

Sexual abuse and child marriage: Promise and pathos of international human rights treaties in safeguarding the rights of the girl child in Nigeria

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This article analyses international human rights provisions specifically prohibiting sexual abuse and child marriage and interrogates the challenges of harmful cultural practices in Nigeria. It discusses the responsibilities and obligations of Nigeria relating to the protection of the rights of the girl child in international human rights law. In addition, it considers the impact of international instruments on the sexual abuse of the girl child and child marriage, the legal challenges to the applicability of these instruments in Nigeria, the attempts, particularly on the part of the judiciary, and the prospects in view hereof. The article comes to conclusions and makes recommendations on ways of safeguarding the rights of the girl child in Nigeria.

Keywords: sexual abuse; child marriage; girl child; International human rights; sovereign states; conflict of laws; judiciary; Constitution; South Africa; Nigeria

INTRODUCTION

The world has become a global village with international law forming part of the laws of individual sovereign states (Okeke, 1997). While each sovereign state has a set of municipal laws, international laws bind respective states, regulating their relationship, (Uzoukwu, 2010) and also exist as an aspect of municipal law (Asien, 2005). International treaties may become applicable in a state, either through the monist approach or the dualist approach (Azoro, 2014). Nigeria is a dualist state and, thus, all treaties must be domesticated by an Act of the National Assembly before it will have the force of law. However, it is noted that, under international law, a state is not encouraged to renege from its obligations under international law simply based on the non-domestication clause (Enabulele & Imoedemhe, 2008).

Of particular interest in this article are treaties that seek to protect the rights of the girl child from sexual abuse, early marriage and harmful cultural practices. Sexual abuse is a violation of the human rights of an individual, which occurs inside and outside the confines of marriage, and in child marriage; non-consensual, forced intercourse is an abuse and violation of the right to dignity (General Comment 19; Onuora-Oguno, 2010). For the purposes of this article, international and regional human rights instruments relevant to Nigeria are analysed.

The article discusses international and regional human rights provisions protecting the girl child against sexual abuse and child marriage. It also examines state responsibilities under international human rights law and the status of international treaties in Nigeria. In addition, an assessment of Nigeria's obligations relating to sexual abuse and child marriage is done, while the legal challenges to the application of international treaties in Nigeria are analysed. Finally, emerging trends in respecting state obligations under international human rights law are advanced, with conclusions and recommendations.

INTERNATIONAL AND REGIONAL TREATY PROVISIONS ON CAPACITY AND CONSENT TO MARRIAGE AND INTERCOURSE

The United Nations (UN) Convention on the Rights of the Child (CRC) provides that “[i]n all matters affecting the child, the views of the child must be given due consideration, with the right to express those views freely” (article 12(1)). For example, child marriage is criticised because the child cannot freely make a choice by reason of her being underage (Equality Now, 2010).

The African Charter on the Rights and Welfare of the Child (African Children's Charter) provides that "every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters" (article 7). The CRC provides that in the upbringing and development of the child, "the best interests of the child will be their [parents'] basic concern" (section 18(1)). The African Children's Charter further reiterates this position by providing that "in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration" (article 4(1)). According to article 20(1), parents have the responsibility for the child's protection according to the best interests principle and, in the same vein, article 21(1) prohibits harmful customs and practices, while article 21(2) expressly abolishes child marriage and prescribes 18 as the minimum age of marriage.

Article 19(1) of the CRC protects the child against sexual abuse; article 34 prohibits forced intercourse ("the coercion of a child to engage in any unlawful sexual activity"). Article 37(b) prohibits the deprivation of a child's liberty, which occurs in child marriage. Article 24(3) prohibits traditional practices prejudicial to the health of the child. Child marriage is a traditional practice which has damaging effect on the health of the girl child (Braimah, 2014). Article 14(1) of the African Children's Charter provides that every child shall have the right to physical, mental and spiritual health, while article 16(1) prohibits sexual abuse.

Article 16(1) of the Universal Declaration of Human Rights (Universal Declaration) provides that men and women of full age have the right to marry, and according to article 16(2), "marriage shall be entered into with the full and free consent of the intending spouses".

In the Preamble to the Convention on consent to marriage, the minimum age for marriage and registration of marriages provides that states should eradicate child marriage. Article 1 provides that no marriage shall be entered into without the full and free consent of both parties, and article 2 provides that no marriage shall be entered into by persons under a minimum age which is to be fixed by the state (General Assembly Resolution 843 (ix) 17 December 1954).

Article 16(1)(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides that women have the same rights as men as far as entering into marriage is concerned. According to article 16(b), women have the right to freely choose a spouse and to enter into marriage with free and full consent, while in article 16(2), a minimum age is to be specified, and child marriage shall have no legal effect.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) provides in article 3 that women have the right (1) to dignity; (2) to respect as a person and to the free development of her personality; and, according to article 3(4), sexual abuse is prohibited. In addition, Art 4(1) provides that every woman shall be entitled to respect for her life and the integrity and security of her person, and all forms of exploitation and inhuman treatment are prohibited. According to article 6(a), marriage shall be with the free and full consent of both parties, and the minimum age of marriage shall be 18 years (article 6(b)).

Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) provides that marriage must be with the full and free consent of the intending spouses. Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR 1966) recognises the right of men and women of marriageable age to marry and found a family, and to enter into marriage with the free and full consent of the intending spouses (article 23(3)).

Article 2 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Slavery Convention 1956) provides for non-discrimination between husband and wife, which is common in patriarchal societies.

State responsibilities under international human rights law

It is clear that international human rights law places strong obligations on state parties to ensure the respect and fulfilment of the provisions of the above-mentioned treaties. The provisions of the conventions, although alluding to the rights of individuals, are couched as state obligations. Therefore, these provisions should be seen as states' responsibilities to ensure the enjoyment of the rights by its citizens (Stefisyn & Kombo, 2014; Odala, 2012). It is the responsibility of states to protect and defend its citizens. This includes the rights of individual citizens as well as those of groups and communities that make up the state (Gandois, 2008).

In addition, it is the responsibility of states to ensure the protection of the rights of individuals within their territories in accordance with their obligations in terms of the treaties they are parties to (Gandois, 2008). These obligations are to prevent, to protect against, to prosecute, to punish and to provide redress (Stefiszyn & Kombo, 2014). With regard to the protection of the girl child, states are to enact legislation to ensure that the girl child is protected against all forms of sexual abuse and exploitation in any form, including cultural or religious practices (articles 6 and 18, African Women's Protocol; article 23 ICCPR; article 10(1) ICESCR; article 16 CEDAW; article 2 Convention on Marriage, General comment 19 Human Right Committee monitoring ICCPR; UN Human Rights Committee General Comment 19 (Family) General Recommendation adopted by Human Rights treaty bodies, UN Doc HRI/GEN/I (Rev.7(2004) p149, CEDAW General Comment 21, Equality in Marriage and Family Relations 13th session, 1994; Compilation of General Recommendations adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1(Rev1(2004) para 16, 1(a) and (b)).

Although the obligations would have been discharged when there are existing provisions in national constitutions, legislation or laws of state parties that are more favourable and effective than the provisions in these instruments (art 31 Protocol, art 41 UN Convention on the Rights of the Child; art 1(2) African Children's Charter; art 23 CEDAW), in the same way, laws would need to be promulgated and enforced to prevent infringement of the rights of the girl child (Viljoen, 2000; Odili, 2005).

States also have the obligation to defend the rights provided for the victims of the infringement of these rights. This entails generally defending the girl child against the abuses and abusers, by legal aid, by redress and by reparation (Stefiszyn & Kombo, 2014).

THE STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES IN NIGERIA

Nigeria has been an active member of the UN since 7 October 1960 and therefore is committed to ensuring the effective realisation of the principles and obligations of the Universal Declaration by ratifying and domesticating UN treaties (Ladan, 2009).

Regionally, Nigeria signed the African Women's Protocol 16 December 2003, and the African Charter on Human and Peoples' Rights (African Charter) on 31 August 1982, ratified on 22 June 1983. Nigeria ratified the African Children's Charter on 23 June 2001, and CEDAW on 13 June 1985. The CRC was ratified on 19 April 1991. It acceded to the ICCPR and the ICESCR on 29 July 1983.

Obligations of Nigeria and its assessment of sexual abuse in child marriage

The obligations of states under international human rights treaties are to legislate, educate and ensure the judicial enforcement to eradicate all forms of sexual abuse against the girl child, including the practice of child marriage (UN Committee on the Rights of the Child, General Comment 14, Adolescents' Health and Development in the context of the Convention on the Rights of the Child (33rd session, 2003, para 20).

Despite the ratification of some of the above instruments, many African states remain uncommitted to ensuring the enforcement of the various provisions (Ozoemena, 2006). For instance, in Nigeria, CEDAW is yet to be domesticated (Uzoukwu, 2010), and the domestication of the CRC and the African Children's Charter in the Child Rights Act is not applicable throughout the country. This is not only because of the country's nature of federalism, but based on the argument of it being also an Act of the National Assembly on Issues of State's Exclusive Legislative Jurisdiction (Item 61, Part 1, Second Schedule 1999 Constitution). In addition, the fact that customary and Islamic law still apply in the country, particularly relating to marriage and family issues, influences nationwide domestication (Onuora-Oguno, 2013).

The requirement of aligning existing laws with international standards or gender-friendly language has not been fulfilled. The Constitution remains the same, with its laconic provisions, even on marriageable age, recently leading to much public argument (secs 29(4)(a) and (b) CFRN 1999). Discriminatory laws against women in the law still exist without review (Okereafor, 2010), and specifically on the issue of child marriage. No federal law exists or has been enacted to prohibit the practice, either specifically or generally. Even the most recent Act does not address this *lacuna* (Violence Against Persons Prohibition Act 2015).

The Criminal and Penal Code provisions on rape, needing review, have not been reviewed. For example, the provision on the non-recognition of marital rape (sec 6 Criminal Code) and the provisions of the Evidence Act that are discriminatory against the evidence of children still require to be aligned in

line with Nigeria's international treaty obligations (sec 209(3); Ikpang, 2013).

With no domestic law on the issue, the alternative step would be to turn to the provisions of international law. In this regard, the connection between implementation and compliance is important towards reiterating the willingness of a state to give effect to its treaty obligations (Viljoen, 2007). While Nigeria has fulfilled its obligation of reporting and has taken several steps on the issue of policies, especially on education for the girl child, by producing policies to ensure that girls are encouraged to attend school, particularly with concentrated efforts in the north to reduce the issue of child marriage, much still needs to be done. The gap remains because the attempts are indirect means of fulfilling the obligations. These attempts have encouraged education, but child marriages are not discouraged as the idea is strengthened that girls can still have an education while in their husband's houses bearing children. Consequently, Nigeria cannot categorically be said to have taken sufficient, expected and required legislative measures or steps to implement its obligations regarding safeguarding the rights of the girl child (Ozoemena, 2006).

It is, however, to be noted that mere ratification is not sufficient to make a treaty applicable in the country, when they are law-making treaties (Oluwatoyin, 2014), and the reality is that international laws can be effective tools in putting an end to child marriage, but this will of course require legislation in Nigeria (Equality Now, 2014). The relevant treaties Nigeria ratified, CEDAW and the African Women's Protocol, have not been domesticated (National Human Rights Service Commission, 2013), and no matter how important they may be, they cannot be translated into enjoyment by the citizens they are meant to protect without domestication in Nigeria (*Abacha v Fawehinmi*, 2001 AHRLR 172 (Ng SC 2000)). In essence, it may be concluded that Nigeria has not fulfilled its obligation to protect women and children, especially under CEDAW and the CRC, and the specific provisions on the minimum marriageable age (Eweluka as cited in Nnaemeka and Ezeilo, 2005).

LEGAL CHALLENGES TO THE APPLICATION OF INTERNATIONAL TREATIES IN NIGERIA

The application of treaties relates to the enforcement of treaty provisions within a country, while implementation is the process of giving treaties the force of law within a country. Domestication is the process of accepting a treaty as part of the domestic law of a state after which it can be implemented and becomes applicable (Akper cited in Longjohn, 2010). After a treaty has been signed by the executive in Nigeria, the next role is that of the National Assembly, the law-making arm of the government. According to section 12(1) of the Nigerian Constitution, “[n]o treaty between the federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly” (Egede, 2007). This is also the practice in Ghana (Khude, 2008).

The problem with section 12 is its vagueness and incompleteness. First, it restricts the direct application of ratified treaties until domesticated. The situation is compounded by its failure to provide the status of domesticated treaties among its domestic laws (Okeke, 1997). Thus, it further raises the controversy regarding the implementation of treaties such as the CRC, which has been domesticated by Nigeria but has yet to be enacted into law by several states of the federation.

The next issue, which is connected to legal pluralism, is the country's federalism and the legislative pluralism (S4 CFRN 1999). Legislative powers are on the National and State House of Assemblies. Some issues are exclusively for the National Assembly, while some are on the concurrent list, on which both the central and state Houses of Assembly can legislate (LongJohn, 2010). This paves the way for a multiplicity of laws, sometimes on the same issue, and also a conflict of laws and legislative powers (Coetzee, 2010). It is simple when the subject matter of the treaty is one that falls under the exclusive legislative list, but where it falls under the concurrent legislative list, a Bill for an Act of the National Assembly must be ratified by a majority of all the state Houses of Assembly before it is enacted and assented to by the President (sec 12(3)(3) CFRN 1999).

Another legal challenge is the plurality in the legal system which permits the recognition of opposing laws and systems, namely, Islamic and customary laws, which are known patriarchal institutions favouring discrimination against women, and which are recognised laws in the country alongside English law (Onuora-Oguno, 2013). The hesitation as far as the application of international human rights instruments is concerned, particularly on the issue of child marriage in Nigeria, is based on Islam. Northern Islamic states have resisted the introduction of a minimum age in the country's laws, which are already tilted in favour of the practice (Braimah, 2014; Fifth Schedule, Part 1 of the Code of Conduct for

Public Officers General).

Again, politics and prioritisation are a challenge, which applies to the domestication of treaties, especially that of CEDAW (Olajuwon, 2008). Apart from the legal provisions and the problem of a conflict with the legislative powers, the next is the judiciary, the governmental arm responsible for the interpretation of laws (sec 6, CFRN 1999). Although here the law is certain and specific, namely, that it is the function of the judiciary to interpret the law, the judiciary will interpret what the law provides and, on the issue of international treaties, the provisions of section 12 will apply in interpreting these rights. Yet, the fact remains that the judiciary can and is obliged to do so in such a way that the laws of the country will not be held to be against international provisions (sec 19 CFRN 1999).

However, as far as this is concerned, the response of the judiciary, particularly in Nigeria, has varied. In the celebrated case of *Abacha v Fawehinmi* (2001 AHRLR 172 (Ng SC 2000)), any international treaty which has not been domesticated in Nigeria remains unenforceable, no matter how important it is to citizens, although it may have a persuasive effect and even encourage the government to act on it. In *Frank Tietie v AG Federation & Others* (M/336/12), a Federal Capital Territory case, where the Child's Right Act, being a federal enactment, is of necessity applicable, the court criticised the respondents for not fulfilling their obligation under the treaties, even though not yet domesticated. The court went ahead and held that, even though not domesticated, in the absence of an express guarantee or declaration by the Nigerian court, the African Charter, as a domestic law, fills the gap. It must, however, be mentioned that such cases are not common, and where they do occur, the court's decision has been based on domesticated treaties such as the African Charter, while the CRC and CEDAW were only referred to in passing.

In *Nzekwu v Nzekwu & Others* (1989 2NWLR, Pt 105, 373), the Supreme Court supported a traditional practice that was discriminatory against women, while in *Mojekwe v Ejikemi* (1997 7 NWLR, Pt 512, 263), the court held a culture discriminatory against women repugnant to good justice. In this case, CEDAW was referred to even though it had not been domesticated. Also, in *Ukeje v Ukeje* (2014, LPELR-22724 (SC)), the custom and practice which disentitled a female from inheriting from her late father's estate was held contrary to section 42(1)(a)(2).

In *Asika v Atuanya* (2008, 17 NWLR Pt 117), the court made strong reference to the CEDAW, leaning on article 2(7), which placed an obligation on signatory states to employ all means, including legislation, to eradicate practices discriminatory against women. It is commendable, however, that in *Frank Tietie v Attorney-General Federation & Others* (M/336/12), the court criticised the Attorney-General for failing in his obligation to protect the girl child based on the Child Rights Act which, even though it may be argued that the Act is not applicable in the whole of Nigeria, it is a law in the federal capital territory.

In *African Reinsurance Corporation v Fataye* (1986, 3 NWLR Pt 32,811), the Supreme Court held that a ratified treaty had no force of law in Nigeria except when it had been enacted into law.

In *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria* (2008, 2 NWLR Pt 1072, 575), the Supreme Court held that it was incorrect for the Court of Appeal to have held that the International Labour Convention, which had not been domesticated in Nigeria, had legal force.

What this implies is that much is left to the judiciary as interpreters and protectors of the law and the Constitution to determine the applicability of treaties in Nigeria. Consequently, it is clear that, in Nigeria, the approach of the judiciary in relying on undomesticated treaties to protect the rights of the girl child is not certain.

The position taken by the courts would then depend on which rule the court decides to apply in its task of interpretation. Here, there are many options: the Bangalore principle; rules of customary international law; the repugnancy doctrine; or even fundamental human rights principles. With the above challenges in mind, it is important that the Nigerian judiciary embrace pragmatic ways of ensuring that the rights of the child are well protected. In the next section, the article discusses possible best practices that may be adopted in giving positive effect to laws protecting the girl child in Nigeria.

EMERGING TRENDS IN RESPECTING STATE OBLIGATIONS UNDER INTERNATIONAL LAW

States have responded differently to this issue, by reforming their constitutions through the harmonisation of its laws, by aligning it with international human rights provisions or legislative review,

or even by the courts relying on the Bangalore principles, customary international law or generally using their initiative to ensure that domestic laws do not contradict the international law obligations of the state.

Some states have provisions that permit the direct application of international treaties. In accordance with the Bangalore principles, undomesticated treaties can aid the interpretation of statutes (Anderson, 2001). The constitutional jurisprudence of India follows this trend (Uzoukwu, 2010). Many countries have enacted child marriage prohibition laws (India, The Prohibition of Child Marriage Act, 2006; United Kingdom, Forced Marriage Civil Protection Act 2007). In addition, countries where child marriage poses serious challenges have adopted a minimum age of marriage in accordance with international requirements, like Egypt (2008); Algeria (2005); Morocco (2004); Turkey (2001); and Sierra Leone (2007).

In South Africa, the courts when interpreting any legislation must promote the values that underlie an open democratic society based on human dignity, equality and freedom and must consider international law or foreign law (sec 39(1) Constitution of South Africa). In *Masiya v Director Public Prosecutions (The State & Another 2007 (5) SA (CC))*, the Court extended the interpretation and confines of rape in the trial of the accused person. The court developed the definition of rape jettisoning the “irrational distinction between non-consensual penile penetration of the anus of a female ... and the vagina”. This approach by the South African courts ultimately led to the amendment of certain provisions of the Criminal Procedure Act of 1977 and Criminal Law Amendment Act 105 of 1997.

Ethiopia has amended some of its laws and legislation, such as the Family Code Proclamation No 213 of 2000 and the revised Penal Law, 2004 to further protect the rights of the girl child. Malawi has reformed its marriage laws and, in response to the prohibition of child marriages, a particular chief nullified over 300 child marriages and sent the victims back to school (Dedza, 2015). Malawi has a comprehensive law on child care and a Protection and Justice Act (No 22 2010). Section 23 of its Constitution provides for the rights of children; according to its Constitution, international conventions are part of enforceable law in Malawi (sec 211); and in *Re David Banda* (MLR 1) and *Re Chifundo James* (MSCA 2008 Adoption Appeal No 28, 2009), the best interests principle was applied. In *Nwangwu v Republic* (2008 MLR 103), a man had defiled his daughter. The Supreme Court only upheld the Appeal Court’s decision because it could not overrule an appeal decision, not because of the harm the defilement caused the girl but, although the decision was upheld by the Supreme Court of Appeal, the court of first instance was held to have erred by considering the pain that would mar the victim’s future in reaching the sentence. Yet, in *Phiri & Mwanyi v Republic* (MWHC Criminal Appeal Case 84 of 2005, unreported), the court held that the issue of corroboration in law was not only wrong, but it was wrong to proceed on the basis that a female should scream for help; rather, the male should ensure that he seeks and receives her consent for intercourse and not merely assume it. In *Kaseka & Others v Republic* (1999 MLR 116), where the police had visited a club and found male and female prostitutes, and arrested only the females, the court held the act of the police discriminatory and therefore unlawful.

Kenya has promulgated a law known as the Sexual Offences Act 2006, to protect women and girl children, replacing its Police Act No 11A of 2011. However, the Kenyan Constitution expressly provides for children’s rights to be protected from abuse (art 53). Moreover, the Constitution accepts the direct application of international law after ratification and as part of its domestic law (arts 2(5) and (6)). In *CK (A Child) & 11 Others v Commissioner of Police/Inspector-General of the National Police Service & 2 Others*, the rights of the girl child further received judicial protection (Petition No 8 2012, High Court of Meru (2012) EKLR).

Nigeria has, however, been slow, especially with reference to the initiative of the judiciary, to protect the girl child, and the efforts have been conflicting. In *AG Ondo State v AG Federation & 33 Others* (2002 9 NWLR Pt 772, 222), it was held that the courts could not enforce Chapter Two of the 1999 Constitution, the section on fundamental objectives and directive principles of state policy, containing provisions on socio-economic, cultural, health and reproductive rights, as the National Assembly had made specific laws for their enforcement. Contrastingly, in *Adamu v AG Borno State* (1996 NWLR Pt 465, 203), the chapter was held justiciable. The recent case of *Frank Tietie v Attorney-General Federation & Others* (M/336/12) is similar to the Kenyan case of *CK (A child) & 11 Others v Commissioner of Police/Inspector-General of the National Police & 2 Others* (Petition No 8 of 2012, High Court of Meru (2012) EKLR).

However, while these countries have the support of their constitutions where there is express provision for the protection of children, Nigeria does not have this support: Its provisions are general, not gender or children's rights-specific. South Africa has a Children's Act and its Constitution provides for children. Therefore, in the case of Nigeria, so much more is expected of the judiciary, especially in the creation of law. This seems to be the impression of Botswana judges (Meerkotter & Priti, 2015), as explained in the case of *Ramantele v Mmusi & Others* (Meerkotter & Priti, 2015), where the Court of Appeal judge said that the courts, in interpreting the provisions of the Constitution, especially regarding fundamental rights, must adopt a general approach in order to breathe life into the Constitution. Nigerian courts can emulate this, particularly regarding the use of international instruments and conventions on human rights and in the specific case of Botswana. It is suggested that Nigerian courts should follow this approach also for the effective protection of the girl child.

SUMMARY AND CONCLUSION

The essence of the article was to examine the application of existing international human rights provisions for the protection of the girl child against sexual abuse and child marriage in Nigeria. To achieve this, it examined the obligations of the Nigerian government arising from the ratified instruments prohibiting sexual abuse, sexual discrimination and specific provisions on marriage, particularly relating to capacity and consent to marriage and sexual intercourse.

The article proceeded to assess the status of treaties in Nigeria, Nigeria's obligations and fulfilment, the process of domestication and the application of treaties. Thereafter it discussed the legal challenges to the domestication in Nigeria of treaties prohibiting child marriage.

The article established the existence of international and regional instruments for the protection of the girl child against sexual abuse and child marriage which have been ratified by Nigeria and the legal challenges inhibiting their application in the country, the legal system, the provisions of section 12 of the Constitution, the nature of federalism, the conflicting nature of its laws and their laconic provisions.

In sum, it cannot categorically be said that these provisions are applicable in the country, despite ratification of these instruments and their importance for the enjoyment of the rights by the girl child. In essence, the solution is the harmonisation of laws, the legal system and law reform as this, in addition, will support public interest litigation in the quest for the protection of the girl child.

LIST OF REFERENCES

- Anderson, M. 2001. Domestication of International human rights law: Trends in commonwealth including the UK being a paper, delivered at the British Nigeria Law week, 23-27 April 2001 at Abuja.
- Asein, J.O. 2005. *Introduction to Nigerian legal system*. Lagos: Ababa Press Ltd
- Akper, P.T. Domestication of treaties. In C.D. Longjohn. 2010. *Implementation and application of treaties in Nigeria being a thesis for masters at the Institute of Advanced Legal Studies*.
- Azoro, C.J.S. 2014. The Place of customary international law in the Nigerian legal system: A jurisprudential perspective. *International journal of research (IJR)*, 1(3): 74-100.
- Braimah, T.S. 2014. Child marriage in northern Nigeria: Section 61 of part 1 of the 1999 Constitution and the protection of children against child marriage *African human rights law journal*, 14(2): 474-488.
- Coetzee, S. 2010. Discipline in Nigerian schools with a human rights framework. *AHRL*, 10(2): 478-501.
- Dedza. June 23, 2015. Malawian chief voids 330 child marriages, enrolls them back in school. Available at: <http://www.maravipost.com/national/malawi-nes/district/9114-malawian-chief-voids-330-child-marriages-enrolls-them-back-in-school-html>. (accessed on: 10 June 2015)
- Enabulele, A.O. & Imoedemhe, C.O. 2008. Unification of international law in the municipal realm: A challenge for contemporary international law. *Electronic journal of comparative law*, 12:6. Available at: <http://www.ejcl.org> (accessed on: 10 June 2015).
- Egede, E. 2007. Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria. *Journal of African law*, 51(2): 249-284.
- Ewelukwa, UU. 2005. The girl child, African states and international human rights law: Towards a new

- framework for action. In Nnaemeka, O. & Ezeilo, J.N. *Engendering human rights*. New York & England, Palgrave Macmillan: 131-156.
- Gandois, H. 2008. Sovereignty as responsibility: Theory and practice in Africa, Oxford University, being a paper for delivery at the annual meeting of the international studies association.
- Ikpang, A.J. 2013. A critical assessment of milestone in the Nigerian evidence act. *HumberSide Journal of Social Sciences*, 12(1): 12-21. Available at: www.sachajournals.com/documents/image/bajhjss-ikpangoo2/pdf (accessed on: 20 June 2015).
- Khude, A.K.P. 2008. Constitutional rights and their relationship with international human rights in Ghana. *Israeli Law Review*, 41: 677-702.
- Ladan, M.T. 2009. Introduction to national and international framework on human rights, being course module for Abdulsalam Abubakar Institute for peace and sustainable development (AAIPSDS).
- Meekotter A. & Priti, P. (ed). 2015. *Using the Courts to protect vulnerable people: Perspectives from the judiciary and the legal profession in Botswana, Malawi and Zambia*. Southern Africa Litigation Center.
- Odala,V. 2012. Protection of children from harmful practices through the law in Africa, the African child policy forum, international expert consultation on harmful practices, 13th -15th June. Addis Ababa.
- Odili, M. 2005. The Nigerian child and cross cultural protection rights, Nigerian human rights agenda 2011-2015. *Amnesty international publication*. Available at: www.thisdayonline.com/inview.php?i=32772 (accessed on: 1 June 2015).
- Okeke, C.N. 1997. International Law in the Nigerian Legal System, 27 *Cal W. Int'l. L.J* 311.
- Okereafor, L. 2010. Nigeria: Rape, the silent weapon, Amnesty International Report cited in Nnadi, I. (2012) An Insight into Violence against Women as Human Rights Violation in Nigeria: A Critique *Journal of Politics and Law*, 5(3):48-56.
- Olajuwon, T. 2008. Combating Trafficking in Person: A case study of Nigeria. *European Journal of Scientific Research*, 24(1):23-32.
- Oluwatoyin, B.I. 2014. Treaty making and its application under Nigerian law the journey so far, *International journal of Business and management invention*. Available at: www.ijbmi.org (accessed on: 3 June 2015).
- Onuora-Oguno AC. 2013. "Enhancing Women's Rights in Nigeria- Customary Law vs Statutory Law" in Layla Al-Zubaidi, Paula Assubuji and Jochen Luckscheiter (eds) *The Perspective*, Issue 3, 2013:26-29. Published by Heinrich Boll Stiftung e.V., Cape Town, South Africa. Available at: <http://www.boell.de/en/2014/01/22/perspectives-312> (accessed on: 12 June 2015).
- Onuora-Oguno, A.C. 2010. Personal liberty and domestic violence: Any legal respite in Nigeria? University of Ilorin. *Law Journal*, 6: 18-31.
- Ozoemena, R.N. 2006. African customary law and Gender justice in a progressive democracy, being a Master's thesis of Rhodes University Available at: www.genderlinks.org.za/attachment.php?aa_id=13646 (accessed on: 26 June 2015).
- Stefiszyn, K. & Kombo, B.K. 2014. Due diligence and State responsibility to eliminate violence against women. African region, International Human Rights Initiative (FHRI). Available at: www.duediligenceproject.org/Resources-files/AfricaRegionalReportUSletter.pdf (accessed on: 22 June 2015).
- Uzoukwu, L.I. 2010. Constitutionalism, human rights and the judiciary in Nigeria, being LLD thesis of the University of South Africa. Available at: uir.unisa.ac.za/handle/10500/3561 (accessed on: 15 June 2015).
- Viljoen, F. 2000. *Human rights in the African context in International human rights law in Africa*. London: Oxford University Press.

Reports

Report of consultative meeting of the international and comparative law of the federal ministry of Justice, 14th -15th March 2000, at Abuja. A project of the DICL Of the Federal ministry of Justice

Nigeria, Alliance for Africa, and, Justice and Growth program of the UK Department for international law.

Protecting the girl child using laws to end child early and forced marriage and related human rights violation, 2014, Equality Now. Available at: www.equalitynow.org (accessed on: 20 June 2015).

Musawah- Report to be written pursuant to HRC Resolution A/HRC/RES/24/23 on Child, Early and Forced Marriage, 13/Dec/2013.

A report on state compliance with international minimum standard of human rights by Nigeria under the universal periodic review mechanism, to be reviewed in Oct 2013- National Human rights commission of Nigeria.

The Protocol to prevent, suppress and Punish Trafficking in Persons which was ratified on 28 June, 2001 and entered into force 25 December 2003.

Trafficking in Persons Prohibition Law Enforcement and Administration Act No 24, 2003.

Concluding statement of the judicial colloquium held in Bangalore, India, 24th – 26th FEB 1998, see also Para 7 of the commonwealth secretariat and interrights, developing human rights jurisprudence vol 7, seventh judicial colloquium on the domestic application of international human right norms 1978 217-218.

Comments and Recommendations

The Human Right Committee monitoring ICCPR IN Gen Comment N0 19, marriageable age for both men and women shall be based on their ability to give full and free consent, UN Human Rights Committee, Gen Comment, No 19 (Family), protection of the family, the right to marriage and Equality of the spouses (Art 23), (Thirty ninth session, 1990), compilation of General comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/I (Rev.7(2004) p 149, Cedaw- Gen Comment No 21, the Right of marriage based on men and women's equal rights to enter into marriage, conditioned on their free and full consent- CEDAW Committee, Gen Recommendation NO 21, Equality in marriage and family relations(Thirteenth session, 1994), Compilation of General Recommendations adopted by Human Rights Treaty bodies, UN Doc. HRI (GEN/I/Rev.1(2004)para 16, 1(a) and (b).

Gen comments N0 14, Adolescent Health and Development in the context of the Convention on the Rights of the Child.(Thirty-third session, 2003)para 20.

General Comment No 19. Available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed on: 23 June 2015).

Legislations and international instruments

African Charter on Human and Peoples Rights on the Rights of Women

African Charter on the Rights and Welfare of the Child

Convention on the Rights of the Child

Convention on the Elimination of All Discrimination against Women

Convention on consent to marriage, minimum age for marriage and registration of marriages

The International Convention on Economic, Social & Cultural Rights (ICESCR)

The International Convention on Civil and Political Rights (ICCPR)

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Slavery Convention) 1956

Universal Declaration of Human Rights

The Nigerian Constitution

Criminal Code

The Constitution of South Africa

Malawi law on child care and a Protection and Justice Act

Malawi Constitution

Kenya Constitution

Police Act NO 11A, 2011
Ethiopia Family Code Proclamation no 213, 2000
Ethiopia Revised Penal Law, 2004
India Prohibition of Child marriage Act 2006
UK Forced Marriage Civil Protection Act, 2007

Cases

Abacha v Fawehinmi 2001 AHRLR 172 (Ng SC) 2000
Adamu v AG Borno State 1996 NWLR Pt 465, 203
African Reinsurance Corporation v Fataye 1986 (3) NWLR Pt 32,811
Asika v Atuanya 2008 (17) NWLR Pt 117
AG Ondo State v AG Federation and 33 Others 2002 (9) NWLR Pt 772, 222
CK. (A Child) & 11 Others v Commissioner of Police/ Inspector General of the National Police Service and 2 Others. Petition No 8 2012, High Court of Meru (2012) EKLR
Frank Tietie v Attorney General Federation & Others (m/336/12).
Ibidapo v Lufthansa Airlines 1997 4NWLR Part 498
Kaseka & Others v Republic 1999 MLR 116
Masiya v Director Public Prosecution The State & Another-2007 5 SA (CC)
Mojekwe v Ejikemi 1997 (7) NWLR Pt 512, 263
Nwangwu v Republic 2008 MLR 103
Nzekwu v Nzekwu and others 1989 (2) NWLR, Pt 105, 373
Phiri & Mwanyi v Republic MWHC Criminal Appeal case 84 of 2005, unreported
Re David Banda (MLR 1) and Re Chifundo James (MSCA 2008 Adoption Appeal N0 28, 2009.
Registered Trustees of National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria 2008 (2) NWLR Pt1072, 575
Ukeje V Ukeje 2014 LPELR-22724 (SC)