

Published By	JULIA LAW PUBLISHERS	Peer Reviewed Academic Article Received 13/02/ 2019
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JLP England

CRANBROOK LAW REVIEW

Volume 9(1) 2019 pp. 14 - 23 (6,500 words)

ISSN 2045-8479 (Print)

ISSN 2045-8487 (Online)



Accepted:
16 April 2019

APPLICATION OF GIRL-CHILD RIGHTS IN NIGERIA: EXAMINING THE CHALLENGES OF LAW

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ABSTRACT

This paper examines the application of girl-child rights in Nigeria and argues that law itself is a challenge to the application of the rights of the girl-child in Nigeria. It is the position of this paper that the rights of the girl-child in Nigeria continues to be violated despite the very many provisions of the law guaranteeing such rights in domestic and international instruments. It is opined in this paper that these violations persist because of various factors such as the patriarchal social system adopted in Nigeria, the very high illiteracy rate of the Nigerian public especially in the rural area, our ever present customary laws which treat the girl-child and in fact women generally as subservient to the man and with limited opportunities under custom to maximize potentials, the various religious beliefs that insist that a woman's individuality should be subject to the man who is superior etcetera. Going further however, this paper examined the challenge of law to the application of girl-child rights in Nigeria and found that despite the copious provision of rights in various Statute books, these laws remain very remote to the average Nigerian especially in the rural areas where customary law still holds sway. It was also discovered that the pervasive culture of silence in the face of violations borne out of fear of possible stigma as a deviant and troublesome person coupled with great poverty resulting from customarily conspired rules which deny the girl-child the right to engage in some economic activities or even to enjoy the proceeds of efforts in the presence of the men-folk have continually guaranteed the continued violations of the rights of the girl-child. This work therefore underscores the role of the judiciary in insisting on the correct position of the law in cases of violations, the need for more and proper education and enlightenment to break the limiting culture of silence which stops victims of infringements from reporting to the law enforcement agencies and the need for further legislative interventions.

Keywords: Rights; Girl-Child; Nigerian law

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1. INTRODUCTION

Nigeria is a signatory to many international and regional instruments, Protocols and Charters recognizing and pledging support for the application and enforcement of human rights which includes the rights of the girl-child in addition to the fundamental human rights provisions in its Constitution. The girl-child in Nigeria has globally recognized and acknowledged inalienable rights as a member of the human family. It is trite however that these rights have been and are still being violated by different persons and organizations for different reasons although the nature, extent and frequency of violations differ from place to place.

Various persons and groups in acknowledging the continued violations of the rights of the girl-child in Nigeria have called for the intervention of the government and international agencies to stem the ugly tide. For instance, Alabi et al³ acknowledge that “certain traditional practices, stereotyping, cultural and religious beliefs still put the girl-child at the risk of abuse and neglect.” According to them “the root of all kinds of discriminations and bias against the girl-child lies in the customs, traditions and typical mind-set of the society which considers the girl-child and women as inferior beings.” Despite these persistent calls by various groups for measures to ensure that the girl-child’s rights are protected and not trifled with by government officials, individuals and even corporate entities the challenges facing the application of the girl-child’s rights in Nigeria remain very daunting.

It is true that all over the world there is no country that can boast of complete compliance with international standards and laws concerning the rights of the persons within its locale. However the case of Nigeria in particular attracts closer scrutiny as rights long acknowledged and respected as fundamental and inherent in man elsewhere are still subjects of debate in our legislative houses.

The question then is, are the human rights of the girl-child as already recognized and provided by our laws really applied in Nigeria? If they are, why are the rights of the girl-child still violated in Nigeria? How is the law itself a challenge to the application of the rights of the girl-child in Nigeria? And how can legal instruments be galvanised to ensure that they go beyond mere provisions in various instruments to be an effective tool in guaranteeing rights. This is the focus of this work which considers the issue of rights, examines recognised and recognisable girl-child rights in Nigeria, the extent of application of these rights and how the law itself is a challenge to the application of the girl-child’s rights. This work while concluding that the issue of discrimination against the girl-child is live and unresolved in our society makes some recommendations on the way forward.

2. THE ISSUE OF RIGHTS

Rights are critical to the happiness and enjoyment of human beings on planet earth while the protection of these rights forms the basis of organized statehood and limited government which is marked by mutual respect of each person’s rights and the societal approval of agreed claims recognized and protected by law. They concern those privileges owed to people by others and which they are allowed by law to exercise. Rights are defined as “the aggregate of capacities, powers, liberties, and privileges by which a claim is secured.”⁴ Accordingly therefore, “rights dominate most modern understandings of what actions are proper and which institutions are just. Rights structure the forms of our government, the content of our laws...to accept a set of rights is to approve a distribution of freedom and authority and to

³ T Alabi & Ors, ‘The Girl-Child: A Sociological View On The Problems of Girl-child Education in Nigeria’ (2014)10, *European Scientific Journal*, 67.

⁴ The Webster English Dictionary available at [https:// www.merriam-webster.com>legal...](https://www.merriam-webster.com/legal...)

endorse a certain view of what may, must and must not be done.”⁵ In this paper therefore the rights of the girl-child would mean those claims, powers and privileges accorded the girl-child as natural endowments of her humanness and so required to be protected by the State through the instrumentality of the law.

3. GIRL-CHILD RIGHTS IN NIGERIA

The Constitution of Nigeria provides for the fundamental rights of the girl-child in its chapter four.⁶ Ama Oji states clearly that “it is in this chapter that most of the rights of the individual are comprehensively set out and protected.”⁷ These rights are universal as they belong to all persons by virtue of the fact of their being human beings. These rights which are civil, political, economic, social and cultural rights,⁸ are not granted by any country’s legislation but are merely recognized, adopted, and declared. They are inalienable and so should not be denied by any person, group or government. These rights have been stated to include the rights to life, the right to education, right to freedom of expression, right to health care, right to protection from abuse, right to protection from exploitation and neglect, the right to development, right to recreation, right to survival and equality etcetera.⁹ Further rights are right of non discrimination, the right to survival and development of potential, protection from harmful influences, abuses and exploitation.¹⁰

The Child Rights Act 2003 as a legal document adopted all the fundamental human rights set out in the Chapter Four of the 1999 Constitution as the fundamental human rights of children and in addition also provided some specific rights for the protection of children such as the right to a name; right to survival and protection, right to dignity; right to parental care, protection and maintenance; right to free compulsory and universal primary education; right to freedom from discrimination; right to privacy and family; right to freedom of movement; right to freedom of association and peaceful assembly; right to freedom of thought, conscience and religion; right to leisure, recreation and cultural activities; right to health and health services; right of a child in need of special care and protection; right of the unborn child to protection against harmful social and cultural practices; right not to be imprisoned with the mother; right to have his best interest considered paramount in any matter involving him; right to protection against abuse and torture. These rights have been categorized into four groups namely survival, development, protection and participation rights to be involved in matters that concern him.¹¹

The girl-child also enjoys other rights enshrined in international legal instruments.¹² The Declaration¹³ recognizes that everyone including the girl-child has the right to life, liberty and

⁵ *Stanford Encyclopedia of Philosophy* (July, 2007) retrieved from [https:// en.m.wikipedia.org >wiki>Rights](https://en.m.wikipedia.org/wiki/Rights)

⁶ See Chapter Four; Constitution of the Federal Republic of Nigeria, 1999 which provides the fundamental rights to be 12 identifiable rights namely; the right to life; right to dignity of the human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, right to acquire and own property; right to compensation for property compulsorily acquired.

⁷ E.Ama Oji, ‘Right to Private and Family Life and Right to Freedom of Thought, Conscience and Religion,’ in O Okpara, *Human Rights Law and Practice in Nigeria* (Enugu: Chenglo Limited, 2005) p.42.

⁸ Universal Declaration of Human Rights (UDHR) 1948.

⁹ ‘The Rights of the Girl-Child’ available at <http://www.slideshare.net/ajsjabm> 2012-13/the -girl-child rights

¹⁰ Convention on the Rights of the Child (CRC) 1989 which sets out basic human rights for children under 18 years.

¹¹ T Akinlami, ‘The Child Rights Act 2003: Provisions, Applications and You;’ delivered at a Training Programme for Lagos State Teachers held on June 2013.

¹² Universal Declaration of Human Rights (UDHR) 1948; African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

the security of person¹⁴ and that no one shall be held in slavery and slave trade shall be prohibited in all forms.¹⁵ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁶ By the provisions of the United Nations Convention on the Rights of the Child, the girl-child has a recognizable and inherent right to life; and it is the responsibility of States to “ensure to the maximum extent possible the survival and development of the child.”¹⁷ The child also has the freedom of expression, of thought, conscience and religion; although it also recognizes the rights and duties of parents or legal guardians to provide direction to the child.¹⁸ The Charter¹⁹ on the other hand provides that the best interest of the child shall be the primary consideration in all actions concerning the child; every child has an inherent right to life to be protected by law; freedom of expression, association, freedom of thought, conscience and religion.²⁰ The Charter recognizes the child’s right to protection of privacy and right to education, rest, leisure and cultural activities.²¹

4. APPLICATION OF GIRL-CHILD RIGHTS IN NIGERIA

The Child Rights Act as passed by the National Assembly enjoins the different State Legislative houses to enact same as State laws as such matters fall within the residual list in the 1999 Nigerian Constitution. However, it is discovered that some States especially in the northern part of the country have still not adopted the Child Rights Act 2003 as State laws which means that the copious provisions of the Act aimed at protecting the welfare, interests and rights of the child are not applied in such States. An explanation²² given over the non application of provisions of the Child Rights Act in some states is that it is incompatible with the tenets of Islamic religion which permits child marriages, that is marriages to a girl-child under 18 years and clearly excluded by the Act. Before the enactment of the Child Rights Act 2003, several other domestic and international legislations were in place to ensure the protection of the girl-child rights such as the Children and Young Person’s Act which protected the Nigerian child especially with regard to juvenile justice. It appears however that:

*... there exists no provision of national force that truly protects children against abusive conditions; and that in many States, child protection activities in Nigeria are still the purview of Non-Governmental Organizations. Implementation has been challenging as Nigerian States and Local governments represent a diverse range of ethnic groups and customs.*²³

The positions agreed on concerning the protection of the rights of the girl-child in different relevant international legislations have not been enforced by Nigeria as a Member

¹³ Universal Declaration of Human Rights, 1948

¹⁴ Art. 3; *ibid.*

¹⁵ Art. 4; *ibid.*

¹⁶ Art. 5; *ibid.*

¹⁷ Art. 6, *ibid.*

¹⁸ Art. 13 & 14, *ibid.*

¹⁹ African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

²⁰ Art V, VII, VIII, IX African Charter on the Rights and Welfare of the Child (ACRWC) 1990

²¹ Art XI, XII *ibid.*

²² A Umar, “An X-ray of the Conflicts between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy” (2012) Vol.3 *Human Rights Review; An international Human Rights Journal* 70-76, in which examining the provisions of the Child Rights Act 2003, he argues that they were in conflict with Sharia law and so cannot be adopted as law in the northern part of the country. The existing conflicts between the provisions of the Child Rights Act and Islamic law according to him especially regarding child marriages were against the spirit and practice of islam and thus, makes “the realization of the rights of the Nigerian child more difficult.

²³ Cited from www.law.yale.edu/rcw/rcw/jurisdictions/afw/ and accessed on April 4, 2016.

State. For instance, Nigeria has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which in its S.2 requires all signatories to condemn discriminations against women in all forms, and to adopt all appropriate means, policies and strategies to eliminate discriminations against women including the repealing of laws which constitute discriminations. In practice however in Nigeria, we see many discriminatory practices against the girl-child thrive under our local and customary laws.

Early child marriages, female genital mutilations and girl-child disinheritance are still subsisting practices under customary law in the Niger Delta as no Federal law has been specifically enacted to criminalize these acts. According to Alemika et al²⁴S. 42 of the Nigerian Constitution is not successfully implemented in Nigeria. It is stated that “despite the laws in practice, the girl-child and in some areas the boy-child; children born out of wedlock, disabled children, children of outcasts, children from the minority and children from other States often experience discriminations.” In fact female genital mutilations are still practiced in Nigeria despite the provisions of the law protecting the girl-child from degrading treatment.²⁵

Child labour and exploitation are still practiced in many parts of the country despite the provisions of the Convention on the Rights of the Child which enjoins Member States “to protect children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education or to the child’s health or physical, mental, spiritual, moral or social development.”²⁶ Child labour is “one of the main sources of child exploitation and abuse in the world today.”²⁷ The International Labour Organization (ILO) estimated in 2002 that “about 23 to 25% of children aged 10-14years in Nigeria were working on family farms, in fishing and as cattle herders...they also work in domestic service and in public markets and streets as hawkers, vendors, stall minders, beggars...head loaders.”²⁸The girl-child by the provisions of the various domestic, regional and international instruments and laws has an acknowledged “right to rest and leisure; right to basic education, and right to be protected from neglect or negligent treatment, maltreatment or exploitation...”²⁹ It is however very sad that the exposure of the girl-child to all forms of domestic servitude in the houses of relations and non relations alike where she is exposed to exploitative child labour such as hawking wares for long hours on busy roads dogging vehicles and other road users alike cannot guarantee the girl-child’s right to rest and leisure.

According to Adeyemi, “child labour and child abuses are still rampant with the presence of street children and children beggars... and the right to education appears to be replaced by exploitative child labour.”³⁰

²⁴ E E Alemika, I Chukwuma & Ors, “Rights of the Child in Nigeria” cited in The Report on the Implementation of the Convention on the Rights of the Child by Nigeria. A Report for the Committee on the Rights of the Child, 38th Session- Geneva, January 2005.

²⁵ See S 34(1) Constitution of the Federal Republic of Nigeria, 1999 which provides that “no person shall be subjected to torture or inhuman or degrading treatment...”

²⁶ C Joseph-Obi, “Oil, Gender & Agricultural Child Labour in the Niger Delta Region of Nigeria: Implications for Sustainable Development” *African Journals online (AJOL)* (2011) Vol.9, No.2 available at www.readperiodicals.com/201112/2522112461.html accessed on April 4, 2016.

²⁷ M O Edeko, “Policy and Legislative Responses to Child Labour in Nigeria” (2011), Vol. 1, No1 *BIU Law Journal*, 253.

²⁸ International Labour Organisation, “A Future Without Child Labour Report Under The Follow Up”. The ILO Declaration on Fundamental Principles And Rights At Work 1(B) ILO Conference, 95th Session, Geneva, 2002.

²⁹ See variously UDHR 1948 Art. 4; Child Rights Act 2003, S.12; ICCPR 1966, Art. 8; CRC 1990, Art.11.

³⁰ A A Adeyemi, “Children In Especially Difficult Circumstances in the Context of the United Nations and OAU Charter on the Rights of the Child” (1997)1 *NJPL* 16.

5. EXAMINING THE CHALLENGE OF LAW

It is the position of this paper that the challenge to the application of the rights of the girl-child in Nigeria is not the availability of legal provisions encapsulating these rights in addition to relevant procedures for redress in cases of violations but the challenge of the law is actually in the lack of knowledge of available law by persons whose rights are violated daily and by guardians of such persons where they are not of legal age. How many people in our rural areas who are grappling with basic needs of hunger and shelter realize that some attitudes and traditions are clear infractions of their rights? The knowledge and awareness of existing laws by those to whom they apply therefore become critical to their effective application because a person can only apply what he is aware of.

Secondly, the law creates a challenge to the application of the rights of the girl-child because of the remoteness of the law especially the Constitution to Nigerian citizens because of illiteracy, poor attitudes to social issues, location, improper education and socialization processes. Many persons especially the illiterate class is oblivious of the existence of any legal document called the Constitution of Nigeria and oblivious of its content which provides for certain rights and even protects same. They are more attuned to the customs which they have known all through their lives in the community; and except for the immediate neighbours they have had trading and other social contacts with are content with their limited world view as they know no better. In such areas redresses for perceived wrongs were immediately taken to the family head or community chief who will of course judge the matter based on the custom and traditions of the people and not on the basis of constitutional provisions. At this point it is not the right globally recognized as a human right that will guide the family head's or chief's decision but what the tradition has established.

The critical question that bogs the mind especially where questions of violations of the rights of the girl-child are concerned is; which law should actually apply to such a person in the circumstance? Is it their tradition or the Constitution? Should the family head faced with such a complaint apply the tradition or direct the complaint to other quarters? Who will compel such a chief to follow the overriding provisions of the constitution when he is the 'law' in the area? Who will enforce the constitutional provisions in the local communities where persons are generally answerable to customary and traditional codes, sanctions and practices in cases of deviant behaviour before recourse to modern law enforcement agencies?

Thirdly, the provisions of our Constitution³¹ which by the implication of establishing Customary and Sharia Courts of Appeal in each State of the Federation where they are relevant and in the Federal Capital territory (FCT) recognize the place of our customary and sharia laws as regulatory of the behaviour of persons who acknowledge them and to whom they apply. This constitutional recognition sometimes expose citizens to conflicts of traditional law and 'modern law', that is our constitution and subsidiary legislation which become somewhat farfetched to persons in the creeks for which the Niger Delta is known. This is so without prejudice to the supremacy of the constitution. So the application of the girl-child rights faces the challenge of which law is to be applied at a particular time. Is it the customary law or the provisions of the Constitution? This question is germane given the fact that customary law is closest to the people. It is part and parcel of their way of life; is known and recognized as regulatory of their behaviour and not an imposition. The difficulty in practice however arises from the fact that most rural dwellers to which the Constitution grants protection may not be aware of such protection and may lack the means to harness the provisions of the Constitution to attack violations condoned by custom and tradition especially as by its clear provisions the Nigerian Constitution states that:

³¹ SS. 280-284 & 275-279, Part II, Constitution of Nigeria (as amended) 1999 which for instance provides that "a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law."

*The Constitution is Supreme. And its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria... 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.*³²

The provisions of the Constitution on the fundamental human rights of the girl-child and avenues for redress in cases of violations may in some instances and in some locale actually appear to be too distant and remote to be very useful. For instance, where the Constitution provides for the right to freedom of expression, movement and freedom from discrimination, many customary laws applicable in the Nigeria qualify this constitutional right by either proscribing the girl-child's right to speak especially in public gatherings or allowing this right only with the permission of her male relatives. As Nwabue³³ laments "there are an array of laws to protect women but in reality the dirty song of exploitation, discrimination and violence continues unabated. Some of the laws are omnipotent on paper but are impotent in practice."

Fourthly, the length of time it takes to report violations from the rural parts of Nigeria such as the Niger Delta due to the difficult terrain or the North east with its security challenges remain a frustrating challenge to the enforcement of the rights of the girl-child in the country. Discriminations against the girl-child would have long been carried out or implemented that reversal may be difficult due to the peculiar location of the Niger Delta which is essentially waterlogged and undeveloped, thereby making reports of violations not worth the effort. Also, persons may be discouraged by the same cultural biases thus making the quest for judicial review and pronouncement of the illegality of such an action a mere waste of time and resources which may not even be available to the girl child or her parents. Establishing evidence of some violations especially those with cultural connotations and identifying particular offenders and violators may become problematic as sentiments such as the need to avoid confrontations and conflicts between families and even within the community because of the connectivity of persons may override one's personal desire for justice; and invariably therefore perpetuating such culturally biased violations.

Fifthly, the application of girl – child rights in the Nigeria faces the challenge of the law; not so much as to paucity of laws but that of harnessing and harmonizing the different provisions on the same subject matter in the different legislations dealing with the rights of the child. For instance, on the issue of legally approved marriageable age, a man in Akwa Ibom State who gives out his 17 year old daughter in marriage would be correct to do so under their State law which defines a child as a person under 16years whilst by the provisions of the Child Rights Act 2003 which defines a child as a person below 18 years, the marriage of a 17 year old girl would be offensive as a child marriage. In Rivers State,³⁴ the age of customary marriages is put at 18 years in tandem with the provisions of the Child rights Act 2003 and the Convention of the Rights of the Child. The Rivers State Law goes on to say that "a marriage or promise or offer of marriage between or in respect of persons either of whom is under the age of 18 years shall be void..."³⁵ So where a Rivers man of 20 years wants to marry an Akwa Ibom lady of 17years, the problem would be which law that would be applicable as what the law justifies in Akwa Ibom State is declared a nullity in Rivers State.

So the discrepancies as to who a child is and age of lawful marriage in the provisions of the Child Rights Laws of the States that have adopted the provisions of the Child Rights Act

³² Constitution of the Federal Republic of Nigeria 1999 (as amended); S (1) (3).

³³ U S F Nwabue, 'Education, Women and National Development' in Women Education & National Development in Africa by Federation of University Women of Africa, (2013)p.24 available at <http://www.biu.edu.ng/publications/> accessed on 02/05/16

³⁴ Age of Customary Marriage Law, Cap 5 Vol. 1, Laws of Rivers State of Nigeria 1999.

³⁵ S. 2 *ibid*.

2003 which are clearly inconsistent with the provisions of the Act do not make for uniformity and clarity as to the purpose and effectiveness of such legislation.

Sixthly, establishing who actually and legally is a girl-child is still open to debates. The definition of who can be called a child under our laws is also not uniform. So who can be described as a girl-child has no objective legal interpretation. It is worrisome that the supreme law of the land has created a lacuna in this area which means that certain persons who may locate themselves within this age bracket and so lay claims to established rights acknowledged as belonging to this group may actually be making false claims. Whilst the 1999 Constitution does not contain a definition of who a child is, the Labour Act defines the child as “a young person under the age of 12years;” and the Children and Young Person’s Act gives a different definition of a child being a person “under the age of 14years”. By the provisions of the African Charter on the Rights and Welfare of the child; “a child is a human being below 18years and the UN Convention on the rights of the Child defines a child to be a person below 18years except where in the law applicable to the child the age of majority is attained earlier. There is thus no agreement in the different laws dealing with the child and this makes enforcing of rights and establishing violations such as early and forced marriages difficult and subjective. There is thus the challenge of harmonizing the different customary laws on the marriageable age of the girl-child³⁶ and the provisions of extant written laws such as the Constitution, the Child Rights Act, the Convention on Child Rights, the African Charter on Rights and Welfare of the child. According to Iguh & Onyeka,³⁷ “the lack of a comprehensive definition that is applicable throughout the nation is an all encompassing handicap with regard to the just application of the provisions of the law.”

Another challenge of the law is that under our Constitution, issues bordering on children and by implication dealing with the girl-child, are located in the residuary legislative list making it the preserve of the States. This singular fact is the major factor against the proper application of the Child Rights Act 2003 as States are by law required to adopt and adapt same as State laws for the purpose of enforcement in States. It is trite that “every child has the inherent right to life and States shall ensure to the maximum child survival and development;”³⁸ every child has the right to parental care, protection and maintenance to the extent of the means of the parents or guardians.³⁹ The problem however is with the enforcement of these rights. Who will enforce these rights on behalf of the girl-child where she is unable to do so? Is it the State that has not enacted the relevant laws? By the provisions of the law, where these rights are denied the girl-child she has a right to enforce same in the Family court provided by the Act and to be established in each State of the Federation⁴⁰ with jurisdiction clearly stated in S. 151. Sadly to say however, this special court is non- existent in most States of the Federation. Enforcement is thus hampered by the inability or refusal of States to adopt the Child Rights Act as State law; and even States that have adopted the Act, have not been able to establish the family court; and where they have actually designated facilities as family courts, such facilities have not equipped with material and manpower thereby rendering them inoperative and non functional. It is only Lagos State that has established a functional family court to try matters that fall within the stated jurisdictions.

Under the Matrimonial Causes Act⁴¹ the child has the right to sue his parents for maintenance; but enforcing same against the same parents and guardians who ordinarily would

³⁶ Among the Communities of the Niger Delta, the marriageable age for the girl-child ranges from 15years to 18years depending on the community in question, the rate of development of the girl-child and other social factors like death of parents and general poverty of the family.

³⁷ N A Iguh & O Nosike, ‘An Examination of the Child Rights Protection and Corporal Punishment in Nigeria’ (1999) ACRWC, (Legislative and institutional Framework of Environmental Protection) 13 available at www.ajol.info accessed on Friday April 22, 2016.

³⁸ African Charter on the Rights & Welfare of the Child 1990, Art. 5.

³⁹ Child Rights Act 2003, S.14 (2).

⁴⁰ S. 149 *ibid*.

⁴¹ Matrimonial Causes Act 1970, Cap M 7, Vol. 8, Laws of the Federation of Nigeria, 2004; S.70(1)(2).

have taken action on her behalf to enforce the girl-child's rights become difficult. The challenge of the law becomes evident in some of our domestic laws which provide for the protection of the girl-child rights and at the same time import inherent discriminations against the girl-child. An example of this is the offence of rape under our laws which seek to protect the girl-child from sexual harassment and exploitation by male brute force, but however by the same provisions of our law require corroboration for an offence that is essentially private thereby making establishment of the offence of rape difficult. It also exposes the girl-child to further indignities, making it "a man's trial but a woman's tribulation" and invariably discourages the girl-child victim from reporting incidences of rape for fear of public ridicule and opprobrium.⁴² In addition there is a noticeable gender disparity in punishments prescribed for indecent assault under our laws.⁴³ This obvious imbalance in our laws creates the impression that women are inferior to men, making one to wonder what informed the conclusions reached by the framers of the law.

A major challenge to the application of the rights of the girl-child in Nigeria is the continued inability or refusal of the nation to domesticate some of the critical international legislations and protocols already ratified to give them the required force of law to ensure better enforcement. A typical example of this situation is the non domestication of the Convention on the Elimination of All Forms of Discriminations against women already ratified by the nation in 1985 and with the optional protocol signed in 1999. This instrument is clearly targeting the protection of the rights of women (the girl-child inclusive) from various forms of abuses and violence. It provides for instance, that "women have equal rights and the same advantages with men in matters relating to marriage and family relations. They also have the right to marriage and to freely choose their spouse, have equal rights during marriage and when marriage comes to an end. Also they have the right to share the same parental responsibilities as men in matters relating to their children."⁴⁴ However despite these provisions, our customs and traditions deny the girl-child her right to inherit property from her parents and even from her late husband. Also the continued demand and payment of bride-price on the girl-child upon marriage emphasize the unequal treatment to the females under customary law.

According to Igwe & Akolokwu,⁴⁵ "the custom of bride-price is a patriarchal socio-cultural construction and order which maintains the superiority of the man (husband) over the woman (wife). It negates the principle of equality and equity;" variously enunciated by our Constitution and the provisions of the Convention on the Elimination of all forms of discrimination against women 1979. This inequality in customary marriage is captured by Omoregbe,⁴⁶ who states that the payment of the bride-price transfers ownership of the children to be born during marital life from the girl's family to the family of the man.

Lamenting on this sorry state of non domestication of this Convention, Edeko & Anor⁴⁷ who described CEDAW "as the central international human rights instrument for the realization of equality between women and men," stated further that "the non domestication of the treaty by

⁴² N O Odiaka, 'The Concept of Gender Justice and Women's Rights in Nigeria: Addressing the Missing Link' (2013) *Journal of Sustainable Development Law and Policy*; Vol. 2, No 1, available at <http://www.ajol.info/index.php/jsdlp/article/view/122608> accessed on April 6 2016.

⁴³ See sections 353 & 360 of the Criminal Code which provide for the offence of unlawful and indecent assault with a lesser punishment of 2years for a man who assaults a female and for 3years when the victim is a man.

⁴⁴ Convention on the Elimination of all Discriminations Against Women 1979; S.16.

⁴⁵ O W Igwe & G O Akolokwu, 'Patriarchy and Its Violations of Human Rights of Women in Nigeria' (2015) Vol. 1(1)*International Law and Policy Research Journal*, 001-008; available online at <http://www.apexjournal.org>

⁴⁶ O O Omoregbe, 'Perspectives on urban and Rural Women in A O Obilade (ed.) *Women in Law* (Lagos: Southern University Law centre and Faculty of Law of University of Lagos 1993) p. 90.

⁴⁷ M Edeko & S O Idehen, 'Attaining Gender Equality in Nigeria through Constitutional Reform: The Kenya Experience' 2013, *Women Education & National Development in Africa* by Federation of University Women of Africa, 97-109 available at <http://www.biu.edu.ng/publications/> accessed on 02/05/16.

Nigeria after ratifying same hampers the growth of women;”and continuing Edeko stated that the “slow process of domesticating the CEDAW, and the Protocol to the African Charter on Human and Peoples rights on the rights of women in Africa and other human rights instruments that are gender specific in Nigeria is delaying women’s rightful enjoyment of their human rights.”

6. CONCLUSION & RECOMMENDATIONS

In Nigeria, especially as concerning the issue of rights of the girl-child, the problem of lack of uniformity of relevant laws is real. Determining the appropriate law which is to be applied in a given situation is still a challenge where our various customary laws importing ingredients inconsistent with the provisions of the Constitution of the country and so should be void to the extent of their inconsistency still remain valid and applied by various persons and institutions. Although customary law generally recognizes some political, economic and social rights of the girl-child; it only protects same to the extent that they maintain the subordinate and inferior role of the female to the male which remain a violation of the rights of the girl-child. Also her political right to leadership is not recognized in most parts of the country neither is her economic right to maximize her full potentials in accordance with principles and rights enunciated by local and international instruments permitted under customary law as the extent of her career, economic pursuits and even products of her enterprise are by custom under the control and prerogative of the male. In addition her social rights such as freedom to speak and move are highly censored and sometimes stifled by customary law. The instrumentality of law which should be deployed to curtail and restrain further violations is established in this work to still constitute a challenge making its efficacy debatable. To overcome this challenge it is recommended that the following strategies be adopted, namely:

- a) The amendment of the Constitution of the Federal Republic of Nigeria 1999 to expressly provide a definition of who a child is in Nigeria to ensure uniformity as to the age of a child in the country to remove the possibility of different States adopting different ages.
- b) Adoption and Implementation of the child Rights Act by all the States in Nigeria and proper socialization of children.
- c) The legislative review of all domestic laws discriminating against women in Nigeria.
- d) The enactment of specific gender based laws by the National Assembly to reduce the incidence of discriminations against the girl-child.
- e) Integrating women rights issues and gender education into the junior and secondary schools curriculum to ensure proper socialization. Gender Equality and Parity should form the basis of government policies.
- f) Increased and programmed enlightenment campaigns on constitutional rights by the Nigerian Orientation Agency (NOA) as well as advocacy by persons, government agencies and Civil society groups. Advocacy is required and recommended to change the minds of people about opinions and values long acquired and practiced.

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