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Research Article

MARRIAGE OF MINORS: IMPLICATIONS FROM NIGERIAN AND TUNISIAN LEGAL SYSTEMS FRAMEWORK

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Background: Despite all the international agreements and national laws that ban and against the marriage of minors, it is increasingly commonplace in many countries across the globe. Child marriage is a human rights violation which denies girls from acquiring proper education and gaining the required knowledge and sound health that could help them to conveniently navigate the future for their dream or perceived ambition in life so that they can play an amazing role with their peers in nation building. People engage in a marriage with a minor for different reasons and motivations. Still, the majority believe in sexual pleasure derived from marrying someone young, far different from that of an older woman. The implications of the marriage of minors are vividly addressed in this paper. The marriage of minors is rampant in the world, but this study limits its scope to the implications of the marriage of minors from the legal framework in Nigeria and Tunisia.

Methods: This article uses content analysis (CA) and systematic literature review (SLR) as methodological approaches. The methodology provides theoretical and practical foundations for Marriage of Minors: Implications from Nigerian and Tunisian Legal Systems Framework.

Results and Conclusions: The results from the literature review and content analysis demonstrate cases of the marriage of a minor in both countries explored in this study. The paper also demonstrated that there are international and domestic legal frameworks in addressing the challenges of marriage to minors, and the paper specifically analysed the Convention on the Rights of the Child. It also illustrated the Tunisian legal framework for the marriage of minors and highlighted the similarities and differences in Nigerian and Tunisian laws regarding the issue. The health and educational implications of child marriage in both countries are also elucidated in the paper. The paper recommends valuable suggestions to the policy maker and the need for the National Assembly of both countries to reform their family law and take note of the differences in both customary and Islamic laws. This paper also recommends more respect for civil law, enacted unanimously.

1 INTRODUCTION

Without a doubt, the world is witnessing different kinds of crimes that always harms the people concerned. The marriage of a minor is undoubtedly one of the crimes some people commit. The reason for engaging in such action differs, but the research shows that the majority of them are engaging in child marriage for sexual satisfaction. There is a general belief that children below 18 years perform better sexually than older women. The consequences of such action (health, education etc.) on children involved are not taken seriously as long as the marriage has been done. Thus, according to UNICEF, the early marriage or marriage of minors is defined as the marriage between two people in which one is over 18 years of age and the other party is less than 18 years, respectively. Marriage of minors is an ancient worldwide custom. It compromises a girl's development that may end up in early pregnancy, affecting her educational achievement, restricting her chances for career and vocational advancement and making her vulnerable to the risk of domestic violence. Marriage of minors impacts not only girls but also boys, though the latter marriage has not been widely studied. It exposes them to unnecessary financial pressure to carry out their responsibilities and meet the family's needs. This may curtail their opportunity to continue their education and deny them career development.

Marriage of minors has been problematic in some countries where several efforts have been put in place to end the injustice. Many agreements have been made internationally and domestically in fighting the injustice of child marriage in Africa. Countries have signed the agreements entirely or partially. Such an agreement includes the Child Right Act (CRA)

in Africa which condemns and rejects the marriage of minors³. Another agreement is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴ Tunisia is one of the two countries that have signed the agreement so far. Nigeria and Tunisia are not exempted; it has been rampant in some parts of Nigeria where the act has been associated with religion more than civil. Though, the Nigerian constitution alligns with the international stand by rejecting the act. Although Tunisia is an Arab country, a series of uprisings have been carried out against child marriage. Its constitution does not support child marriage but partially agrees to the marriage of any minor who was impregnated by who impregnated her. Certain acts and practices are implemented in the culture of all countries in the world. This may be purely cultural or affiliated to a specific religious belief. Therefore, due to cultural diversity, cultures and practices in some areas contradict the practices in other places. But as far as the marriage of minors is concerned, no country adopts it in totality as the law of the land but is associated with the belief of some religions. Despite all international and national rejection of the marriage of minors, people are still practising it.⁵

In Nigeria, it has become a rampant act among reach people, particularly among the politicians, mainly in Northern Nigeria. The perspective of Islam law regarding the marriage of whom to consider as minor in customary law influenced the practice of marriage of minors in Northern Nigeria. It is reported that more than 48% of Hausa-Fulani girls got married at the age of 15, while about 78% married at the age of 18⁶. The practice contradicts the Child Right Act. Though Islamic law is recognized in Nigeria as part of Nigerian law, none of those practising marriage of minors that claimed that Prophet Muhammad practised it can give a precise analysis and reason why such action is practised. It is known that Prophet Muhammad is a role model in Islam, and everything he does has a basis in line with God's directive. Looking at the statistics of girls married before the age of 18 in Nigeria, it is realised that Nigeria Demographic and Health Survey (NDHS) reported in 2013 that 58.2 per cent of Nigerian girls become brides before 18.⁷ The implications of marriage of minors in Nigeria are enormous; as a result, the victims (girls or boys) face many problems. Among the recorded implications are issues in health by getting older than their age, being unable to handle the challenges of married life, continuing education to desired stage, and failing to pursue a future career.

In Tunisia's case, as in Nigeria law, the legal marriage age is 18 years or above for both man and woman, though the marriage of minors is permitted in Tunisia subject to the consent of their parents and guardians and special approval from the judge⁸. According to Tunisian law, the judge is the only person permitted to give the go-ahead for any minor marriage only in case of "grave reasons", and it has to be "in the interest of the spouses"⁹. This contributes

3 Act of the Federal Republic of Nigeria No 26 'Child's Rights Act' of 2003 <<https://www.refworld.org/docid/5568201f4.html>> accessed 14 May 2023.

4 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>> accessed 14 May 2023.

5 UNICEF, 'Child Marriage is a Violation of Human Rights, but is all too common' (UNICEF Data, May 2022) <<https://data.unicef.org/topic/child-protection/child-marriage>> accessed 14 May 2023.

6 Tim S Braimah, 'Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection Children against Child Marriage' (2014) 14 African Human Rights Law Journal 475 <<https://www.saflii.org/za/journals/AHRLJ/2014/24.html>> accessed 14 May 2023.

7 National Population Commission [Nigeria] and ICF International, *Nigeria: Demographic and Health Survey 2013* (NPC, ICF International 2014).

8 Décret de la République Tunisienne 'Code du Statut Personnel' du 13 août 1956 (6 moharem 1376) arts 5, 6 <<https://www.refworld.org/docid/3ae6b5510.html>> consulté le 14 May 2023.

9 *ibid*, art 5.

significantly to the widespread of child marriages in the country. Many citizens in Tunisia capitalise on the law regarding the marriage of minors that partially allows the marriage of minors. It is reported that a court in Tunisia approved the marriage of a 13-year-old girl to a 20-year-old relative who impregnated her.¹⁰ This caused an uproar among organisations dealing with children's rights in the country. Believing that the judgment totally contradicts the international agreement on child marriage. The judge was relying on an article in the Tunisian Criminal Code which stipulates that:

“While sex with a girl under 15 without the use of force is punishable by six years in prison, the culprit can halt proceedings by marrying the victim”.¹¹

The article in the Tunisian criminal law is enacted for nothing but to maintain peace in the Tunisian society, not to cause more chaos or problem. The law realises problems may occur in the future as a result of unwanted pregnancy of a minor girl in society. It is generally believed in Tunisia and most of the Arab world that any girl who has slept with a man out of marriage might not be able to get another serious-minded man. As a result of the above problems, the study ready discusses the legal framework for the marriage of minors in Nigeria and Tunisia. Thus, the research relies on the following objectives.

1. Understanding the marriage of minors and the view of both countries
2. Perusing legal proceedings and courts' decided cases on the marriage of minors in Nigeria and Tunisia
3. Implications of the marriage of minors in Nigeria and Tunisia societies

2 LITERATURE REVIEW

The discussion of the scholars towards the marriage of minors is based on related and relevant literature. Understanding the marriage of minors in its concept differs as it is determined by the ideology and beliefs of a given society. Scholars affirm that some communities agreed that there is no specific age for getting married in as much the girl can talk, walk, and of course, has started menstruating. As it is reported by the NDHS 2013, Nigerian girls get married before the age of 18¹². This clearly illustrates that a large number of Nigerian girls are involved in early marriage. Based on this, Idayat Hassan approves the report that it highlights the challenges faced by the Nigerian girl-child regarding early marriage. She also emphasises the stagnant growth and improvement despite the availability of laws like the constitution of Nigeria and the Child Rights Act in 2003, which has been adopted in 24 out of 36 states in Nigeria. On the determinant of early marriage in Nigeria, Envuladu researches Plateau state, using indicators such as the level of education of parents and guardians, the environmental contribution, religious attainment, the father's type of job and the number of people they have to cater for. The author conducts research by sharing questionnaires with school girls. More than 46% of the girls believe that one of the major causes of early marriage is an order from parents to marry before 18 years¹³. He added that those girls forced in

10 Basma Atassi, 'Tunisian Court Approves Marriage of Pregnant 13-year-old' (*CNN news*, 14 December 2016) <<https://edition.cnn.com/2016/12/14/middleeast/tunisia-court-child-marriage/index.html>> accessed 14 May 2023.

11 Décret de la République Tunisienne 'Code Penal' du 9 juillet 1913 (5 châbane 1331) art 227 bis <<https://www.refworld.org/docid/3ae6b5590.html>> consulté le 14 May 2023.

12 Nigeria: Demographic and Health Survey 2013 (n 7).

13 EA Envuladu et al, 'Determinants and Effect of Girl Child Marriage: A Cross Sectional Study of School Girls in Plateau State, Nigeria' (2016) 5 (3) *International Journal of Medicine and Biomedical Research* 125, doi: 10.14194/ijmbr.5.3.3.

to early marriage are to be cared for, not to be caring for children. This can lead to more problems for the young mother who gave birth in the early years of her life and may also cause problems for the child born as she has no experience of how to care for a newborn baby. The age of the first sexual intercourse is also another determinant of early marriage. This is relevant to research conducted in the Democratic Republic of Congo (DRC) where the researcher confirms that any girl who reported that her first sexual intercourse was when she was before 16 is about 73 times more likely to get married before the age of 18¹⁴.

Avogo and Somefun affirm that the marriage of minors in West Africa is regarded as the highest in the world; therefore, researchers need to conduct more research on under age marriage there. Avogo and Somefun chose Niger, Nigeria and Burkina Faso as the focus of their case study on the marriage of minors and the formation and childbearing in West Africa. Statistically, at 60%, Niger has the highest number of marriages of minors in Africa, followed by Nigeria with 28% and Burkina Faso with 25%.¹⁵ Perusing the law of those countries, there is a similarity in some of the provisions of laws and the influence of Islamic law. That may contribute to the rise of the occurrence of early marriage in their countries. Though, Tunisia does not share the same idea with them regarding Islamic law. Still, civil law in Tunisia has a provision for the legality and acceptability of the marriage of minors (with condition).

Envuladu view on the causes and effects of early marriage in Nigeria is associated with the individual characteristics - women's education, place of residence, economic status and public indicators are strong determinants of early marriage and child bearing¹⁶. Thus, most scholars address the determinant and childbearing, but this paper will focus more on the legal framework to stop or minimise the widespread of child marriage.

2. 1 MARRIAGE OF MINOR: CASES

A Nigerian senator, Ahmad Yerima, married a 13-year-old Egypt girl after paying a dowry of \$100,000. Although the marriage generated an uproar as it contradicts Section 21 of the CRA, his argument relies on religious grounds and affirms that: Prophet Muhammad (SAW) married Aisha at the age of nine. Therefore, any Muslim who marries a girl of nine years and above is following the teaching and practices of the Prophet Muhammad (SAW). If there is anybody who will tell me that what I did contradicts Islam, I will say I will submit, and I will do whatever they ask me to do.¹⁷ Below is a Hadeeth on the age of Aisha when she married Prophet Muhammad and the story behind the marriage:

Al-Amash narrates from Ibrahim, who narrates from al-Aswad that Aisha said: "The Messenger of God married her when she was six years old and consummated the marriage when she was nine [years old], and he passed away when she was eighteen".¹⁸

- It is reported that a court in Tunisia approved the marriage of a 13-year-old girl to a 20-year old relative who impregnated her. This caused an uproar among

14 Jacques Elengemoke Mpilambo et al, 'Determinants of Early Marriage among Young Women in Democratic Republic of Congo' (2017) 52 (1-3) *Journal of Social Sciences* 82, doi: 10.1080/09718923.2017.1322393.
15 Winfred A Avogo and Oluwaseyi D Somefun, 'Early Marriage, Cohabitation, and Childbearing in West Africa' [2019] *Journal of Environmental and Public Health* 1, doi: 10.1155/2019/9731756.
16 Envuladu et al (n 13).
17 Braimah (n 6) 485-7.
18 Sahih Muslim, *The Book of Marriage*, ii 1038 no 1422 <<https://sunnah.com/muslim:1422a>> accessed 14 May 2023.

organisations dealing with children's rights in the country, declaring that the judgment contradicts the international agreement on child marriage. The judge relied on an article in the Tunisian Criminal Code stipulating that while sex with a girl under 15 without the use of force is punishable by six years in prison, the culprit can halt proceedings by marrying the victim.¹⁹

According to Human Rights Watch,²⁰ it is worrying that the Child Rights Act has been passed in Nigeria, closing on two decades; still, small girls are being forced into marriages. The organisation urged Nigerian states to quickly adopt the CRA at least to minimise the early and forced marriage prevailing in the Nigerian environment. Human Rights Watch interviewed 16 married girls between the ages of 14 and 19. As Nigerian states differ slightly in adopting the type of legal system in Nigeria's constitution, the interview focuses on the legal, tradition and demography of two different states: Kano (the northern part of Nigeria) and Imo states (Eastern part of Nigeria). Based on the view of some scholars that child marriage is majorly happening in the northern part of Nigeria, this interview disproves them by citing examples of forced and child marriage cases across Nigeria. Imo state, a majority Igbo and Christian state in Nigeria, has adopted Child Rights Act since 2004; still, child marriage is still occurring in the state.

- Unwanted early pregnancy is often considered a great shame for the family in the Imo state. In the Igbo customary law, a child born out of wedlock is regarded as an illegitimate child. If the parent of the impregnated girl can find a man older and richer who agrees to take the responsibility of marrying her, it saves her from the shame she has caused the family. She said:

I was just thrown out of the house [then] due to fear of the pregnancy; if I stayed in my family house, the persecution would be too much for me. So, it was better for me to marry.²¹

- A case of Rachel K. from Imo state; when interviewed, she was 15 years old when her parents discovered that she was five months pregnant with her then- school boyfriend. She was sent out of her family house to save her family from shame.
- Another case of Obioma O. from Imo state, a 15 years old girl impregnated by her 60- year- old teacher. Her parent chased her out of the family house and later lived with her teacher who had impregnated her and was previously married . She was forced to marry the man for the unwanted pregnancy.
- A case of a 14-year-old girl forced into marriage and ran away from her husband's house six times in three years. Every time she left her husband, her family always forced her to return . This shows that her family dictated the marriage, and it was against her will.
- In Kano state, Human Rights Watch discovered in Kano state that families often arrange marriages for girls and young women without informing the girls or even knowing whom to marry them to. This will not give them a choice over when or whom to marry. In a state like Kano state, Sharia law is installed and the marriage of minors is accepted on religious and traditional grounds .

¹⁹ Atassi (n 10); Code Penal (n 11) art 227 bis.

²⁰ Human Rights Watch, 'Nigeria: Child Marriage Violates Girls' Rights: States Should Urgently Adopt Laws to Enforce Child Rights Act' (*Human Rights Watch*, 17 January 2022) <<https://www.hrw.org/news/2022/01/17/nigeria-child-marriage-violates-girls-rights>> accessed 14 May 2023.

²¹ *ibid.*

Nafisatu a 12-year-old girl forced into marriage with a 27-year-old man, said that:

...my family had no money to provide for my basic needs and education after my father died. Instead, they planned for me to leave school and marry a man they chose. She added that: when I told him that I am not interested in marriage, [He] went back to my family members, and they told him to just forget about my decision, it's not that important if he actually loved me and wanted to marry me.²²

She was out of school due to forced marriage at an early age.

Based on the above cases and interviews conducted by Human Rights Watch in Nigeria, it is clear that the marriage of minors is a general problem. In Nigeria for example, the Human Rights Watch carried out interviews across Nigeria to indicate that the marriage of minors is not only practised in the northern part of Nigeria but is also happening in some southern parts of the country. Kano state was chosen in the North and Imo state in the South; this shows that despite the CRA signed by some Southern states, very few states in the northern part of the country signed it yet. The marriage of minors is still practised in the South. For the case of Ahmed Yerima, a 13-year-old Egyptian girl, it is believed that her husband based his argument on religious grounds that it is permissible in Islam to marry a girl that has started menstruating regardless of her age. Though Nigeria's legal system is based on three laws, civil, customary and Islamic law, the Yerima case is in line with both customary and religious laws.

Looking at the Tunisia case of a 13-year-old impregnated, the judge ordered the rapist to marry her after serving his punishment according to the law. Despite the judge's pronouncement that the rapist should marry the victim, which may be considered as an opportunity for Tunisian men to continue to be involved in the marriage of minors in the country, the marriage of minors remains minimal in Tunisia, with only two per cent recorded for Tunisia.

3 INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

3.1 CONVENTION ON THE RIGHTS OF THE CHILD

The first international instrument that deals with the rights of children is the Convention on the Rights of the Child (CRC), where rights of children were adopted. This was later opened for signature on 20 November 1989.²³ Woodhouse describes the CRC as a charter that encompasses children's rights.²⁴ This shows that all the conventions' agreements are binding and worth following majorly for all African countries. He believes that CRC has comprised the cases like child marriage and child abuse. However, Warner and Askari oppose Woodhouse's acceptance of the CRC as an inclusive agreement. Warner confirms that CRC does not have a provision for child marriage.²⁵ He accepts that the subject of marriage of minor had been discussed in the Convention on Consent to Marriage, the minimum age for marriage and of course, registration of marriages. Therefore, there won't be any need for

²² *ibid.*

²³ Convention on the Rights of the Child (adopted 20 November 1989 UNGA Res 44/25) <<https://undocs.org/en/A/RES/44/25>> accessed 14 May 2023.

²⁴ Barbara Bennett Woodhouse, *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate* (Princeton UP 2008) 32.

²⁵ Ladan Askari, 'The Convention on the Rights of the Child: The Necessity of Adding a Provision to Ban Child Marriages' (1998) 5 (1) *ILSA Journal of International and Comparative Law* 123.

CRC to address child marriage. Askari makes the gender bias in CRC known and argues that CRC discusses more violence against boys (involving child soldiers), which fails to give similar attention to girls who are in more vulnerable and precarious situations than boys.

3.2 DOMESTIC LEGAL FRAMEWORK

The Child Rights Act (2003) indicated Nigeria's domestic action against child abuse generally. The bill spelt out the interests of Nigerian children in all aspects of life. Duties and obligations of parents, the government and organisations towards the children are also included in the bill.²⁶ This confirms that the CRA comprises full legal rights of children in Nigeria. These rights include; putting an end to the use of children in criminal activities, child labour, sexual abuse of children. The CRA also includes caring for the children's supervision and custody.

According to the African Child Forum:

“Early marriage is criminalised Child's Right Act, 2003 Article 23: a certain Punishment is set for child marriage and betrothal A person who married a child, or to whom a child is betrothed or who promotes the marriage of a child or who betroths a child commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both such fine and imprisonment”²⁷

Although the Child Rights Act (CRA, 2003) is against marriage under 18 years, the stand of Islamic and civil law contradicts the position of CRA.

Nigerian constitution comprises three legal systems: civil, customary and Islamic law, which operate simultaneously. The perspectives of the Islamic and customary law regarding the marriage of minors, or marriage generally, are different from the civil law. That is why the government only controls marriage conducted in civil law and has no control over customary or Islamic law. Thus, the 1999 Constitution of Nigeria, Part 1 Section 61, provides that:

“The federal government cannot interfere with Islamic and customary marriages, which weakens and fails to give effect to the CRA to protect children against a social evil such as child marriage”²⁸

Therefore, in Northern Nigeria, if any one marries an under age girl that marriage conducted in accordance with Islamic law, such a marriage cannot be challenged or prosecuted because it has legal backing for it. Undoubtedly, accepting the marriage of a minor in line with Islamic law in Nigeria has automatically rendered the provision in CRA useless.

3.3 THE TUNISIAN LEGAL FRAMEWORK FOR THE MARRIAGE OF MINOR

In Tunisia, the legally accepted minimum marriageable age for both sexes is 18 years, while that of a minor is permitted if the guardian or the birth mother gives their consent and including special approval of the judge. The law of Tunisia gives autonomy to the judge to grant marriages of minors in case of “grave reasons” for the advantage of the spouses. This law was enacted in reaction to a judgment passed by one Tunisian judge on a pregnant 13-year-old girl, where the court ordered the offender to marry the victim after facing the law. In addition, child marriage is void under Article 21 of the code even though no

26 Human Rights Watch (n 20).

27 Child's Rights Act (n 3) arts 23.

28 Constitution of the Federal Republic of Nigeria of 1999, pt 1, s 61 <<http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>> accessed 14 May 2023.

penalties are specified against those who may have facilitated or knowingly been involved in such marriages.²⁹ On the issue of the 13-year-old impregnated, some organisations protested to see that government called for the reverse of the judgment, grant protection to the pregnant girl, and ensure the continuation of her education. The Ministry of Women's Affairs, Family and Children in Tunisia released a statement saying it was deeply concerned by the decision, adding that it had been trying to annul the marriage "for the sake of the child's interest". Following the unprecedented marriage of a minor, the ministry called on the Tunisian parliament to adopt and pass a bill based on countering violence against women. According to a Population Reference Bureau report (2013), child marriages are now rare cases in Tunisia, despite legal exceptions to the age of marriage.³⁰

3.4 SIMILARITIES AND DIFFERENCES IN NIGERIAN AND TUNISIAN LAWS ON MARRIAGE OF MINOR

Both Nigeria and Tunisia adopted many international treaties and agreements on protecting women and children. The domestic law of each country has also enacted laws that protect child abuse, protection of women and children, the marriage of minors etc. There are similarities in the laws of both countries. Although there are slight differences in their domestic laws regarding child marriage. Nigeria's legal system has three concurrent classes: civil, customary and Islamic laws. Despite being a signatory to many international agreements on women's and children's rights, it is not easy to stop child marriage as part of the Nigerian legal system accepts child marriage.³¹ Tunisian law on the other hand, signed the UN-CRC, similar to the Nigerian constitution; article 46 of the constitution of Tunisia shows a dedication to the abolition of all types of violence against women and the defence of women's rights in all spheres.³² In the Middle East and North Africa, Tunisia was the first nation to ratify and remove all doubts about the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It is one of the only two countries that adopted the Optional Protocol in the North African countries. In addition, Tunisia is one of the sponsors of the following Human Rights Council resolutions: the 2013 resolution on the marriage of minors in or forced marriage, the 2017 resolution on the need to address = the marriage of minors and forced marriage in the humanitarian platform, the 2019 resolution on the consequences of the marriage of a minor.³³ But despite all these agreements and laws that Tunisia has signed to protect women and children, a court can still approve a marriage between a 13-year-old child and her rapist.³⁴ This is relatively similar to Nigerian law on the marriage of minors, as civil and Islamic laws in Nigeria approve and overrule the marriage of minors.

29 Code du Statut Personnel (n 8) art 21; World Bank, Women, Business, and the law 2016: getting to equal (World Bank Publ 2015) 233.

30 Farzaneh Roudi-Fahimi and Shaimaa Ibrahim, 'Ending Child Marriage in the Arab Region' (Population Reference Bureau (PRB), 17 June 2013) <<https://www.prb.org/resources/ending-child-marriage-in-the-arab-region>> accessed 14 May 2023.

31 Constitution of the Federal Republic of Nigeria (n 28) pt 1, s 61; Child's Rights Act (n 3) arts 21-23.

32 Tunisia's Constitution of 2014 <https://www.constituteproject.org/constitution/Tunisia_2014?lang=en> accessed 14 May 2023.

33 Child, Early and Forced Marriage (adopted 18 December 2013 UNGA Res 68/148) <<https://digitallibrary.un.org/record/764369>> accessed 14 May 2023; Child, Early and Forced Marriage in Humanitarian Settings (adopted 22 June 2017 UNGA Res 35/16) <<https://digitallibrary.un.org/record/1302329>> accessed 14 June 2023; Consequences of child, early and forced marriage (adopted 11 July 2019 UNGA Res 41/8) <<https://digitallibrary.un.org/record/3832174>> accessed 14 May 2023.

34 Code du Statut Personnel (n 8) arts 5, 6, 21; Code Penal (n 11) art 227 bis.

4 THE IMPLICATIONS OF CHILD MARRIAGE IN BOTH COUNTRIES

4.1 HEALTH IMPLICATION

Like other cases of child abuse, the marriage of a minor has several implications for victims. Thus includes health implications. Generally, any law enacted in a given society is for better living and maintaining safety in that society. The marriage of minors is undoubtedly a violation of human rights, mainly the violation of child rights by preventing them from enjoying sound health. It particularly affects the girl's health, such as increasing the risk of sexually transmitted diseases (STD), cervical cancer, death during childbirth, and obstetric fistulas.³⁵ Child marriage is not prevalent in Nigeria and Tunisia alone, but other African Countries share in its widespread. Mali, one of the West African countries, confirms the effects of a marriage of a minor more on young girls, although the generation to come is at risk for illness and premature death. In Mali, "adolescent mothers have a 35% - 55% higher risk than older women for delivering preterm infants and low birth weight. Mortality rates are 73% higher for infants born to mothers under 20 years of age than for those born to older mothers".³⁶ The implication of the marriage of minors cannot be over-emphasised. Many young mothers are in the stage of being cared for medically, not yet mature to look after others. Having a baby and finding herself in marriage will compel a young mother to care for babies, even with her lack of knowledge on many things relating to childbearing. Thus, childbearing by young girls can lead to obstetric fistulas and the mother's death.³⁷

Over 2 million adolescents are living with fistulas. It develops in 100,000 each year.³⁸ Without a doubt, "girls between 10-15 years are vulnerable because their pelvic bones are not actually ripe for childbearing and delivery. Their risk for fistula is as high as 88%. Once a fistula is formed, faecal or urinary incontinence and personal nerve palsy may lead to humiliation, ostracism and resultant depression. Unless the fistula is surgically repaired, these girls have limited chances of living a normal life and bearing children".³⁹ The health consequence of child marriage is serious, as it is associated with the life of the victim and wide spread of deadly diseases.

4.2 EDUCATIONAL IMPLICATION

Education is essential in the life of a human being. It is the key to success in life, as education serves as a guide to a better life. Achieving certain educational standards requires a certain number of years and commitments. Involving in child marriage is a one of the impediments to achieving more in education. It is believed that education is an important step to attaining a higher position in life. Many girls married after the age of 18 take time to achieve more in education, through which they comprehend marital life before involving in it.

Therefore, low educational attainment affects girls' life trajectories in many ways. Girls who are forced to drop out of school early are more likely to marry or have children early before they may be physically and emotionally ready to become wives and mothers. This may affect their health and their children. For example, children of mothers younger than 18 face

35 EO Osakinle and Olufunmilayo Tayo-Olajubutu, 'Child Marriage and Health Consequences in Nigeria' (2017) 30 (1) American Scientific Research Journal for Engineering, Technology, and Sciences 351.

36 *ibid* 353.

37 Siné Bayo et al, 'Risk Factors of Invasive Cervical Cancer in Mali' (2002) 31 (1) International Journal of Epidemiology 202, doi: 10.1093/ije/31.1.202.

38 United Nations Population Fund, 'Obstetric fistula' (UNFPA, 6 September 2021) <<https://arabstates.unfpa.org/en/topics/obstetric-fistula-5>> accessed 14 May 2023.

39 Osakinle and Tayo-Olajubutu (n 35) 355.

higher risks of dying by age 5 and being malnourished. Other risks for girls and women associated with a lack of education include intimate partner violence and a lack of decision-making ability in the household. Low educational attainment for girls may also weaken community solidarity and reduce women's participation in society. Lack of education is associated with a lower predisposition to altruistic behaviours, and it curtails women's voice and agency in the household, at work and in institutions. Fundamentally, a lack of education husband disempowered women and girls in ways that deprived them of their basic rights. Many girls speak out about their experiences with their husbands regarding the continuation of education after getting married. It robs girls of their educational opportunities, with their husbands often left to decide whether they can continue their education. Rachel said that:

"I discussed going back to school with my husband, but the way he is feeling, he is not interested in that" Rachel added. "He says that if I find anything good for me [in the job market], I should go ahead and do it. He thinks that if I am educated or if I have degrees, I will start to insult him. I don't know"⁴⁰

Despite the free and compulsory education in Nigeria for ages 6-15, many girls still dropped out for one reason or other. Also, many girls get pregnant or have been forced into marriage and pulled out of school to work to earn a living. Surely, education will not count seriously as the girl has started participating in the responsibilities of the house.

5 RECOMMENDATIONS

More respect must be given to civil law to end the marriage of minors in Nigeria and Tunisia. Without a doubt, civil law enacted with the unanimous agreement of the populace needs to be respected. Though Part 1, section 61 of the Nigerian Constitution required a little bit of modification to both customary and Islamic laws. This also applies to Tunisian law, where a court passes judgment on rapists and victims that rapists should marry the victim. Despite the court order, the marriage of a minor in Tunisia is very low in comparison to Nigeria. Still, in order to stop it completely in Tunisia, the judgment needs to be reviewed in accordance with 18 years as the official marriage age.

It is also important for the National Assembly and the Parliament of both Nigeria and Tunisia to reform the family law of each country and address the differences in both customary and Islamic laws. By doing so, both legal systems will correspond to each other, and there will be no hiding place for anyone who commits crimes by marrying a minor.

6 CONCLUSION

This paper discusses the implications of child marriage in Nigeria and Tunisia and the legal framework to stop or minimise it. The study pays particular attention to the meaning of child marriage or the marriage of minors as defines each term for better understanding. Despite Nigeria's approval of the Child Rights Act (CRA), the rights of women and children regarding marriage remain unprotected. Despite the international, regional and domestic agreements signed by Tunisia to put an end to child marriage in Tunisia, cases of child marriage are being recorded. Nigeria's legal systems run on three classes: civil, customary and Islamic law. Any legal case has to be treated by taking it through the window of each law in the country. No doubt, these laws are sometimes contradicting as the sources of each law

40 Human Rights Watch (n 20).

differ from the other. That is the case in the marriage of minors , in which customary law affirms the minimum age for marriage is 18 years which is not necessarily the case in Islamic law. Tunisia law states that any marriage be low 18 years of age is void, except in the case of rape, which allows the rapist to face the law and marry the victim. The implications of the marriage of minors as discussed in this paper, include Health and Education implications . It has been recommended that more respect needs to be given to civil law as all provisions in the constitution were unanimously agreed upon by the citizens of the country. It is also recommended that the National Assembly of both countries take the reformation of family law more seriously. By incorporating both Islamic and customary law, there would not be a problem between civil and customary as it always is in the case of the marriage of a minor.

REFERENCES

1. Askari L, 'The Convention on the Rights of the Child: The Necessity of Adding a Provision to Ban Child Marriages' (1998) 5 (1) ILSA Journal of International and Comparative Law 123.
2. Atassi B, 'Tunisian Court Approves Marriage of Pregnant 13-year-old' (CNN news, 14 December 2016) <<https://edition.cnn.com/2016/12/14/middleeast/tunisia-court-child-marriage/index.html>> accessed 14 June 2023.
3. Avogo WA and Somefun OD, 'Early Marriage, Cohabitation, and Childbearing in West Africa' [2019] Journal of Environmental and Public Health 1, doi: 10.1155/2019/9731756.
4. Bayo S et al, 'Risk factors of invasive cervical cancer in Mali' (2002) 31 (1) International Journal of Epidemiology 202, doi: 10.1093/ije/31.1.202.
5. Braimah TS, 'Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection Children against Child Marriage' (2014) 14 African Human Rights Law Journal 474 <<https://www.saflii.org/za/journals/AHRLJ/2014/24.html>> accessed 14 June 2023.
6. Envuladu EA et al, 'Determinants and Effect of Girl Child Marriage: A Cross Sectional Study of School Girls in Plateau State, Nigeria' (2016) 5 (3) International Journal of Medicine and Biomedical Research 122, doi: 10.14194/ijmbr.5.3.3.
7. Mpilambo JE et al, 'Determinants of Early Marriage among Young Women in Democratic Republic of Congo' (2017) 52 (1-3) Journal of Social Sciences 82, doi: 10.1080/09718923.2017.1322393.
8. Osakinle EO and Tayo-Olajubutu O, 'Child Marriage and Health Consequences in Nigeria' (2017) 30 (1) American Scientific Research Journal for Engineering, Technology, and Sciences 351.
9. Roudi-Fahimi F and Ibrahim S, 'Ending Child Marriage in the Arab Region' (Population Reference Bureau (PRB), 17 June 2013) <<https://www.prb.org/resources/ending-child-marriage-in-the-arab-region>> accessed 14 June 2023.
10. Woodhouse BB, *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate* (Princeton UP 2008).