⁶⁸ *Ibid* at 649.

³⁶⁹ *Ibid* at 648.

³⁷⁰ *CRA*, *supra* note 202 at s 13.

³⁷¹ *Ibid*.

³⁷² This is a traditional surgical cut performed by traditional birth attendants, local herbalists or barbers where the anterior vaginal wall, posterior or lateral walls are cut with a razor blade or knife during delivery of a child. This method of delivery has complications that include: severe bleeding leading to shock, excruciating pain, and vesicovaginal fistula: Abdullahi Dahiru, "Some Harmful Traditional Birth Practices In Northern Nigeria and Making Child Birth Safer in Nigeria" (n.d.), *Gamji* (blog), online: <<http://www.gamji.com/article8000/NEWS8634.htm>>.

children usually have an undeveloped pelvis and because of this the babies, most times, do not come out easily. The consequences of giving birth with an undeveloped pelvis are vesicovaginal fistula (VVF), high blood pressure and severe bleeding.”³⁷³ Child marriage as early exposure to sex exposes children to severe reproductive and sexual health consequences, including VVF, HIV, and unwanted pregnancy, among others.³⁷⁴ Children who are victims have high chance to suffer deep psychological trauma, post-traumatic stress, multiple pregnancies, restricted access to education and income generation opportunities, social seclusion, and early widowhood.³⁷⁵

1.3. Child Marriage as a Hindrance to Girl-Child Education.

Educational attainment is considered an essential accomplishment in the life of young girls in the southern, western and eastern parts of Nigeria, where girls marry much later than in the north, with a median age of marriage being over twenty-four years.³⁷⁶ Girls in northern Nigeria have low levels of education which can vary between regions, area of residence, and the economic security of the family.³⁷⁷ In 2007, young girls in rural areas in the northern part of Nigeria³⁷⁸ had illiteracy rates at 75%, compared to a 15% illiteracy rate for girls in rural areas in the south.³⁷⁹ Nearly two-thirds of women in the north-west and north-east regions have no education compared to 70-78% of girls in rural areas in the south who had education at the secondary level or higher.³⁸⁰ The north-east and north-west states not only have the lowest rates of girl child education, these

³⁷³ WRAPA Nigeria, “Girls in Their Own Voices, Child Marriage in Nigeria” (July 18, 2016), online: YouTube <<https://www.youtube.com/watch?v=m32PIHGe9UM>>

³⁷⁴ *CRA*, *supra* note 202 at ss 31, 32.

³⁷⁵ Eliana Riggio Chaudhuri, “Thematic Report: Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage”, (October 2015), online: <<http://www.ecpat.org/news/new-thematic-report-unrecognised-sexual-abuse-and-exploitation-children-child-early-and-forced/>>

³⁷⁶ Erulkar & Bello, *supra* note 297.

³⁷⁷ *Ibid* at 4.

³⁷⁸ Gombe, Bauchi, Yobe, and Borno states in the north-east, and Kebbi, Sokoto, Jigawa, Zamfara, and Katsina states in the north-west.

³⁷⁹ Erulkar & Bello, *supra* note 297 at 4.

³⁸⁰ British Council, “Girl’s Education in Nigeria Report 2014: Issues, Influencers and Actions” 2009 [British Council]

regions also have the highest rate of child marriage in Nigeria,³⁸¹ showing the correlation between low levels of education and child marriage.³⁸²

1.3.1. What is Education?

Education is the process of receiving or giving systematic instruction, imparting knowledge, and developing the power of reasoning, judgement and intellectual abilities, especially at a school or university.³⁸³ Education is an essential and indispensable asset in this modern and global world, as it helps constitute and develop influence in behaviour, interactions and informal assessments and understanding of the self and others. Education for the girl child entails knowledge through access to schooling.³⁸⁴ Education is an essential tool for personal and societal development.

Acquiring education can be either informal and formal, the latter of which involves learning and understanding in the Western system of imparting knowledge, while the informal can mean the traditional and non-structured way of imparting knowledge that usually starts from the household level to the community level.³⁸⁵ The type of girl child education that is discussed here is the formal imparting of knowledge - a vital schooling stage that involves attending primary, secondary, and post-secondary institutions.

1.3.1.1. Legislation on the Education of the Nigerian Girl Child

³⁸¹ Tobore Ovuorie, "Northern states have Nigeria's worst girl-child education-Report" (13 October 2013), online: <<https://www.premiuntimesng.com>>.

³⁸² Erulkar & Bello, *supra* note 297 at 6.

³⁸³ *Oxford Living Dictionary*, *sub verbo* "education", online: <<https://en.oxforddictionaries.com/definition/education>>.

³⁸⁴ Kayode *supra* note 301 at 468.

³⁸⁵ Adebukola Foluke Osunyikanmi, "Reflections on Education and Girl Child Marriage in Nigeria" (2014) 1:2 *International Journal of Sociological Science* 1 at 3 [Osunyikanmi].

The gender disparity in access to basic education and equality in enrolment, retention and completion of school which affects the girls and women in northern Nigeria has been a matter of concern to the Nigerian government.³⁸⁶

Nigeria has different policies that are aimed to keep children in schools around the nation. Among those policies is the Universal Basic Education Commission (“UBC”). UBC is a federal government agency initiated in 1999 by the 1999 Constitution. The UBC programme was designed to ensure that every child has access to free and compulsory basic education, which is defined as nine, uninterrupted years of primary and junior secondary school education in the thirty-six states of Nigeria.³⁸⁷ Nigeria’s National Policy on Education says that primary education should be organized for all children between the ages of six and eleven, followed by secondary education which will last for six years, including three years for junior secondary and three years for senior secondary education.³⁸⁸

The UBC’s guidelines guaranteeing continuous education for the girl child are guided by the Universal Basic Education Act³⁸⁹ and 1999 Constitution.³⁹⁰ Education for the girl is guaranteed under section 18 of the 1999 Constitution that states that every Nigerian deserves “equal and adequate educational opportunities at all levels.”³⁹¹ The UBC recognizes and guarantees the girl child access to basic education based on its understanding that access to education for the girl child will reduce the incidence of drop-out from the formal school system, eradicate illiteracy, ignorance

³⁸⁶ Joseph A Oluyemi & Muhammed A Yinusa, “Girl-Child Education in Nigeria: Issues and Implications on National Development” (2016) 28:1 University of Ilorin at 46 [Oluyemi & Yinusa].

³⁸⁷ Universal Basic Education Commission, “Universal Basic Education Commission” (n.d.), online: Government of Nigeria <<https://ubeconline.com/>>.

³⁸⁸ Martin Library, “National Policy on Education: The 6-3-3-4 Educational System Policy Document” (n.d.), online: <<https://martinlibrary.blogspot.com/2014/05/national-policy-on-education-6-3-3-4.html>>.

³⁸⁹ *Universal Basic Education Act*, 2004. Cap 271 Laws of the Federation (LFN) 1990

³⁹⁰ *1999 Constitution*, *supra* note 27.

³⁹¹ *Ibid* at s 18.

and poverty, as well as stimulate and accelerate national development, political consciousness, and national integration.³⁹²

1.3.1.2. The “Inferiority” of the Girl-Child

Flavia Pansieri, the Deputy UN High Commissioner for Human Rights in 2014 said that “[c]hild marriage is rooted in unequal gender status and power relations that can result in the perpetual subjugation of girls and women. In the absence of viable legal remedies, discriminatory cultural practices based on stereotypical views of women’s roles and sexuality is among the structural causes of child and forced marriage.”³⁹³ The pattern of child marriage in northern Nigeria is centred on the gender oppression of girls and a conventional arrangement of domination by men most commonly called patriarchy.³⁹⁴ Girls in northern Nigeria are oppressed and dominated by men because they are denied the right to education, they are forced into early marriage and exposed to the consequences of teenage motherhood.

Deprivation of the girl child’s education has its root in preferential treatment of male children over female children. Male children, considered the superior gender, are not denied education, while female children’s education is substituted for arranged marriages and household chores.³⁹⁵ Culturally, women are argued to not be suited to have an education because their brain

³⁹² Universal Basic Education Commission, “Who We Are” (n.d.), online: Government of Nigeria <<http://ubec.gov.ng/about/who-we-are>>.

³⁹³ United Nations Human Rights Office of the High Commissioner, “Child and forced marriage - manifestation of gender discrimination” (11 July 2014), online: United Nations <<https://www.ohchr.org/EN/NewsEvents/Pages/Childandforcedmarriagemanifestationofgenderdiscrimination.aspx>>

³⁹⁴ Oluyemi & Yinusa, *supra* note 386 at 49.

³⁹⁵ Osunyikanmi, *supra* note 385.

is too small for intellectual pursuits, leadership roles and management of businesses, while men's brains are naturally built to provide and to rule.³⁹⁶

Parents lack confidence in female education because they believe in the myth of the male gender's superiority and that education has nothing to offer the girl child. This cultural belief is a stereotype built on an idea that men are superior based on their strength in armies, mining of ore, cultivation of farmlands, and other corporal demands of survival.³⁹⁷ However, this superiority theory is a weak one because, for example, women in Hausa land historically made better warriors than their male counterparts.³⁹⁸ Comparing the intelligence of genders and claiming male superiority is wrong because many girls who are intelligent students still encounter child marriage as a barrier to education.³⁹⁹

Girls are made aware of their subordinate role from birth, especially when parents show their disappointment when the firstborn in the family is a girl or when all of their children are female. This is because male children are seen as the only ones to propagate the family lineage or take leadership of the family after the death of the father, while the female child is only seen to make a meaningful contribution in her husband's house as homemaker and child producer.⁴⁰⁰

An average Nigerian parent, especially those that reside in rural areas, would prefer investing in the education of their son rather than their daughter because of the societal value of

³⁹⁶ Unimke J Ugi, "Gender Equality: The Myth of Gender Superiority in Northern Nigeria, And the Fate of the Girl Child" (30 August 2016), *WorldPulse* blog, online: <<https://www.worldpulse.com/en/community/users/eweimedia/posts/69908>> [Ugi].

³⁹⁷ *Ibid.* The recognition of the superiority in the writings of Charles Darwin, who based his theory of women's intellectual and physical inferiority on the theory of evolution that centered on the survival of the fittest; Jerry Bergman, *supra* note 48 at 107; Superiority is therefore a function of individual ability, and not a generic attribute of gender.

³⁹⁸ Vivian Birchall, "African Women Warriors" (7 March 2018), online: <<http://www.africa2u.org/2018/03/african-women-warriors.html>>.

³⁹⁹ Ugi, *supra* note 396.

⁴⁰⁰ *Ibid.*

gender inequality prompted by the cultural and religious beliefs that the boy child dominates the girl child and so he should be more educated than her.⁴⁰¹ Economic challenges of parents and families in northern Nigeria worsen the situation for the girl child as parents will decline an educational investment in the girl and instead arrange for her to be married so that the bride price can be used to invest in the boy child's education.⁴⁰²

Child marriage and discriminatory access to equal education in northern Nigeria can also be attributed to myths, superstitions, and cultural beliefs that educated women do not make submissive wives, they are sometimes promiscuous, they are usually barren and believed to have had an abortion, and they have attitudes that are not compatible with the traditionally expected gender roles of girls and women as future wives and mothers.⁴⁰³ The practice of child marriage and the perpetual subjugation of girls and women by depriving them access to education are also rooted in men's domination and the upholding of cultural beliefs that women are not and cannot be equal to men. Men believe that education will make women insist on gender equality. Most men, especially in the rural communities, believe the girl child's place is in the kitchen and home and that she should accept her traditional roles of bearing and rearing children and maintaining the welfare of her family instead of competing with men in society.⁴⁰⁴

1.4. Why Educate the Girl-Child?

Child marriage is a silent and critical challenge to literacy in northern Nigeria. Many girls between the ages of fifteen and nineteen have a dream of becoming scientists, lawyers, doctors, or engineers, but the realities of child marriage block their dreams. Education should be treated as an agenda for development in Nigeria. The relationship between education and sustainable

⁴⁰¹ Oluoyemi Yinusa, *supra* note 386 at 45.

⁴⁰² *Ibid* at 48.

⁴⁰³ *Ibid* at 47.

⁴⁰⁴ *Ibid* at 47.

development goals is critical in Nigeria because uneducated girls, become uneducated adults, and the cycle of undereducation continues. If the literacy rate for the girl child is not increased, then there will continue to be a cycle of illiteracy in the country. Also, there will continue to be a cycle of poverty from generation to generation.⁴⁰⁵ Education, particularly that of the girl child is a strategic development investment, so it should not be left as a matter of choice for parents but rather be an imperative for development. According to the wife of the Executive Governor of Kebbi State, Dr. Zainab S. Bagudu, “[w]hen we empower girls through education, the chains of poverty are broken, and stronger, healthier societies and nations are built.”⁴⁰⁶

In the Kebbi State in the north-west of Nigeria, in 2007, 67% of young women between fifteen and nineteen years were either married or in a union. Only 35% of the young women were enrolled in primary schools, and 32% were enrolled in secondary schools.⁴⁰⁷ In northern Nigeria, girls who do go to school do so at all-girls schools. In one of these schools in the Kebbi State, of the 7,280 teachers employed by at the school, 5,720 are male, and only 1,530 are female.⁴⁰⁸ This reflects the inequality in access to education. The neglect and substitution of the girl child’s education with marriage deny her the knowledge and skills to advance her status and to advance the country and instead sets her up her for abject poverty and infectious maladies.⁴⁰⁹ An educated girl is able to know her rights, realize her full potential, create jobs, and teach her community to learn to respect girls’ rights by eliminating cultural practices that infringe upon them.⁴¹⁰ The girl child who has an education and an educated mind can hardly be misled, but an uneducated and

⁴⁰⁵ mAcademy, “Kebbi Girl-Child Education documentary” (6 January 2018), online: <<https://www.youtube.com/watch?v=2rK6ASRGeuk>>.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Oluyemi & Yinusa, *supra* note 386 at 55.

⁴¹⁰ *Ibid.*

uninformed girl child can be manipulated and misled.⁴¹¹ The education of girls reduces the rate of child marriage.

The education of the girl child is an investment in the growth and transformation of the socioeconomic, cultural, and political development of Nigeria. Education of girls is a practical approach to alleviate poverty because through education they can better contribute to the development of society socially, economically, politically, morally, intellectually, spiritually, and technologically.⁴¹² The education of the girl child is the promotion of gender equality, understanding, tolerance and friendship among people of a community.⁴¹³

1.4.1. Right to Education

Lack of proper education is a significant consequence of child marriage for the girl child. Every child has a right to have a basic education.⁴¹⁴ Every child, both boys and girls, deserves the right to free, compulsory, and universal primary education.⁴¹⁵ Obtaining education as a child is regarded as fostering respect for human rights and fundamental freedoms that are stated in international human rights declarations and conventions.⁴¹⁶ A child is adequately educated if he/she receives efficient full-time education suitable to his/her age, ability and aptitude.⁴¹⁷

Education, as a fundamental human right, has been recognized in many domestic and international legal instruments. According to article 11 of the ACRWC, the education of the girl child must be directed to the development of her personality, talents and mental and physical abilities to their

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ *Ibid.*

⁴¹⁴ *CRA, supra* note 202 at s 15; *ACRWC, supra* note 199 at art 1; Basic education in Nigeria is primary and secondary school education.

⁴¹⁵ *CRA, ibid.*

⁴¹⁶ *ACRWC, supra* note 199 at art 1(2)(b).

⁴¹⁷ *CRA, supra* note 202 at 58(3).

fullest potential.⁴¹⁸ The right to education for the girl child was also recognized in section 15 of the CRA where it states that “parents or guardians of the girl-child shall ensure that the girl-child completes her primary, junior secondary and senior secondary education.”⁴¹⁹ Nevertheless, this is not the case for girls in northern Nigeria, for whom education can be considered a mirage, especially when they can be married as young as twelve years old.⁴²⁰ The girl child’s education also suffers from the gender-biased curriculum, lack of school facilities, instructional materials and terrorism (e.g., Boko Haram Chibok and Dapchi girls).⁴²¹ These factors contribute to girls having a low net enrolment rate and a high dropout rate in school in the country.⁴²²

Child marriage makes it extremely difficult for girls to remain in or complete secondary school, and it also reduces the possibility of parents enrolling their girl child in school at all.⁴²³ Child marriage’s effect on girls’ education has intergenerational effects of illiteracy and poverty because it reduces education prospects for child brides and lowers earning potential for child brides in adulthood since a lack of education prevents them from getting good jobs.⁴²⁴

Currently, in northern Nigeria, the average girl stops attending school at the age of nine. They are not given the chance to learn and to have a quality education.⁴²⁵ According to Rabia Eshak the Commissioner of Education for Jigawa State in northern Nigeria, “[s]ome girls are not in school

⁴¹⁸ ACRWC, *supra* note 199 at art 2(b).

⁴¹⁹ CRA, *supra* note 202 at s 15.

⁴²⁰ Iwalaiye Elizabeth Mayokun et al, “The Challenges of Girl-Child Education in Government Secondary Schools of Abuja, Nigeria –Implication for Counselling” (2016) 2:4 International Journal Series in Multidisciplinary Research 26 at 28 [Mayokun].

⁴²¹ Kevin Sieff, “Boko Haram kidnapped 276 girls two years ago. What happened to them?” *Washington Post* (14 April 2016), online: <https://www.washingtonpost.com/news/worldviews/wp/2016/04/14/boko-haram-kidnapped-276-girls-two-years-ago-what-happened-to-them/?noredirect=on&utm_term=.377f10a2d827>.

⁴²² Mayokun, *supra* note 420 at 28.

⁴²³ Quentin Wodon et al, *Economic Impacts of Child Marriage* (Global Synthesis Report” delivered at International Center for Research on Women and the World Bank Conference Edition June 27, 2017)

⁴²⁴ Quentin Wodon, “Child marriage and education: Impacts, costs, and benefits” –(29 June 2017), online: <<https://www.globalpartnership.org/blog/child-marriage-and-education-impacts-costs-and-benefits>>.

⁴²⁵ TV2Africa, “Nigeria Girls’ Education” (26 October 2016) online: <<https://www.youtube.com/watch?v=h7uNmI2Tw0>>

at all, so they do not know how to read and write, and they are not trained to know some basic life skills...Poverty is a very grinding factor that stops girl for going to school, and because of that they have to get married early...the few girls that get to school, they don't get the quality education that I got when I saw my daughter who started school was not learning, I knew that then other girl girls were not learning, and of course other boys too, but I felt that, if the indices show that fewer girls are graduating or finishing secondary school, then I believe there is something wrong and something needs to be done."⁴²⁶ Notwithstanding parents or cultural reasons, the girl child deserves an equal opportunity to quality education as their male counterparts, not only because it is their human right to be educated, but also because they can achieve as much, or more, as boys if given the same opportunities.⁴²⁷ The issue of child marriage and the girl child's lack of access to education needs urgent attention if Nigeria wants to have meaningful development in vital sectors, including such as the economic, infrastructure and health sectors.

Having discussed the abuses inflicted through the practice of child marriage in the northern parts of Nigeria, recommendations will now be given on how child marriage can be eliminated. Article 19(1) of UN CRC of which Nigeria is a member state, says that the Nigerian government must commit itself to ensure the realization of the girl child human rights, including the right to education, and to protect the girl child from harmful and abusive practices, such as child marriage. The question then becomes, what can the Nigerian government do to eliminate child marriage? The answers to this question are:

1. Review and amend the current laws on children's rights and the 1999 Constitution;
2. Change the concept or notions of consent in Child marriage through legislation;

⁴²⁶ *Ibid.*

⁴²⁷ Oluyemi & Yinusa, *supra* note 386 at 52.

3. Empowering girls to develop resilience to harmful practice like child marriage;
4. Educate the parents;
5. Provide relevant economic support;
6. Extending special protection measures to children at risk or victims of sexual violence in child marriage.

1.5. Review and amend the current laws on children’s rights and the 1999 Constitution:

The 1999 Constitution does not specifically define the minimum age for marriage. It only states, in section 29(4)(b), that “any woman who is married shall be deemed to be of full age.”⁴²⁸ The words “full age” can be interpreted to be any age. Laws against child marriage should not only specify the age of marriage, but they should provide an in-depth definition of the concept of the crime of child marriage. The 1999 Constitution should explain the age that marriage is acceptable and that puberty does not mean full age or adulthood. Girls who have attained puberty but are under eighteen years old are not old enough to be brides, and any child below eighteen years has not yet attained “maturity age.” The 1999 Constitution should be explicit on the requirement to record every marriage that takes place and the punishment for anyone that abuses the child’s rights through child marriage.⁴²⁹

Section 262 of the 1999 Constitution empowers Sharia law by stating that it will not interfere with matrimonial matters in Islamic courts. This provision should be changed because the power of Sharia Court, as conferred by the 1999 Constitution, will disrupt access to justice in cases of child marriage, as Sharia law is not against child marriage.⁴³⁰

⁴²⁸ *1999 Constitution, supra* note 27.

⁴²⁹ I am suggesting life imprisonment for her father and his relatives that accept dowry, community service for her mother if she was not allowed to revolt, and life imprisonment for the husband of the child bride.

⁴³⁰ *Penal Code, supra* note 350 at s 282.

Nigerian governments should extend the jurisdiction of the CRA to every state by removing the option of adoption and making it a requirement. The CRA should be implemented in the thirty-six states in Nigeria as federal law. This law should establish eighteen years as the legal age of marriage for girls. Other legislative bodies such as the Nigerian Senates and House of Representatives should also draft a federal law on the executive list that prohibits child marriage and punishes perpetrators. The executive list means it will operate in all of the thirty-six states of Nigeria, without requiring individual enactment to come into effect nationwide.

1.5.1. Change the concept or notions of consent in Child marriage through legislation: There is need to challenge the custom of parents arranging marriages for daughters before 18 years because parents consider themselves as the sole decision maker of issues surrounding their children. Parents see the consent of the girl-child on issues of marriage as unnecessary because they believe they are acting in the best interest of the child by preserving sexual norm of virginity and chastity.⁴³¹ Traditionally in northern Nigeria, parents have the notion that they have authority to decide on the spouse, the time of the wedding and the arrangements through which the marriage must be contracted. But this notion of having authority over children in terms of marriage has to change for eradication child marriage. Changing the concept or notions of consent in child marriage should demand that no child below 18 years can give consent and parent are prohibited to consent on any child behalf. The change should take place through the amending of policies and legislation to contrast the notion of parents' authority on marriage. The aim of amending laws- i.e. the Rights Child Act 2003 is to generate discussion and an established notion of the government on the child's rights to make life choices. Agreed, the amended laws can create tension that will

⁴³¹ ECPAT International Plan International, "Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage" (October, 2015) Thematic Report at 30 [ECPAT]

affect the internalized cultural setting where young girls' decision regarding marriage is inadequate the government limiting parental rights to consent.⁴³² However, it will deal with issue of direct involvement of parent, elder family and the community on who, how and when to force a girl-child her husband without her consent.

1.5.2. Empowering girls to develop resilience to harmful practice like child marriage:

Empowerment starts with human rights awareness, because patriarchal norms and structures deprives girls of their human rights to be free sexual violence in child marriage.⁴³³ Girls who are aware of their rights are cognizant of the value of education, good employment opportunities and the attainment of leadership skills that are healthier to their future, compare to child marriage. Empowerment and development of resilience entails the government creating a sense of self-awareness and value being instilled in girls that are between the age of puberty and adolescence, through frequent seminars in the communities.

Each session of the seminars should build their esteem and enhance their social assets, skills, and status in the communities through life skills training, safe spaces for girls to share experiences freely and discuss life options, and the development of peer support networks.⁴³⁴ Girls' should be taught how to resilient the pressure to marry, how to socialize and how to oppose confinement to domestic precincts, constraint of movement and isolation.⁴³⁵ Additionally, to create achievable resilience the seminars should include masculinities programming for boys and men, for necessary change of attitudes that perpetuate child marriage. Men should be taught the relevant of equality, reject early marriage for their daughters and appreciate the importance of girls' education.

⁴³² Ibid

⁴³³ Ibid at 69

⁴³⁴ Ibid

⁴³⁵ Ibid

1.5.3. Educate the parents: Child marriage in the northern communities succeeds, because fathers and elders are some of the drivers of the practice of child marriage in northern Nigeria. Child marriage is centered on parents and the men who marry the girls. Child marriage takes place in traditional communities in northern Nigeria, and some parents believe child marriage is a shield to prevent promiscuity of their daughters and will provide economic security. These beliefs are caused by lack of formal education among elders, mothers, and fathers. Education will help parents, families and communities know the harmful effects of the practice of child marriage.⁴³⁶ Parents should be educated on the values of promoting education for the girl child.

If the government need to invest in community education to challenge traditional gender norms and the deeply entrenched traditional practice of child marriage, it is vital to educate fathers and husbands or potential husbands, on the rights of girls and how early marriage can be harmful to her health and happiness and destructive to the community. They need to know that the high rate of child marriage and lack of education for girls is a deep-rooted cause of poverty in their society. The government should tell them about the benefits of girls' education and should give them incentives so that they will encourage their female children to attend formal schools. Government agencies should discourage the communal orientation and help eliminate the pressure on parents to marry their daughters early.⁴³⁷

1.5.4. Provide relevant economic support: Girls are seen as economic burdens and securities for male and younger female siblings. Parents may understand some of the abuses their daughters suffer from their husbands, yet they cannot do anything about it because of poverty. Providing

⁴³⁶ Carol Olson, "16 Ways of Preventing and Intervening in Child Marriages" (26 November 2014), online: <<http://16days.thepixelproject.net/16-ways-of-preventing-and-intervening-in-child-marriages/>>.

⁴³⁷ Bala Salihu, "Trauma of Girl Child Education in Northern Nigeria" *u12mm13de* (27 May 2016), online: <<https://u12mm13deupdates.wordpress.com/2016/06/27/trauma-of-girl-child-education-in-northern-nigeria/>>.

economic support to families may be a way of assisting parents through economic incentives are greatly needed because of poverty. Most victims of child marriage live in rural areas that are far away from schools, limiting access to education, a factor that is further compounded by poverty.⁴³⁸ Women who are from wealthier homes are often married later in life, as adults 18 years and older, compared to those from poorer backgrounds who are often married as children. Education and social development of women increases their economic positions, so women and the girl child who experience barriers to education due to poverty are less likely to improve their economic position in the future.

Economic incentives that address poverty in northern communities may come in the form of substantive subsidies for families towards better farming equipment, regular skills training, or loans. Incentives by the government can also come in the form of an educational scheme or program that takes financial care of girls' books, uniforms, transportation, and lunches.⁴³⁹ Alternatively, incentives can come in the form of establishing small- and large-scale businesses for parents who allow their children to complete secondary school education. Another economic incentive can come in the form of a tax credit incentive that is connected to marriage registration. The tax credit can help ensure the registration of marriages, as it would provide sufficient income for adult men and women who register their marriage.⁴⁴⁰ This type of incentive will help to keep track of the number of marriages and the age of the brides. This incentive will be particularly useful if the government enforces the Child Right Act in every state in Nigeria, which would allow for a sanction or punishment in cases where a child marriage is registered.

⁴³⁸ British Council, "Girl's Education in Nigeria Report 2014: Issues, Influencers and Actions" 2014 at 9

⁴³⁹ *Ibid* at 35.

⁴⁴⁰ Davids, *supra* note 302 at 323.

Empowering families of these girls through provision of financials will create a sense of self-worth for these girls because they will be able to go to school. Financial investment as economic security will not only assist the girls who because of financial reasons, stopped their educational pursuit; it will also remove the financial pressure on families. There will be a decrease in the use of dowry from child marriage as a suitable means of income.

1.5.5. Extending special protection measures to children at risk or victims of sexual violence

in child marriage: As part of the duty of the Nigerian government to protect the girl child from harmful cultural practices, it should have an open shelter for girls who escape child marriage. Both victims and survivors should be able to reach out for help and these services that should be at no cost. Scholarships should be given towards their education, and a restrictive injunction should be placed on members of the families who may want to capture or abduct them to carry out the marriage. Child marriage also means these girls are open to physical assault, mental and sexual abuse, so government agencies should set up therapy and health sessions to make sure that the psychological and reproductive health of the girls is satisfactory. Girls who are victims of child marriage and are in abusive situations should be removed from the house where they are being abused and reintegrated into the community, after appropriate mental health services. This will assist them to recuperate the states of anxiety, depression associated with the challenges of early introduction to motherhood and living an unproductive family life.⁴⁴¹

Protecting children at risk means facilitating of access to justice for the girl-child by removing limitation and speedy procedure on divorce cases for victims of child marriage. Access to justice

⁴⁴¹ *ECPAT*, supra note 431 at 73

is the use of legal aid services that will protect the girls' legal rights before and during and legal proceeding that may arise as a result of child marriage.⁴⁴²

⁴⁴² *ECPAT*, supra note 431 at 74

CHAPTER V

1. SECLUSION

1.1. Seclusion of Women in Northern Nigeria as a Limitation on the Economic Rights of Women

Women in Nigeria struggle to enjoy their fundamental human rights because the country operates as a patriarchal society where women are disadvantaged by their assigned gender roles in which they are viewed as subordinate to men.⁴⁴³ Most states in northern Nigeria have a predominately Muslim population and a long history and practice of Islam that has shaped the family and socioeconomic framework in the region. An average Hausa woman, especially one living in rural areas can be classified and defined as having a low social status, poor education, and as experiencing economic inequality (within the context of overall regional poverty), restricted social mobility, and spatial confinement.⁴⁴⁴

The general cultural expectations placed on Hausa girls and women is that they express virtues of a mother and a caretaker, meaning they show patience, modesty, subservience, and comply with the will of their husbands, brothers and other male relatives. An average Hausa man is indoctrinated with a cultural ideology that limits women to domestic and reproductive duties, while men are advised to be educated, employed and so that they can provide for the family. This ideology indirectly establishes the validity for the seclusion and subordination of women and is legitimized through a strict delineation of gender roles and an unequal division of labour that separates men from women in their families and communities.⁴⁴⁵

One of the main aims of this thesis is to expose seclusion as a form of domination, solitary confinement and abuse on the right to economic participation of Muslim women in northern

⁴⁴³ *Osunyikanmi*, supra note 385 at 1.

⁴⁴⁴ Wall L. Lewis, *Tears for my Sisters: The Tragedy of Obstetric Fistula* (Baltimore: John Hopkins University Press, 2018) at 142 [Lewis].

⁴⁴⁵ *Ibid* at 134.

Nigeria. This chapter will, therefore, address the question: how is seclusion a constraint on the realization of Hausa women's full potential for economic development? In this chapter, I will conclude that seclusion limits women's freedom to associate, organize and access markets. This chapter is organized into four parts:

- i. The meaning of seclusion for married Hausa women in northern Nigeria;
- ii. The status of married Hausa women;
- iii. International and national laws for the protection of women's economic rights; and
- iv. The act of seclusion is a contributing factor to the abuse of economic rights of Hausa women in northern Nigeria.

1.1.1. Meaning of seclusion for Hausa women

Seclusion, also known as *purdah* or *auren 'Kulle*, Hausa for "locked in marriage", is a term referring to the traditional confinement of women practised in Hausa societies in northern Nigeria. For Hausa women, seclusion means they are assigned to separate living quarters, they are required to practice veiling, practice self-effacing mannerisms, and they are prohibited from interacting with unrelated men and women in public places.⁴⁴⁶ In traditional and rural societies, seclusion is justified by a conservative interpretation of Islamic scripture and law. In Hausa villages, there is a noticeable absence of adult women in public spaces because adult and married Hausa women are restricted to a strict form of *purdah* or seclusion, where they have limited personal autonomy and are subject to their husbands' or fathers' commands (as men control their families and Hausa

⁴⁴⁶ *Oxford Dictionary of Islam*, *sub verbo* "seclusion", online: <<http://www.oxfordislamicstudies.com/article/opr/t125/e2128>> (accessed 14-Jun-2018) ["seclusion"].

society more broadly).⁴⁴⁷ Seclusion is a strategy employed and argued to preserve religious and cultural heritage.⁴⁴⁸

There are two Hausa proverbs that support the practice of seclusion: “Matar shige ba ta da daraja”, or “a woman who “goes out” is without honor”; and “Kyakkyawar ‘kwarya tana ragaya da faifanta a rufe”, or “the very best gourd calabash stays hung up at home with a lid on top”.⁴⁴⁹ In Nigerian culture, “calabashes” are used for domestic storage and they are kept at home with the lid closed to ensure the calabashes relevant and longevity. So this Hausa proverb suggests that women are to be cherished like the calabash that is closed, or sealed up, only to be opened or used by the owner, in this case, her husband.⁴⁵⁰ Secluded women are allowed outside their homes only with the permission of their husbands or male relatives, and most commonly go out for naming ceremonies, marriages, funerals, and medical care, or sometimes at night with older women as escorts.⁴⁵¹

The practice of seclusion places Hausa women in an “isolated or separate world”; a “symbolic shelter.”⁴⁵² Women who are secluded are to remain in the house or domestic sphere, away from men who are not their relatives. They are only allowed, with permission, to be around their fathers, sons, brothers, brother’s sons or sister’s sons, and other women.⁴⁵³ Seclusion of women is reinforced by the residential layout or compounds where families live. Many compounds in northern Nigeria are built in the style of *gida*,⁴⁵⁴ which means there are different houses in one compound, and the (male) head of the household’s house is separate, but still within the same

⁴⁴⁷ Lewis, *supra* note 444 at 132.

⁴⁴⁸ Seclusion, *supra* note 443.

⁴⁴⁹ Lewis, *supra* note 444 at 134.

⁴⁵⁰ *Ibid.*

⁴⁵¹ Socialization and Seclusion, *supra* note 44 at 313

⁴⁵² Lewis, *supra* note 444 at 134.

⁴⁵³ Callaway, *supra* note 44 at 33; **Quran 33: 55**

⁴⁵⁴ Rene’e Ilene Pittin, *Women and Work in Northern Nigeria: Transcending Boundaries* (New York: Palgrave Macmillan, 2002) at 49 [Pittin]; *gida* is singular, the plural is *gidaje*.

compound. *Gida* also means: home; building; family; household; place; world; portion and settlement. *Gidaje* reflects the socio-cultural conception of Hausa society and way of life through their layouts, particularly in the way compounds are walled and face inward to the central courtyard.⁴⁵⁵ Wives are secluded by being restricted to a demarcated space away from the men, such as a hut or a separate room.⁴⁵⁶ Exclusion and seclusion or segregation have similar meanings.

1.1.2. History of Seclusion

In northern states (e.g., Kano State), women between the ages of twelve and forty-five are rarely seen during daylight hours.⁴⁵⁷ Early periods of Hausa history began to redefine public roles for Hausa women. The earliest history of seclusion in Hausa-land was under Mohammad Rumfa, between 1463 and 1499.⁴⁵⁸ Rumfa was a ruler in Kano who began the practice of seclusion of women with his concubines, whom he acquired by requiring all firstborns to be brought to him for their sexual experiences. These firstborns become his concubines and were secluded to his palace. By the end of his reign, seclusion had become an Islamic practice for the Hausa and a norm for women of all classes, both wives and concubines. Public roles or official titles for women were erased from history.⁴⁵⁹

Before the early nineteenth century, women in northern states exercised power to associate in society, control property and were recognized in positions of power. In the early nineteenth century, women who were wealthy had institutional political power and some were known as “Queen Mother” - referring not to the mother of an incumbent king, but a woman with authority

⁴⁵⁵ Abdullallaq Ahmad Muhammad-Oumar, *Gidaje: The Socio-Cultural Morphology of Hausa Living Spaces* (Ph.D.Thesis, The Bartleu School of Graduate Studies University College London, Faculty Of The Built Environment 1997) at 252

⁴⁵⁶ *Callaway, supra* note 44 at 64

⁴⁵⁷ *Callaway, supra* note 44 at 2

⁴⁵⁸ *Ibid* at 8.

⁴⁵⁹ *Ibid*.

and influence over the ruling king, his sisters, and daughters.⁴⁶⁰ In the following decades and centuries, especially in the twentieth century, women of the ruling-class who held traditional authority, titles and offices in their communities had been systemically removed from positions of power and women's authority had been lost in northern Nigeria.⁴⁶¹

The subordination and domination of women by men through seclusion in form Islamic interpretation have also been attributed to the nineteenth century Fulani's radical interpretation of Islam and the Hausa and Fulani traditional and cultural change.⁴⁶² Some of the cultural practices of present northern Nigeria were introduced by the Fulani who arrived in the northern part of Nigeria as cattle traders or nomads,⁴⁶³ and who later became Muslim teachers or *mallams*.⁴⁶⁴ The Fulani were not only teachers, but they also became rulers after fighting the holy war, the Fulani Jihad, led by Shehu Usman dan Fodio from 1804 to 1812.⁴⁶⁵ The Fulani influence on the culture of the Hausa began in the eighteenth century when they used their power as Muslim teachers to voice their disapproval of the "privileges" of the women in Hausa culture. These privileges included: the passing of inheritance through the female; the "nakedness of women"; and the mingling of sexes in public.⁴⁶⁶ The Fulani eventually acted on their disapproval, by establishing Sharia or Islamic law as a uniform code throughout the empire they ruled.⁴⁶⁷ The teaching of secluding women is one of the teachings that remains today in northern Nigeria.

⁴⁶⁰ *Ibid* at 10.

⁴⁶¹ *Ibid* at 11.

⁴⁶² *Ibid* at 19.

⁴⁶³ Mustafa B. Ibrahim, "The Fulani - A Nomadic Tribe in Northern Nigeria" (1966) 65:259 *African Affairs* 170 at 170 [Ibrahim]: The Fulanis arrived at northern Nigeria as an alien tribe who originated from Shepherd Kings or the downfall of the Hyksos, who were driven from Egypt about the year 1630 BC.

⁴⁶⁴ Callaway, *supra* note 44 at 12

⁴⁶⁵ Ibrahim, *supra* note 463 at 171: The jihad was more a reformist movement aimed at bringing about fundamental changes in the society. Presently the Hausa-Fulani people in make up 29% of Nigeria's total population.

⁴⁶⁶ Callaway, *supra* note 44 at 12

⁴⁶⁷ The Jihad gave the Fulani the power to rule Kano, Sokoto, Daura, Saria, Katsina and other Hausa States: *Ibid* at 13

1.2. Women Roles and Seclusion

Hausa living arrangements and culture give men ascendancy over women through a system of unrelenting spatial constraints on women from puberty (regardless of whether they are married or unmarried) until they are well into middle age when they can no longer get pregnant. Hausa men see women as “fields” to be “tilled”, and children are the “crop” that results from the tilling.⁴⁶⁸ To an average Hausa man, the life purpose of women and girls is to produce children, and suitable men must control women's reproductive capacity.⁴⁶⁹ To control a woman reproductive capacity is to control the life cycle of Hausa women because her life cycle revolves around their reproductive capacity.⁴⁷⁰ Hausa girls, from toddlers to pre-adolescents (or *bera*, in Hausa), have high personal freedom and can move freely in the community.⁴⁷¹ As children, brothers and sisters of the same mother can sleep or stay in the same compound, but as they grow older and become *bera* or pre-adolescents, their father or other members of the family will ask for immediate separation of boys and girls in the house.⁴⁷² The girls would be taken to their mother's house within the compound, which is usually separate from the main house (where men stay), while the boys stay in the main house their fathers and other male relatives. Once girls are segregated from their brothers, they spend their time with their mothers and are assigned more responsibilities in the form of household chores. They are also employed for street hawking snacks and foodstuffs their mothers sell, since their mothers, under *purdah*, are not allowed into the public sphere for economic activities.⁴⁷³

⁴⁶⁸ Lewis, *supra* note 444 at 132.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Ibid.*

⁴⁷² *Ibid* at 133.

⁴⁷³ *Ibid.*

A Hausa girl's freedom of movement is limited once she becomes an adolescent (or *budurwa*, in Hausa). *Budurwa* is a word that signifies that a girl shows signs of puberty and that she is, therefore, approaching womanhood.⁴⁷⁴ It is believed that to ensure proper control of her womanhood and potential sexual misconduct, the girl's father must give her away in marriage to a suitable man.⁴⁷⁵ Marriage, in Hausa culture, involves the seclusion of wives.⁴⁷⁶ Marriage immediately confines a young girl - who before marriage had the freedom to roam around the village, visit both male and female friends, and go wherever she pleased - to her husband's compound.⁴⁷⁷ Newly married girls enter purdah and lose the freedom associated with childhood until after their childbearing years- menopause age.⁴⁷⁸ Seclusion is only enforced on female Hausa, never on males.

1.2.1. The Quran on Purdah and Seclusion

Purdah, as widely practised in northern Nigeria, is justified using an interpretation of the Quran. However, seclusion, as practised in Hausa culture, involves physical segregation of women and girls from society, even though the Quran states that purdah is a form of veiling, not physical seclusion.⁴⁷⁹ Scholars and commentators describe the meaning of purdah as covering or veiling as an obligation placed on a young girl reaching the age of menstruation until she has reached an age when she can no longer bear children.⁴⁸⁰ Purdah, as practised in northern Nigeria, is understood and practised in two ways: through veiling, which is the requirement for women to cover their

⁴⁷⁴ *Ibid.*

⁴⁷⁵ *Ibid.*

⁴⁷⁶ *Ibid.*; The Hausa word for "woman" or "wife" is *mace*, and if you are a wife, you are yet to have a status.

⁴⁷⁷ *Ibid.*

⁴⁷⁸ Callaway, *supra* note 44 at 32

⁴⁷⁹ *Ibid* at 19

⁴⁸⁰ Hauwa'u Evelyn Yusuf, "Purdah: A Religious Practice or an Instrument of Exclusion, Seclusion and Isolation of Women in a Typical Islamic Setting of Northern Nigeria" (2014) 4:1 American International Journal of Contemporary Research 239 [Yusuf].

bodies in a concealed form by wearing a burqa or hijab; and the physical segregation of the sexes in public. Seclusion forces or cajoles women to stop associating with the public and physically separates them using high walls, curtains, and screens erected within houses.⁴⁸¹ In the Quran, purdah is defined as covering with a veil, but it does not explicitly restrict the movement of married women - this understanding is an issue of the interpretation of men.

Surah 24:31 gives a more detailed explanation of purdah from the Quran. It says:

*“And say to the believing women that they should lower their gaze and guide their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appears thereof; that they should draw **their veils over their bosoms and not display their beauty except to their sons, their husbands’ sons, their brothers’ or their brothers’ sons or their sisters’ sons, or their women, or their slaves whom their right hands possess, or male servants free of physical needs or small children who have no sense of shame of sex; and that they should not strike their feet in order to draw attention to their hidden ornaments.**”*⁴⁸²

The Quran also discusses purdah in Surah Ahzaab 33:59, and Hadith 4092, as narrated by Aisha Ummul Mu’mmiin:

Surah Ahzaah 33, verse 59: “O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments. That is more suitable that they will be known and not be abused. And ever is Allah Forgiving and Merciful.”⁴⁸³

Hadith 4092, as narrated by Aisha Ummul Mu’mmiin: “Asma, daughter of Abu Bakr, entered upon the Apostle of Allah (peace be upon him, PBUH) wearing thin clothes. The Apostle (PBUH) turned

⁴⁸¹ *Ibid* at 239.

⁴⁸² Quran Surah 24:31

⁴⁸³ Quran, Surah Ahzaab 33: 59

his attention to her. He said: O Asma, when a woman reaches the age of menstruation (matures) it does not suit her that she displays part of the body except this and this and he Muhammad (SAW) pointed to her face and hands.”⁴⁸⁴

In the Quran, purdah or seclusion’s purpose was focused on the men who visit or ask something from wives of the prophet of Islam without permission. Purdah involves veiling when in public (some sphere women are not restricted from based on the text), or in the presence of a visitor.⁴⁸⁵ The representation of the purdah as women’s isolation from all members of their family and the physical seclusion of women from the public at large is not coherent with her family and this was written in the Quran in Surah 33:53:

*“O you who have believed, do not enter the **houses of the Prophet** except when you are permitted for a meal, without awaiting its readiness. But when you are invited, then enter; and when you have eaten, disperse without seeking to remain for conversation. Indeed, that [behaviour] was troubling the Prophet, and he is shy of [dismissing] you. But Allah is not shy of the truth. And when you **ask [his wives] for something**, ask them from behind a **partition**. That is purer for your hearts and their hearts. And it is not [conceivable or lawful] for you to harm the Messenger of Allah or to marry his wives after him, ever. Indeed, that would be in the sight of Allah an enormity.”*⁴⁸⁶

Surah 33:53’s emphasis is on the privacy of the prophet and the men who visit or enter the house of the prophet without permission to do so. According to Surah 33:55, the only men permitted to visit the wives of the Prophet without permission from the prophet are their fathers,

⁴⁸⁴ Quran, in Hadith 4092

⁴⁸⁵ *Ibid* at 241.

⁴⁸⁶ Quran, Surah 33:53

their sons, their brothers, or their brother's or sister's sons.⁴⁸⁷ Another passage in the Quran where both men and women are expected to practice modesty is Surah 24:30. It refers to the veiling of the body and says that both men and women ought to practice purdah as commanded by Allah.⁴⁸⁸ The gendered interpretation of purdah through the seclusion of women in northern Nigeria as a religious practice is based on man's interpretation. Current rule in Hausa Muslim's community in northern Nigeria that women should be confined to the four walls of the home and should have no role to play in the society is not a Quranic one.⁴⁸⁹ There is no direct or indirect mention in the Quran that women cannot earn. Economic and financial independence in Quran is that a woman can earn independently of her father like a daughter, of her husband as a wife and of her brother as sister and she can be the sole owner of what she earns.⁴⁹⁰

The gender interpretation of purdah or seclusion of wives in northern Nigeria as a religious practice is based on interpretation of some Iman or cleric who the people greatly reverence because the women who were companions of the Prophet Muhammad were never confined them to their homes.⁴⁹¹ The Prophet's wives took part in activities ranging from politics to religion.⁴⁹² Hadrat 'A'isha was a great exegetist (Quran interpreter, her exegesis or interpretation are included in Sahih in the Quran), Rafidah Aslamiyah, Umm Muta and Umm Kabsha were experts in medicine and surgery;⁴⁹³ and Safiyah, Atikah, Hind bint Harith, and Kabshah bint Rafi were great publishers of poetries.⁴⁹⁴ In additions to the names mentioned above, Prophet Muhammad wives and

⁴⁸⁷ Quran, Surah 33:55

⁴⁸⁸ Yusuf, *supra* note 480 at 241.

⁴⁸⁹ Asghar, *supra* note 91 at 82

⁴⁹⁰ Ibid at 82 citing Maulana Abul Kalam Azad & Tarjuman al-Quran (Delhi, 1980), Vol. 11, at 191

⁴⁹¹ Asghar, *supra* note 91 at 82.

⁴⁹² Ibid at 83, citing Maulana Said Ansari, *Siyar al-Sahabiyat* (Azamgarh, 1972), at 8-9

⁴⁹³ Rafidah has her nursing home next to the mosque of the Prophet.

Asghar, *supra* note 91 at 82, citing *Tabqat Ibn S'ad*, Vol. VIII, p. 213.

⁴⁹⁴ Asghar, *supra* note 91 at 83

companions were known to be educated, engaged in the society and excellence in their respective field or occupations.⁴⁹⁵

1.3. The Status of Married Hausa Women

Seclusion of women is a practice that illustrates the status of women in Hausa society because it shows how women are treated as subordinate to men and are restricted or limited based on their gender. The lifestyle of Hausa women is a model of the Islamic way of life for some non-Hausa Muslims in Nigeria and neighbouring countries, because of the strict adherence to a principle of, “men rule the world, while women run the home”⁴⁹⁶ and practices of submission and modesty in dressing.⁴⁹⁷ Women are seen to be privileged to have men who offer protection and support by recognizing the domain of wives in the family. Marriage is a sacrament in northern Nigeria and permits men to limit the rights of women. Men have the power to make life decisions for women because women are not permitted to exercise the right to make decisions on when to marry, whom to marry, how many children to have, whether to go to school or to work, and etcetera. Women must have permission from the male representative of the family - her father, her brother, her husband - to do anything.⁴⁹⁸ Any decision made without permission will attract punishment, which often can involve physical abuse.⁴⁹⁹

1.3.1. Inferior Status of Women

The low status of women in northern Nigeria is emphasized and idealized as wife and mother role's and women are supposed to be respected, revered and protected in society while they perform these roles, however this respect does not include a successful career or open market

⁴⁹⁵ *Ibid* at 83.

⁴⁹⁶ *Callaway, supra* note 44 at 187

⁴⁹⁷ *Ibid* at 2

⁴⁹⁸ *Ibid* at 188.

⁴⁹⁹ *Ibid*: Quran 4:34 gives men the right to admonish women, boycott their beds and beat them, if they disobey them.

business.⁵⁰⁰ Some Hausa men do not regard a woman with a career as a successful woman; the Hausa word for a modern woman is who want a career or engage in the open market is *matan zamani*, a euphemism for a prostitute.⁵⁰¹ In contrast to men, women respect other women who are independent and those who are able to support themselves and live outside of marriage.⁵⁰²

The practice of seclusion and the relationship between females and males in Hausa society is based on the dominance and superiority of men and the subordination and inferiority of women.⁵⁰³ Liberation from oppression is considered alien to a “good” Hausa woman, and she will not voluntarily seek it because she likely has internalized her subordinate status.⁵⁰⁴ Women are made to believe they are inferior to men, who are their superior because they have been treated as second-class citizens since childhood and their status has been reinforced through elders’ words and proverbs. Women and girls’ inferior status is reinforced in common sayings, in Hausa: “duk mace a bayan namiji take”, or “every woman is inferior to a man”;⁵⁰⁵ “ba ki ganin ke mace ce, she namiji ne”, or “can’t you see you are a woman, while he is a man?”;⁵⁰⁶ “tunda ke mace ce, a karkashin wani kike”, or “you are a woman, and you are under male authority”;⁵⁰⁷ and “ki dinga yin abu kamar mace”, or “to behave like a woman.”⁵⁰⁸ An excellent northern woman is considered someone who understands herself to be a person with no individualism or thinks of herself, she lives for her family, her father’s family, and her husband’s family.

⁵⁰⁰ Callaway, *supra* note 44 at 197.

⁵⁰¹ *Ibid* at 200.

⁵⁰² *Ibid*.

⁵⁰³ Enid Schildkrout, *Women and work in Africa* edited by Edna G. Bay (Boulder Westview Press, 1982 at 57 [Schildkrout]

⁵⁰⁴ Callaway, *supra* note 44 at 31.

⁵⁰⁵ *Ibid* at 31

⁵⁰⁶ This question is constantly asked when a girl argues her opinion with her brother, father or any male relative: *Ibid* at 29, n 31

⁵⁰⁷ *Ibid* at 29.

⁵⁰⁸ *Ibid*.

In some parts of northern Nigeria, the concept of equality between men and women is not seen through the lens of equal opportunities,⁵⁰⁹ because most families insist on education for women should be limited to the study of the Quran, which deprives them of formal education that will increase their relevance in society in both civil and private employment sectors. Culturally, Muslim women in northern Nigerian are meant to bear children, live in a large family group,⁵¹⁰ restricted to domestic roles with no opportunities for roles in the public.⁵¹¹ Hausa women are meant to be humble, religious, and their lives are anchored in traditional behaviour pattern of seclusion in the house.⁵¹² As observed by Barbara J. Callaway, in Kano State, the northern Nigerian wife's self-image is *prima facie* evidence of the manifestation of inferiority, inequality and seclusion from the public. Women's independence is believed to be something that should not be considered.⁵¹³ Callaway, as an outside observer, noted a manifestation of the inferiority of women through patriarchy, patrilineality, patrilocality, child marriage, polygamy, and sudden repudiation and male domination of economic and political systems.⁵¹⁴

1.4. Seclusion and Marriage

Hausa communities preserve the practice of seclusion of married women by emphasizing the norms that adult women or girls of childbearing age should remain married.⁵¹⁵ When a woman gets divorced or loses her husband, she is expected to remarry immediately.⁵¹⁶ A woman who is

⁵⁰⁹ *Ibid* at 192.

⁵¹⁰ *Ibid* at 191.

⁵¹¹ *Ibid* at 194.

⁵¹² *Ibid* at xix

⁵¹³ *Ibid* at 191.

⁵¹⁴ *Ibid* at 192.

⁵¹⁵ Catherine M. Coles & Beverly Mack, eds, *Hausa Women in the Twentieth Century* Madison: (University of Wisconsin Press, 1991) at 8.

⁵¹⁶ *Ibid* at 9.

no longer married, either due to divorced or as a widow, is referred to as a *bazawara*.⁵¹⁷ A *bazawara* must return to the house of her male relatives, stay indoors and away from men and the public until she remarries.⁵¹⁸ Marriage and the idea of becoming *bazawara* are to maintain every reproductive woman in Hausa community's commitment to seclusion and reinforcement that she is under the authority or control of men.⁵¹⁹ Any divorced or widowed woman who is still able to bear children but refuses the *bazawara* lifestyle by living alone will be considered to be *karuwai* or *courtesans* – meaning prostitutes. Regardless of her reason to live alone, be it economic security or any other reason, she will still be referred to as *karuwai*.⁵²⁰ A woman is expected to be dependent on her father or husband, but a *karuwai* is an independent woman who has liberated herself from male-control and is an impressive example of the struggle of women to achieve independence from male social and spatial control.⁵²¹

Seclusion is one of the ways men control the sexuality of unmarried girls and women. The control of female sexuality is a constant worry in Hausa culture because Hausa men view female sexuality as dangerous and disruptive. Seclusion of Hausa women officially begins at marriage. To reinforce the importance of this cultural practice, fathers' advice women from adolescence to practice the supreme virtue of *kunya*, (modesty or deference) until she submits herself to marriage and enters *purdah*. Submission of women to men is expressed in this Hausa proverb, “matar na tuba ba ta rasa miji”, or “a submissive woman will not lack a husband.”⁵²² In Hausa culture, a

⁵¹⁷ Lewis, *supra* note 444 at 136: According to Maliki Islamic laws, divorcees and widows are forbidden to remarry until several months have passed, so that paternity of any pregnancy for a deceased or divorced husband can be determined, because children born out of wedlock are castigated.

⁵¹⁸ Enid Schildkrout, “Widows in Hausa Society” in Betty Potash, ed, *Widows in African Societies: Choices and Constraints* (Stanford: Stanford University Press, 1986) at 138. [Enid]

⁵¹⁹ *Ibid* at 139.

⁵²⁰ *Ibid*.

⁵²¹ Callaway, *supra* note 44 at 100-101.

⁵²² Lewis, *supra* note 444 at 134.

virtuous woman is a woman who is married, deferential, submissive and secluded in the family compound, away from the view of other men.

1.5. International and National Laws for the Protection of Women

Married women and men are partners who have an equal right of protection and benefit before the law.⁵²³ Equal rights in marriage mean equal access to resources, equal sharing of familial responsibilities, and a harmonious partnership.⁵²⁴ International human rights instruments promote the full enjoyment of human rights and are meant to protect against human rights abuses. Any action or conduct that encourages the deterioration of women or the subjection of women to an inferior status can be considered abuse of their human rights. The Universal Declaration of Human Rights (“UDHR”), which recognizes the inherent dignity and equal and inalienable rights of all members of the human family,⁵²⁵ along with other human rights treaties that Nigeria is a signatory to, are applicable to Nigeria and its citizens irrespective of various domiciliary legal systems and culture, religion and customs.⁵²⁶ Article 26 of the International Covenant on Civil and Political Rights (“ICCPR”) provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”⁵²⁷

The practice of seclusion of Hausa women is a degrading practice that deprives women of freedom of movement and the ability to exercise their rights to economic participation and development. Seclusion of women is a harmful practice that promotes inferiority, discrimination, economic harm, arbitrary restrictions or solitary confinement and is a barrier to the participation of women in economic and social sectors. Women’s human rights are not only fundamental, but

⁵²³ *Protocol to the African Charter on the Rights of Women* supra 200 at arts 6-7.

⁵²⁴ “Report of the fourth World Conference on Women: Beijing, 4-15 September 1995” (A/CONF.177/20/Rev.1 Annex I) on 4-15 September 1995 (New York: United Nations, 1995)

⁵²⁵ *UDHR*, supra note 4 at Preamble

⁵²⁶ Ngozi Oluchukwu Odiaka, “The Concept of Gender Justice and Women’s Rights in Nigeria: Addressing the Missing Link” 2013 2:1 *Afe Babalola University: Journal of Sustainable Development Law and Policy* 190 at 191.

⁵²⁷ *ICCPR* supra note 165 at art 26

they are also protected under Nigerian law and international human rights instruments to which Nigeria is a signatory. Seclusion of Hausa women is a harmful practice because it is discriminatory to the female gender and it perpetuates violence against women. Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Protocol to the African Charter on the Rights of Women") explains that "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life" is discrimination against women.⁵²⁸ Correspondingly, "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime..." are considered violence against women.⁵²⁹

1.5.1. Women's Human Rights, Freedom of Movement and Economic Empowerment

In northern Nigeria, married Hausa women are unable to move freely in public, despite freedom of movement being an economic imperative recognized under Article 13 of the UDHR.⁵³⁰ Women's freedom of movement is crucial to the economic success of Nigeria because women constitute close to half of the population and can offer a significant contribution to economic growth. Seclusion is therefore not an only impairment to individual women's economic empowerment, but also to the economic empowerment of the country. Article 13 of the Protocol to the African Charter on the Rights of Women promotes equality in access to employment and

⁵²⁸ *Protocol to the African Charter on the Rights of Women*, *supra* note 200 at art 1.

⁵²⁹ *Ibid.*

⁵³⁰ *UDHR*, *supra* note 4 at art 13.

the economic empowerment of women by “guarantee[ing] women equal opportunities in work and career advancement and other economic opportunities.”⁵³¹

Seclusion discriminates against women, inflicting economic harm by limiting the economic activities women can engage in as they are limited to their homes. Women under purdah experience the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private and public life from puberty through marriage.⁵³² This limitation on freedom of movement creates an economic restriction on secluded women,⁵³³ which creates a social gap by reducing the economic contributions made by Hausa women to their households and communities. According to the Protocol to the African Charter on the Rights of Women, women have an essential role to play in the development of a country, and to affirm these roles countries must promote gender equality.⁵³⁴

Hausa women have social and economic rights under the Constitution of the Federal Republic of Nigeria (“1999 Constitution”), which are derived from the right to freedom of movement,⁵³⁵ the right to assemble and associate with other persons,⁵³⁶ and the right to be free from discrimination.⁵³⁷ Women are also entitled to enjoy respect for the dignity of the person,⁵³⁸ however, the seclusion of Hausa women infringes on these rights. Seclusion has closed avenues for women to secure an adequate livelihood or suitable employment.⁵³⁹ To have economic rights means not to be discriminated against and to be protected under the principles of equal rights and

⁵³¹ *Protocol to the African Charter on the Rights of Women*, supra note 200 at art 13.

⁵³² *Protocol to the African Charter on the Rights of Women*, supra note 200 at art 1(j).

⁵³³ *Callaway*, supra note 44 at 77

⁵³⁴ *Protocol to the African Charter on the Rights of Women*, supra note 200 at art 1.

⁵³⁵ 1999 Constitution supra 27 at s 41

⁵³⁶ *Ibid* at s 40.

⁵³⁷ *Ibid* at s 42.

⁵³⁸ *Ibid* at s 34.

⁵³⁹ *Ibid* at s 17(3)(a).

respect for human dignity.⁵⁴⁰ The 1999 Constitution protects the equal rights of women in Nigeria and includes economic rights. It is therefore, the duty of the government to prohibit all forms of exploitation or cruel, inhuman or degrading treatment against women so that women as able to experience growth, prosperity and economic independence.⁵⁴¹

1.6. Seclusion as a Barrier to Economic Development

Due to the constraints of purdah, women in Hausa communities are only able to earn a quarter of what men earn, ensuring economic inequality between men and women.⁵⁴² Hausa women cannot survive on their income, so they remain economic and socially dependent on men.⁵⁴³ Seclusion as an impediment on economic development on women entrenched the fact that men place less value on women by controlling the socio-economic freedom of their wives.⁵⁴⁴

Women constitute about 50% of the population of Nigeria which is around 186 million people.⁵⁴⁵

Women play important economic roles in both rural and urban economies and are essential force for growth and development.⁵⁴⁶ In Nigeria, women's participation in the labour force is mainly dependent on their level of education, marital status, place of residence, wealth index of their household, and their religion.⁵⁴⁷ Most Nigerian women have demonstrated their ability to contribute to the economy despite a culture of male-dominated professions and industries. Their contributions have advanced the country's economic development, and their impact is mostly seen in agriculture, a credit to the rural women who constitute 60-80% of the labour force in this

⁵⁴⁰ CEDAW, *supra* note 166 at Preamble

⁵⁴¹ *Protocol to the African Charter on the Rights of Women*, *supra* note 200 at art 4.

⁵⁴² Lewis, *supra* note 444 at 135.

⁵⁴³ *Ibid.*

⁵⁴⁴ Pittin, *supra* note 454 at 291.

⁵⁴⁵ Nigeria Data Portal, "Nigeria - Population Census – 2006" (n.d.), online: <<http://nigeria.opendataforafrica.org/xspplpb/nigeria-census>>.

⁵⁴⁶ Okoyeuzu Chinwe R. et al, "Shaping the Nigerian Economy: The Role of Women" (2012) 8:4 *Acta Universitatis Danubius* 16

⁵⁴⁷ Ezra Gayawa & Samson B. Adebayo, "Spatial Analysis of Women's Employment Status in Nigeria" (2015) 6:2 *CBN Journal of Applied Statistics* 12 [Gayawa & Adebayo]

sector.⁵⁴⁸ However, the number of Hausa married women who contribute to the 60-80% is low. Promoting gender equality and the empowerment of women means investing in the economic growth and social status of women.⁵⁴⁹ “In the 1970s, research on African farmers noted that, far from being gender neutral, development was gender blind and could harm women.”⁵⁵⁰ The research also found that women’s subordination and exclusion from market spheres limited their access to and control over resources which hindered their economic development.⁵⁵¹

Seclusion constrains the realization of Hausa women’s full potential for economic development. Unequal gender roles such as lack of education and the number of time women and girls spend in domestic activities limits their potential for economic advancement.⁵⁵² Seclusion (and other unequal gender practices) strengthens male-control of the family because it limits women’s ability to engage in paid work. When it comes to economic activities, men can participate as farmers, labourers, salaried workers (civil servants), or functionaries in the local government, amongst other positions,⁵⁵³ while the everyday economic activity of women in rural communities is limited to preparing farm products and selling cooked food. Hausa husbands are expected to provide food, water, firewood, housekeeping money, and shelter, while wives are obligated to provide labour for the preparation of food, childcare, and general domestic chores.⁵⁵⁴

⁵⁴⁸ *Ibid* at 2.

⁵⁴⁹ *Ibid* at 1.

⁵⁵⁰ Sarah Bradshaw, “Women’s Role in Economic Development: Overcoming the Constraints” (Background paper for the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, Sustainable Development Solutions Network, 20 May 2013) at 2, online: <<http://unsdsn.org/wp-content/uploads/2014/02/130520-Women-Economic-Development-Paper-for-HLP.pdf>> [Bradshaw].

⁵⁵¹ *Ibid* at 2.

⁵⁵² *Ibid* at 3.

⁵⁵³ Enid, *supra* note 518 at 134; Lewis, *supra* note 444 at 135.

⁵⁵⁴ Lewis, *ibid*.

In Zaria, where farming is people predominate occupation, women do not farm.⁵⁵⁵ Most men and women claim seclusion allows women the freedom to pursue mini-trading (with children as their sale persons). However, this claim is used to justify unequal gender roles.⁵⁵⁶ In Katsina, urban Hausa women that are less educated or not educated are confined to seclusion for 20 years, which limits their freedom to associate, organize, and access markets.⁵⁵⁷ Seclusion of women makes them less able to engage fully in social and economic development and leaves them more economically dependent on men. Seclusion leaves men as the primary income earner for the household, and this is despite the fact that most men having low economic status, especially in the rural communities, so their sole-income does not guarantee economic security for the family.⁵⁵⁸ Women who engage in paid work have a voice and can exert influence in household decision-making (e.g., deciding how many children to have).⁵⁵⁹

Gender strictly delineates economic roles, and to this effect, secluded women's work is downgraded, overlooked, and ignored in Hausa communities.⁵⁶⁰ Economic roles in open market for women cannot be considered because the idea of women breaching their seclusion in favour of economic independence and income-earning activities threatens men's authority.⁵⁶¹ Men with low

⁵⁵⁵ Callaway, *supra* note 44 at 60

⁵⁵⁶ *Ibid*: Women in seclusion are overwhelmingly illiterate, so they are less likely to be aware of the possibilities of income generating activities.

⁵⁵⁷ Renée Pittin, "Women, Work and Ideology in Nigeria" (1991) 52 *Review of African Political Economy*, Fundamentalism in Africa: Religion and Politics 38 at 42. [Renee]

⁵⁵⁸ This was stressed by Sanusi Lamido Sanusi, the Emir of Kano when he was introducing a law prohibiting poor men from marrying more than one wife. The Emir of Kano said "Those of us in the [mainly Muslim] north have all seen the economic consequences of men who are not capable of maintaining one wife, marrying four. They end up producing 20 children, not educating them, leaving them on the streets, and they end up as thugs and terrorists." Anthony Ogbonna, "Law to ban polygamy: There's a connection between polygamy, poverty, terrorism – Emir of Kano" *Vanguard Newspaper* (20 February 2017), online: <<https://www.vanguardngr.com/2017/02/law-ban-polygamy-theres-connection-polygamy-poverty-terrorism-emir-kano/>>.

⁵⁵⁹ Bradshaw, *supra* note 547 at 8.

⁵⁶⁰ Pittin, *supra* note 454 at 334.

⁵⁶¹ Callaway, *supra* note 44 at 64

incomes have impressions that, when women become wealthy through their economic pursuits they will become empowered to challenge their husband's authority and increasingly disobedient as their wealth grows.⁵⁶² Hausa women who are secluded undertake the bulk of unpaid work in the home through household chores and assuming primary responsibility of caring for children, older family members, and male relatives. Unfortunately, the key roles women play in the household that ensure the ability for men to be productive members of the workforce are not remunerated, are unvalued and lie outside the mainstream economy.⁵⁶³

1.6.1. Mobility, Children, and Economic Activities

Limited mobility and income for women and adolescent girls increases the risk of them experiencing domestic violence and abuse of all kinds because it leaves them dependent on their husbands and fathers. Hausa women who work at home have limited opportunities, lack quantifiable assets and experience in economic initiatives. Women's engagement in the open market and their ability to increase ventures in enterprise will yield income in the formal sector of the economy if they are not secluded. However, in Hausa-land women are only free to pursue their economic activities in public if she becomes a *Courtesan*, which is a labelled name that is considered to bring shame to her and her family.⁵⁶⁴ A married woman, however, must meet the criteria for a good wife, that is, a secluded woman, one who practices modesty through veiling and crouching when they greet men.⁵⁶⁵ The majority of women in northern Nigerian societies are excluded from occupying influential positions and engaging in crucial economic activities because these positions and activities are reserved for men.⁵⁶⁶ Men and women's social and economic

⁵⁶² Pittin, *supra* note 454 at 334.

⁵⁶³ Bradshaw, *supra* note 547 at 10.

⁵⁶⁴ Lewis, *supra* note 444 at 135.

⁵⁶⁵ *Ibid.*

⁵⁶⁶ Callaway, *supra* note 44 at 197.

worlds operate separately and independently of each other, because men's value systems are accepted, so they are the major decision-makers in the family, legal world, and society at large, while women are confined basically to the private and domestic world.⁵⁶⁷ Women spend their day's entertaining personal visits from women and some family, if their husband allows, and any remaining time they have is devoted to small, modest income-generating practising.⁵⁶⁸

Hausa women's economic circumstance has forced them to engage in meagre economic activities, like petty commodity producers and small-scale retail. These women strive to have more than one income-earning activity, even though they have limited flexibility of movement and resources or raw materials are difficult to access.⁵⁶⁹ Some women engage in petty trading for domestic wares, or embroidery, knitting and sewing, while others produce immediate consumable goods, bought and sold through children who act as intermediaries between secluded women.⁵⁷⁰ Children can act as intermediaries because they are not constrained by the limits of purdah, and they use this freedom to help women subvert the implications of purdah and exert limited economic leverage.⁵⁷¹⁵⁷²⁵⁷³

Another way secluded women get involved in trade is by maximizing the opportunities presented to them through their husbands' class position and occupation. For example, a wife of a senior civil servant may sell clothes she gets from her husband's widely travelled friends, relatives, colleagues and clients, to women in the same compound or other to other compounds at night.⁵⁷⁴

⁵⁶⁷ *Ibid* at 201.

⁵⁶⁸ *Ibid*.

⁵⁶⁹ Renee *supra* note 557, at 43

⁵⁷⁰ *Ibid*.

⁵⁷¹ Schildkrout, *supra* note 503 at 56.

⁵⁷² Pittin, *supra* note 454 at 298.

⁵⁷³ Schildkrout, *supra* note 503 at 58.

⁵⁷⁴ Pittin, *supra* note 454 at 307.

Women's engagement in economic activities, mainly through local trade within the compound or with neighbours, is known as "honeycomb trade," an economic network where women who are segregated interact secretly, by forming networks of trading relationships.⁵⁷⁵ However, despite the presence of honeycomb trade, women who are not secluded are more prosperous in business than secluded women because they can freely interact with men and strangers giving them an equal footing in the market.

1.7. Privileged Women

Waged employment in the formal sector is non-existent for most women in urban and rural communities in northern Nigeria because they lack access to the formal education that these jobs require. Constraints on women's movement and the domination of men means women and girls experience unequal educational opportunities, limited work possibilities, and conflicts in socio-economic responsibilities.⁵⁷⁶ Privileged, educated Hausa women are less likely to practice seclusion, however they still experience discrimination due to ideological assumptions that privilege men in the formal sector of employment.⁵⁷⁷ Young, educated, married women of the elite class are exceptions to full seclusion in northern Nigeria, as they can leave their marital homes daily to engage in waged, professional work.⁵⁷⁸ Educated, elite women in northern states can avoid the constraints or restrictions of seclusion through their education and their income, which affords them more respect in Hausa society.⁵⁷⁹

Summary

⁵⁷⁵ Lewis, *supra* note 444 at 135.

⁵⁷⁶ Renee, *supra* note 557 at 44

⁵⁷⁷ *Ibid* at 44

⁵⁷⁸ Pittin, *supra* note 454 at 84; Callaway, *supra* note 44 at 66

⁵⁷⁹ Pittin, *ibid*.

The imposition of seclusion on young, married women has significant implications for their socio-economic way of life.⁵⁸⁰ Economic autonomy for women is limited and practised through an informal structure in Hausa marital homes,⁵⁸¹ whereas men can exercise power and authority as the provider of their household. Economic insecurity results in authoritarian power structures, power constraint, gross domination and victimization of women.⁵⁸² In Hausa society, men exercise repressive power over women through seclusion and enforcing social autonomy over women's socio-domestic position.⁵⁸³ Seclusion alienate women and girls from socio-economic activities and is the manifestation of a male-dominated ideology. Women who are in purdah are restricted in their liberty through limitations on movement and social and economic activities outside their homes.

Seclusion is a long-standing religious and cultural practice that was created and supported by men who have authority as heads in the community. An average Nigerian woman accepts the cultural practice as a way of life which will be passed on to younger generations. Most Hausa women do not protest seclusion because it is considered a cultural and religious practice not to be disobeyed by anyone. Hausa married women may be bound by economic constraints because of their commitment to purdah restricts them from occupying positions in the economic structure and engaging in intensive trade.

Seclusion continues to be practised and accepted, in part, because many Hausa women were married as children and they are therefore uneducated and may be unaware that the practice is an abuse of their human rights, including as it impacts their freedom of movement and ability to engage in the economy. Eliminating the practice of seclusion will take time and consistency, but

⁵⁸⁰ *Ibid* at 336.

⁵⁸¹ *Ibid* at 334.

⁵⁸² *Ibid* at 334-5.

⁵⁸³ In cases of divorce, women are likely to lose their children to their husbands.

bringing awareness to the economic, reproductive and educational rights of women and girls will help to decrease the practice of seclusion of women and girls in northern Nigeria. Additionally, governments should finance decent employment opportunities and pathways to employment for women and girls, for example by training housewives in skill acquisition and provide access to land and farm equipment. The key to economic growth for women in Hausa society is the promotion and education of freedom of movement, independence, freedom of speech, land ownership and to rights to non-discrimination, abuse and violence.⁵⁸⁴ Nigeria must work to advance women's economic development through the promotion of financial independence, and educational opportunities mean these are important factors for the equal rights of both women and men.⁵⁸⁵

CHAPTER VI

1. Concluding Remarks

1.1. The Social Construct of Male Power and the Feminist Standpoint Theory: Using the Theoretical Approach to Change Narratives

In preceding chapters, we discussed child marriage and seclusion as experiences of abuse, oppression and domination by males against women's bodies and status, depriving them of their enjoyment of human rights. This thesis also highlighted that the federal government (including the executive, judiciary and legislative arms of government), the state governments, and the local governments of Nigeria, have left women and the girl child under the control of adult men and husbands without investigating how these men use their power against women, or even examining what the woman's experience is in the family and society.

⁵⁸⁴ Bradshaw, *supra* note 547 at 13.

⁵⁸⁵ Callaway, *supra* note 44 at 192.

Examining the status quo (i.e. the superiority of men) and the social constructs that maintain it, along with ways that can be used to change the narratives of the girl child and women in northern Nigeria, is the focus of this thesis. As illustrated, Nigeria operates as a male-dominated society that belittles the female gender. This practice of oppression of women is imposed through cultural and religious beliefs and practices. Accessing the girl child's and women's rights in northern Nigeria has been an issue the government of Nigeria, religious leaders, traditional leaders and captains of industries have avoided. In northern Nigeria, the oppression of women and the girl child has been stylishly avoided such that the oppressed cannot speak or tell their stories (the ones who do tell their stories are left without hope for positive development). If they are not able to tell their stories, the gender inequalities and human rights abuses that are perpetrated against women and the girl child in northern Nigeria will continue to be hidden, and nothing will be done to eliminate the oppression and inequalities they face.

This thesis is a contribution to a lasting solution to the oppression and subordination of the girl child and women in northern Nigeria by their family members, fathers, brothers and the community because of their gender. To this end, the question this chapter will address is: what are the ways of achieving the elimination of oppression of women by men in society? The answer to this question lies in focusing on the oppressed women and children, through knowing and valuing their experiences and by empowering them. To frame this argument, I will use feminist standpoint theories as presented by Patricia Hill Collins and Dorothy Smith. Both Collins' and Smith's standpoint theories can help better understand how to address: the removal and exclusion of women in society; finding the voice of women and the girl child as the oppressed by breaking the norm of silence, and empowerment through education and representation of the oppressed's standpoint through policies.

1.2. Feminist Standpoint Theories

There are different approaches to eliminating oppression that can be drawn from feminist standpoint theories. Feminist standpoint theories emerged in the 1970s and 1980s as explanatory theories to guide research on the practice of power.⁵⁸⁶ Feminist research looks at unique concepts of an ideal nature of human society, where standpoint is both explanatory and normative.⁵⁸⁷ Feminist theories on gender inequality and ideas and contributions through activism ameliorate issues of gender asymmetry, and women's inequality, subordination or domination.⁵⁸⁸ Standpoint theory, according to Patricia Hill Collins, involves discussing the empowerment of an oppressed group by valuing their experiences that emerge as oppositional consciousness to the dominant discourse, and the dismantling of slavery status and gender roles imposed by the dominant conceptual frameworks in a culture.⁵⁸⁹ It is about oppressed populations gaining a public voice on their issue.⁵⁹⁰

Standpoint theories personalize the experience and language of oppression against women.⁵⁹¹ Standpoint theory is the exploration of women's experiences from the perspective of women with a shared experience towards the transformation of the relationship society has in connection to women's lives. People lack knowledge of how women's worlds are hooked and shaped by social relations, organizations and subjective powers.⁵⁹² Standpoint theory explores women's experiences - their oppression, violence, rape and lack of control of their bodies and

⁵⁸⁶ Sandra Harding, ed, *The Feminist Standpoint Theory Reader: Intellectual & Political Controversies* (London, United Kingdom; Routledge, 2004) at 1 [Harding].

⁵⁸⁷ *Ibid* at 2.

⁵⁸⁸ Wendy Kolmar & Frances Bartkowski, *Feminist Theory: A Reader* (London, Ontario: Mayfield Publishing Company, 1999) at 2.

⁵⁸⁹ Harding, *supra* note 586 at 2.

⁵⁹⁰ Sandra Harding, "Rethinking Standpoint Epistemology: What is "Strong Objectivity?" (1992) 36:3 *Centennial Review* 437 at 442 [Harding, "Strong Objectivity"].

⁵⁹¹ Dorothy E Smith, "Sociology from Women's Experience: A Reaffirmation" (1992) 10:1 *Sociological Theory* 88 at 89 [Smith, "Reaffirmation"].

⁵⁹² *Ibid*.

choices to get married.⁵⁹³ Women's experiences of oppression (in all forms) is grounded in male control, use, and domination of women's bodies.⁵⁹⁴

Feminist standpoint theories as an approach to eliminating the oppression of women argue for:

1. Learning more about women's experiences;
2. Limiting the authority of the male voice;
3. Addressing women's collective experience to find their voice and getting rid of silence;
and
4. Government empowerment through education.

1.2.1. Learning more about Women's Experiences

Learning more about women's experiences is the first step to take towards the elimination of oppression. Knowing the standpoint of the oppressed creates an avenue for discussion on the actualities of women's experiences.⁵⁹⁵ The starting point of standpoint theory is to recognize the activities of those at the bottom of social hierarchies, that is, the visibility of their human elation and their natural world. An understanding of the experiences and lives of marginalized people will illuminate areas where there are significant problems and help inform appropriate steps for research agendas.⁵⁹⁶ Women's lives and experiences have been devalued and ignored as a source of objectivity for social solutions.

Understanding women's standpoints is what Smith explains as "locating a place where women were before things shifted that made them subjects for superiors."⁵⁹⁷ It is the combination

⁵⁹³ *Ibid.*

⁵⁹⁴ *Ibid.*

⁵⁹⁵ *Ibid at 88.*

⁵⁹⁶ Harding, "Strong Objectivity", *supra* note 590 at 442-443.

⁵⁹⁷ Smith, "Reaffirmation", *supra* note 591 at 90.

of concepts, knowledge, and facticity as socially organized practices around women and involves inquiring about and researching the lifestyle, activities, feelings and experiences, as well as extended social relationships.⁵⁹⁸ A standpoint is a shift from the notion of knowing how society is organized to an inquiry that brings about the development, structuring, and functioning of women in society.⁵⁹⁹ There has been no change because the lives and experiences of the oppressed have been devalued and ignored as a source of objectivity for cultural and social solutions.⁶⁰⁰

Smith argues that knowing women's experiences can help change social practices that marginalize them.⁶⁰¹ Women's lives and experiences not only provide a starting point for change in social behaviour but can also help regularize an equal relationship between men and women. For example, when a family starts thinking about the lives of the women around them, they may see that assigning domestic and household chores, duties and responsibilities to both the male and the female child will challenge feelings of superiority that male children believe they have a right to exercise. The assumption of the female's social position or women's inferior status that has been developed in the abstract conceptions of men will be demolished. The conscious effort of including men in domestic labour will help break down a belief in the naturalness of altruistic behaviour for females and the unnaturalness of engaging in this type of work for males.⁶⁰² It will support a shift from seeing women as solely sexual, emotional and domestic workers, to seeing women as successful, engaged, political, and working members of the society.

1.2.2. Limiting the Authority of the Male Voice

⁵⁹⁸ *Ibid* at 91.

⁵⁹⁹ Method of sociological inquiry.

⁶⁰⁰ Mary E Swigonski, "The Logic of Feminist Standpoint Theory for Social Work Research" (1994) 39:4 *Social Work* at 390.

⁶⁰¹ Harding, "Strong Objectivity", *supra* note 590 at 443.

⁶⁰² *Ibid*.

Another aspect is to limit the authority of the male voice in the family, community and society. Smith defines “authority as a form of power that has the distinctive capacity to get things done in words.”⁶⁰³ Spoken or written words mean nothing without the author’s force of authority.⁶⁰⁴ The society has vested men with authority as representatives of institutional power.⁶⁰⁵ The authority of the male voice is given by society.⁶⁰⁶ As explained by Smith, the authority in men’s words is a factor that adds force and persuasiveness to what men say and depreciates or weakens women’s words.⁶⁰⁷

Male voice of authority is seen in men, even from a young age, giving instructions to women on how to do their housework, determining when women should leave the house, how she should dress, the age a young girl should marry, the husband she should marry, how many children she should have, whether need she needs education, and whether she should exercise her political rights.⁶⁰⁸ Women’s status, in reality, provides them with a distinctive experience and awareness of the inferiority imposed upon them by the domineering group.⁶⁰⁹ A wife who is obedient and submissive to her husband because he is the sole provider in the family is misconstrued to suggest she believes that she ought to serve her husband. A daughter’s fear of disobeying her father’s choice of a husband is interpreted as acceptance of a man to be her husband at age 13.

⁶⁰³ Dorothy E. Smith, *The Conceptual Practices of Power: A Feminist Sociology of Knowledge*, (Toronto University of Toronto Press, 1990) at 26 [Smith]

⁶⁰⁴ *Ibid* at 29.

⁶⁰⁵ *Ibid* at 30.

⁶⁰⁶ *Ibid*, citing Mary Ellman, *Thinking about Women* (New York: Harcourt Brace Jovanovich, 1968).

⁶⁰⁷ *Ibid* at 30.

⁶⁰⁸ *Ibid* at 30; Public health experts say that, in northern Nigeria in particular, women are having more children than they say they want to. They do not have access to family planning options, control over their reproductive lives or the chance to make any decisions at all about their lives: Maggie Fick, “Women in northern Nigeria are having more children than they want to: High fertility rates and an economic crisis are slowing progress on maternal health” *Financial Times* (16 November 2016), online: < <https://www.ft.com/content/8cb4530e-8c98-11e6-8cb7-e7ada1d123b1> > [Fick].

⁶⁰⁹ Patricia Hill Collins, “The Social Construction of Black Feminist Thought” (1989) 14:4 *Signs* 745 at 748 [Collins].

The male voice is used to control and influence everything that concerns the woman and her position in society. This is discrimination based on gender, and it must be limited. The limitation of men's individual voice of authority is a step towards the end of discrimination against women. The limitation of the male voice of authority can be achieved by first recognizing that there is a deprivation of women's advancement, expression and participation in social relations.⁶¹⁰

1.2.3. Addressing Collective Experience to find their Voice and Getting rid of Silence

Standpoint requires investigating with originality or ingenuity.⁶¹¹ Marginalized people in society need an objective listener who will be attentive to them, listening from their perspective and understanding their accounts of their lives.⁶¹² The government, through researchers, needs to better understand women's and the girl child's stories, from their perspective and become familiar with their experience and concerns. Addressing the collective experience of women and young children allows women to go outside the norm of silence and make themselves heard in the community through legal documents, proceedings, and peaceful protests against violence done against them.⁶¹³ Allowing women to tell their stories⁶¹³ makes them the native speakers of their situation.⁶¹⁴ Women with collective experience should be allowed to organize themselves, share their views and effectively express their voices through a legal document that will give them equality and justice in law.⁶¹⁵

⁶¹⁰ Dorothy E. Smith, *The Everyday World As Problematic: A Feminist Sociology*, (Toronto: University of Toronto Press 1987) at 33 [Dorothy]

⁶¹¹ Ingenuity also means inventive, resourceful, and creative problem-solving skills: Collins, *supra* note 609 at 751.

⁶¹² Harding, "Strong Objectivity", *supra* note 590 at 442.

⁶¹³ Dorothy, *supra* note 610 at 35

⁶¹⁴ Dorothy E Smith, "Women's Perspective as a Radical Critique of Sociology" in Sandra Harding, ed, *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies* (New York: Routledge, 2004) at 34.

⁶¹⁵ Dorothy, *supra* note 610 at 35

Collins' articulation of the Black woman's standpoint and feminist theory is that the knowledge they represent are interdependent on one another.⁶¹⁶ The society or government should not take for granted the knowledge shared by members of a given group to validate their standpoint.⁶¹⁷ Collins explained that the potential significance of a group goes far beyond demonstrating and producing independent and specialized knowledge - it is about the encouragement offered to collective identity in an established social order.⁶¹⁸ Women and the girl child in northern Nigeria share collective experiences, and they can relate to one another. To address the oppression, subjugation and violence, they are collectively facing; there is a need for policymakers (the government through the legislative acts and community leaders in community rules) to speak with the women and the girls who are victims of child/forced marriage.

Legal documents have authority. In Smith words: "*lack of authority ... is lack of authority for ourselves and for other women.*"⁶¹⁹ Wives who don't have the authority to challenge the issue of seclusion, also lack the authority to challenge the issue of child marriage that is imposed on their daughters.⁶²⁰ Drafting policies that express women's and young children's voices are granting women the authority and the courage to express their thoughts and situations, to represent themselves and work together to resist domestic violence and oppression.⁶²¹ A voice to the oppressed woman and the girl child is the ability to say no to seclusion and child marriage. Women finding their collective voice through the law will encourage writers, lawyers, and non-governmental organizations to learn about the struggles and experiences of women in a language

⁶¹⁶ Collins, *supra* note 609 at 750.

⁶¹⁷ *Ibid.*

⁶¹⁸ *Ibid.*

⁶¹⁹ Dorothy, *supra* note 610 at 35

⁶²⁰ *Ibid.*

⁶²¹ *Ibid.*

so that communities will understand the subjectivity of women, the value of education, and the developing of their experience as history for younger generations. Encouragement makes women value their own subjective knowledge base and rearticulates and infuses the elements and forms of subordination in culture and traditions into values that will be the basis of their resistance.⁶²²

1.2.4. Empowerment through Education

The exclusion of women from information and contributions to society is not a product of women's biological deficiency but is based on silence due to lack of education.⁶²³ As stated by Smith, prior to the late nineteenth century, women were denied access to any form of higher education beyond the skills of reading and writing.⁶²⁴ In northern Nigeria, most women and young girls are denied access to any form of education, as 68% of women in the north-east, and 74% of women in the north-west have no formal education.⁶²⁵ The massive exclusion of women in northern Nigeria has affected the educational system, which is seen as an aspect of repression against the girl child and women.⁶²⁶ Education is a learning process and the acquisition of knowledge, skills, and values that trains peoples to obtain what they need to participate at various levels in the society.⁶²⁷ Taking away the ability to read and write, is taking away the ideas, the vocabularies, the beliefs and the training for women and girls to recognize the approved ideological sanctions. Educational values for women will continue to affect the systematic organization of the educational system in the future. Undoubtedly, deprivation of education in women will produce disparity incompetence and skills in every dimension of social, personal and physical

⁶²² Collins, *supra* note 609 at 750.

⁶²³ Dorothy, *supra* note 610 at 22-23

⁶²⁴ *Ibid* at 26.

⁶²⁵ Kwarai, *supra* note 15 at 8.

⁶²⁶ Dorothy, *supra* note 610 at 26

⁶²⁷ *Ibid*.

development. Women who are educated obtain systemic training, intellectual universe and an unfragmented mindset.⁶²⁸

Education is a source of intellectual power and confidence for both men and women.⁶²⁹ Blocking access to education is a conventional, rational and effective tactic men use to ensure the silence of women. The suppression of women's education is the denial of awareness of the impact of their knowledge and a barrier to awareness of the traditional subordination and abuse of their sexual and procreative function.⁶³⁰ As noted by Smith, women are systematically and consciously excluded from education to prevent them from establishing themselves in professions that are restricted to a small number of women.⁶³¹ Some men strongly disapprove of the exercise of women in roles that involve intellectual or political leadership because they are intimidated by education.⁶³² The experience or standpoint of the oppressed woman can be silenced by male-controlled-knowledge of their exclusion from basic literacy to quality educational experiences. Educating the girl child and women is a means to professional expansion for women in the community.⁶³³ Education helps them identify authoritative ideological sources that disseminate new systems of ideas concerning economic or political theory and policy.⁶³⁴ Education is training for independence and a permanent capacity for the autonomous exercise of the mind. Women who obtain education can have the opportunity to control the policy-making and decision-making apparatuses in the educational system.⁶³⁵

⁶²⁸ *Ibid* at 23.

⁶²⁹ *Ibid* at 24-25.

⁶³⁰ *Ibid* at 25.

⁶³¹ *Ibid*.

⁶³² *Ibid*.

⁶³³ *Ibid* at 29.

⁶³⁴ *Ibid* at 26.

⁶³⁵ *Ibid*.

Basic literacy gives women access to produce knowledge that will contest and devalue men as domineering forces in the community.⁶³⁶ Education will further credible research on understandings of authority that will help other oppressed groups within and outside the community.⁶³⁷ Women with academic credentials can also be part of the knowledge validation process as they become the experts within their standpoint groups and can make available the information needed by the community.⁶³⁸ Women who are educated acquire positions of authority in institutions that are occupied by the significant and the powerful.⁶³⁹ Women who are educated should be placed where they can exercise their voice and authority by developing other women in the community⁶⁴⁰ and education for girls will reduce child marriage and high-risk pregnancies.⁶⁴¹

Most parents are more comfortable with schools that have more female teachers. Muslim parents are more likely to send girls to school where their teacher is a woman.⁶⁴² Lack of intellectual training for women has isolated them from interpreting and translating holy books (i.e., the Bible and the Quran) to their own understanding, rather than the interpretation of the male clergy.⁶⁴³ Women have been suppressed to interpret religious books according to the translation of men.⁶⁴⁴

In the educational system, the focus should go beyond issues of social justice because equality of opportunity is a significant problem.⁶⁴⁵ The focus should be on the decline of women's

⁶³⁶ Collins, *supra* note 609 at 753.

⁶³⁷ *Ibid.*

⁶³⁸ *Ibid.*

⁶³⁹ *Ibid.*

⁶⁴⁰ Dorothy, *supra* note 610 at 35

⁶⁴¹ Fick, *supra* note 608.

⁶⁴² David Archer, "Nigeria's girls and the struggle for an education in the line of fire" *The Guardian* (15 May 2014), online: <<https://www.theguardian.com/global-development/poverty-matters/2014/may/15/nigeria-girls-education-boko-haram>>.

⁶⁴³ Dorothy, *supra* note 610 at 23-24

⁶⁴⁴ *Ibid* at 23.

⁶⁴⁵ *Ibid* at 26.

educational procurement from the secondary school level to the university level because of internal or familial control and influence over the structure of education.⁶⁴⁶ The underrepresentation of women in schools is based on the power authority of the educational process at the prerogative of men.⁶⁴⁷ To overcome the prerogative of men government should reorganize the traditional gender roles of married women and girls through access to formal education by Investing and introducing homeschooling systems with female teachers as formal way of teaching women and girls who are secluded can be introduced for equal access to education for married women in seclusion.

Education should also take place in the form of awareness of the right to education, equality of male and female children, and a massive publicity campaign to bring awareness of dangers associated with child marriage and seclusion of women

Conclusion

Cultural and religious practices are powerful, therefore, any implementation of laws or policies that will eliminate the harmful practice veiled or masqueraded under cultural and religious practice should be carried out with caution that it may escalate into unwanted consequences against the victims.⁶⁴⁸

For reality in cultural and religious change, there is a need for a shift from the purported value of keeping virginity of the girl-child, submissiveness of women to men as preached by culture and religion to the knowledge of what is happening to oppressed women and girl-child. A refocus happens when the oppressed women and the girl child are given a voice to tell their stories. The focus on the stories of the oppressed should involve a legislative draft that can empower the

⁶⁴⁶ *Ibid* at 27.

⁶⁴⁷ *Ibid* at 29.

⁶⁴⁸ Lauren Hersh, "Giving Up Harmful Practices, Not Culture" *Advocates for Youths publication* (February 1998) online: <<http://www.advocatesforyouth.org/publications/publications-a-z/521-giving-up-harmful-practices-not-culture>>

oppressed group and restructure social values and cultural practices. The government through its policy maker- the legislature needs to undertake inquiry on the everyday world or everyday localized practices in northern Nigeria by asking the girl-child and women to speak on their experience.⁶⁴⁹ Inquiry should be as an initiative that the Nigerian government is ready to implement policy obligation on gender equality and also confront issues of child marriage, lack and hindrance to education and seclusion of women in public and economic development in northern Nigeria. Experience inquiry should be done prior to the redrafting into text law or rules that will affect women and the girl-child. The legislative draft should expressly confirm government commitment to the empowerment of the oppressed group and elimination of the power of the oppressor in the affairs of society and laws.

There should also be opportunities to challenge the rampant domination by men and androcentric biases of communities, laws, cultural and religious practices against women and the girl child in northern Nigeria. Challenging the rampant domination means that young girls who are oppressed should be able to meet with social-worker or the privileged women in the community, who will act as intermediaries between the government and the victims of oppression. As intermediaries, they challenge the androcentric biases of the Hausa communities by conforming those that diminish the humanity of women and the girl and advocating for the improvement of the welfare of the girl-child who are regarded as deviance by their parent.

The exclusion of women from participating in social processes such as socialization, education, work, and communication with other members of society can also be redeemed through education.⁶⁵⁰ The educational system is an important site to address the repression faced by women

⁶⁴⁹ Smith, *supra* note 603 at 28 [Smith]

⁶⁵⁰ Dorothy, *supra* note 610 at 26. I am reemphasizing this point because it is important. Education is a light to dark situation and lighting up a dark situation a step to restructuring and progress.

and the girl child. The educational structure can be a solution for access to women's participation. Women should be trained and educated to ensure that the leadership roles and positions formerly occupied exclusively by men are occupied by both men and women. Women should be taught the relevance of education in the lives of their female children and society.

Efforts to eradicate cultural practice can be thwarted by community leaders, policy makers, and the victims of the oppression, so there is need for community awareness of negative consequence of these practices and strict implementation and enforcement of laws that protect against harmful practices. Focusing and addressing cultural and religious abuses from women's experiences, education, and their voice, through legal instruments limit the authority of men and is a step towards the creation of a lasting solution to the oppression, subordination and breaking the chain of generational experience of abuse of women and the girl child in northern Nigeria.

Through the research, I hope I have demonstrated that the abuses of women and the girl-child rights in northern Nigeria is a result of the clash of cultural and tradition with international human rights. Millions of these women are pushed into poverty by ongoing violation of human rights in northern Nigeria.

It is recommended that the Nigeria State be put under pressure by the international community to implement equal rights for men and women, especially in northern Nigeria. The international community should intensify advocacy by focusing on this part of human rights deficit in Nigeria.

Reflecting on my Limitation

The research for this thesis was intensive, challenging and educative. I had two main limitations: time and absence of interview.

On the issue of time, I spent lots of time, and sleepless nights on this project because the challenge of narrowing my broad research topic into two basic sub-topics for research. When the thesis was conceived in my mind, I had broad aspects of topic, and they include: ‘child marriage, kulle (seclusion), Zina (Adultery) and Health challenges on the child girl in northern Nigeria. I spent lots of time (about 3 months) reading, writing, and rewriting on my broad topic without achieving desired result. Eventually when I agreed on two topics to discuss, I had limited time for research and writing my findings.

The next limitation for this thesis was the inability to interview the affected population for in-depth revelations by women and children who experience inequality in northern Nigeria. This thesis will be more refined if there was in-depth interview, involvement or participation of women and children experiencing these abuses directly, or indirectly. I considered an in-depth interview when I was planning because I wanted to hear from the victim themselves, connect with the stories by organizing seminars and counselling sessions. It is unfortunate that I could not achieve my plan for one on one interview with participants because of the limitation of time and the constraints of finances.

My hope for future research on this topic is to work hand in hand with Nigerian government to see the implementation of the above recommendation.

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VITA AUCTORIS

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