EARLY CHILD BIRTH AS THE LEADING CAUSE OF OBSTETRIC FISTULA IN NIGERIA: A LEGAL PERSPECTIVE*

Abstract
Obstetric fistula is a phenomenon that affects women, not only in Nigeria but in the world at large. The primary risk factors for obstetric fistula include early child birth, lack of access to medical facilities, obstetric care and emergency caesarean section delivery, lack of adequately trained and skilled medical staff, lack of medical supplies and equipment, and poverty among others. This paper focuses on obstetric fistula as a major consequence of early marriage and early child birth. The paper asserts that obstetric fistula, which mostly occurs as a result of child marriage is a serious threat to the enjoyment of human rights guaranteed by international, regional and national instruments, especially the right to health and the right to be free from discrimination. This paper adopts the desk based research style using materials from textbooks, journal articles and internet sources. It recommends that the Child Rights Act, 2003 should be made enforceable throughout Nigeria, thereby abolishing child marriage. In addition, the government and other stakeholders should ensure the provision of free caesarean delivery for child brides where necessary as this will curb the high incidence of obstructed labour, which may prevent vesico-vaginal fistula. The government should also ensure free access to healthcare for victims of obstetric fistula as this will encourage them to go to the hospital for treatment.

Keywords: Early child birth, Obstetric fistula, leading cause, Law, Nigeria

1. Introduction
Obstetric fistula is one of the most serious and catastrophic childbirth injuries. It has been recorded that hundreds of thousands of women and girls in sub-Saharan Africa, Asia, the Arab States region, and Latin America and the Caribbean are estimated to be living with fistula, with new cases developing every year. Obstetric fistula is a complex problem that is related to personal and sociocultural conditions, it is a medical condition that involves an abnormal opening between the bladder and the vagina (vesicovaginal fistula), between the rectum and vagina (rectovaginal fistula) or both, leading to uncontrolled leakage of urine and/or feces. It results mostly from an unattended prolonged labor, obstetric fistula is a common health and social problem. Obstetric fistula is more prevalent in the northern part of Nigeria as child marriage and early pregnancy are more common there and is estimated as 2.11 per 1000 births in Nigeria. According to the United Nations Population Fund (UNFPA), the circumstances that perpetuate obstetric fistula include poverty, lack of access to health care, child marriage and early childbearing. Child marriage is a

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6 Note 1 above.
marriage in which one or both of the spouses are below the age of 18 years. UNICEF defines child marriage as a formal or informal union before the age of 18 years, which is a reality for both boys and girls, especially girls. It is mostly influenced by traditional, cultural and religious beliefs which have been passed from one generation to another. A 2015 report has shown that the prevalence of forced child marriage varies widely from one region to another in Nigeria, with figures as high as 76% in the North West region and as low as 10% in the South East. The practice of child marriage in Northern Nigeria is largely influenced by culture. Due to the pressure on children to marry young, 8% of Hausa-Fulani girls are married at the age of 15 years, and 78% are married at the age of 18 years. The negative reproductive consequences of child marriage include high levels of teenage pregnancies, teenage motherhood, psychological trauma, recurrent urinary tract infection, sexual dysfunction, chronic pelvic infection, prolonged obstructed labour, vesico-vaginal and recto-vaginal fistulae (VVF and RVF), physical, emotional and sexual abuses. The social consequences of obstetric fistula include divorce by husbands, abandonment and ostracism by affected women’s families and community. This is due to the uncontrollable leakage of urine and/or feces and the accompanying smell. Fistula also leaves women with few opportunities to earn a living, so worsens their poverty.

This paper examines the health condition known as obstetric fistula, considering the causes, consequences and treatment, highlighting the fact that child marriage is one of the leading causes and examines some human rights implications.

2. What is Obstetric Fistula?

Obstetric fistula is a hole between the vagina and rectum or bladder that is caused by prolonged obstructed labour, leaving a woman incontinent of urine or feces or both which often have a profound effect on the patient’s emotional well-being. According to Mary Ellen Stanton, Senior Reproductive Health Adviser, Bureau for Global Health, women who suffer from obstetric fistula also suffer in many cases from neurologically damage that can affect their ability to walk. Obstetric fistula is caused by childbirth, or results from violence of rape, it cause complications like; hygiene problems, stool/gas that leaks through the vagina, irritated or inflamed skin around the vagina or anus, urinary tract infections that keep coming back, and could be life threatening if not treated properly. The result of this is uncontrolled leakage of urine/gas/feces through the vagina. The condition may be further complicated by infection, rash, vaginal ulcers, scarring and stillbirths.

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3. Causes of Obstetric Fistula

There are different causes of obstetric fistula in Africa; the most common cause of fistulas is childbirth and obstructed labor that is left unrelieved, which is mostly caused by immaturity of the reproductive organs. In addition, those who are undergoing radiation therapy are at greater risk for a variety of fistulas. Pierre et al in their work identified one of the causes of obstetric fistula to be ischemia of the soft tissue between the vagina and the urinary tract or between the vagina and the rectum by compression of the fetal head. The second most common cause of obstetric fistula is the direct tearing of the same soft tissue during precipitous delivery or obstetric maneuvers, and elective abortion. Health experts have also identified child marriage as one of the leading cause of serious health risks for women in the developing world, leading to lasting reproductive health problems such as obstetric fistula.

Unrelieved obstructed labour is one of the major causes of Obstetric Fistula. This occurs when a woman encounters a prolonged, obstructed labour, which requires an emergency C-section. The baby does not come out after prolonged pushing probably because the baby is too big for the mother’s pelvis or the baby is not well positioned to come out of the woman. The continuous pressure on the soft tissue of the woman’s womb due to prolonged pushing for days greatly reduces the flow of blood, the lack of blood flow causes injury to the soft tissues surrounding the vagina, bladder and rectum, the soft tissue dies and creates a hole (fistula) through to the bladder or rectum which causes her to leak urine or feces through her vagina for the rest of her life.

In the developed countries of the world, when labour prolonged, a woman would normally be in or near a hospital where a quality C-section procedure is readily always available to patients who need it. In Africa, it may be difficult to access medical facilities, obstetric care and emergency caesarean section delivery, lack of adequately trained, skilled medical staff, lack of medical supplies and equipment, poverty, coupled with malnutrition contribute to the high prevalence of obstructed labour. Symptoms of obstetric fistula include abnormal vaginal discharge (pus, urine and feces); recurrent vaginal and urinary tract infection; painful sexual intercourse; genital ulceration and sores. In most situations, the baby is stillborn. The death of the baby and the inability to conceive and carry a child, with the fistula stigma results to emotional damage. From the foregoing, it can be seen that if obstetrics fistula is not properly managed, it will have both physical and psychological effect on females.

20. ibid
prevent obstetric fistula due to inadequate transportation to the nearest medical facility and poverty. Sometimes, the woman may make it to the hospital but not get any immediate attention from hospital staff. This delay in treatment until it is too late could have catastrophic consequences. It might even be one of the causes of obstetric fistula. The hospital might have a shortage of essential medical supplies and surgical equipment, or even electricity and running water. Some staff could lack skills and might not assess the need for a C-section in time or at all.

Nutrition is a principal cause of obstetric fistula in countries where insufficient nutrition leads to poor skeletal development in females, which causes the pelvic region to be malformed or too small for childbirth. Without physicians to intervene and perform assistance or C-Sections, fistula’s can develop and cause severe complications or even death.

4. Treatment of Obstetric Fistula
Some fistulas may heal without treatment. If it is a small bladder fistula, the doctor might put a small tube called a catheter into the bladder to drain the pee and give the fistula time to heal by itself. The doctor might make use of natural protein to seal or fill the fistula. Reconstructive surgery can usually repair a fistula. Unfortunately, the women and girls affected by this injury often do not know that treatment is possible, cannot afford it or cannot reach the facilities where it is available. Surgery will be required for the complex ones depending on the type of fistula. It could be laparoscopic, where the doctor makes small cuts (incisions) and uses cameras and tools, or it could be abdominal surgery, where one gets a regular incision with a tool called a scalpel. The doctor might sew a special patch over the fistula, or take tissue from the body to close the fistula, or fold a flap of healthy tissue over the fistula, or fix the muscles of the anus if they are damaged and the doctor may also prescribe an antibiotic to treat infection caused by fistula. The aim of treatment for obstetric fistula is to close the hole surgically, restore normal sexual life and fertility, ensure safe delivery in the future, and reintegrate the patient back into the community.

Where a woman with a fistula is taken to the hospital on time while still in labor, and trained medical personnel are available in the hospital, it is possible to close fistula spontaneously by catheterization to avoid urine flowing through the fistula. Also, fistula can be prevented in women with prolonged labor by continuous catheterization and administration of antibiotics postpartum. The diagnosis of obstetrical fistula is usually not made until after the baby is born in underdeveloped countries. This is a predicament, since this is one cause of fetal and maternal death.

countries that have medical outreach, the diagnosis can be reached by a criteria based method. Here are some of the criteria:31

   i. Ask if the female leaks urine on a constant basis?
   ii. If there is urine leakage, did it begin after childbirth?
   iii. Did the female ever have a history of prolonged childbirth?
   iv. Can urine be pushed out when placing pressure over the bladder?
   v. Dye injected into the bladder through a catheter will stain gauze in the vagina?
   vi. A pelvic examination can be performed and the hole can sometimes be felt?
   vii. The patient may have drop-foot, hip contractures or paralysis?
   viii. Stool can be seen leaking from the vagina?

It is clear from the above that obstetric fistula is a serious threat to the enjoyment of human rights guaranteed by international, regional and national instruments. Since it has causes which are purely based on societal and cultural influences, it is possible to reduce the incidence of fistula by putting an end to some of the practices which trigger it, such as child marriage.


Child marriage is one of the major causes of obstetric fistula, as child brides promptly commence wifely duties once they are married off, and most often than not, are forced into child conception. Child marriage has various human rights implications; the major right violated by child marriage in causing obstetric fistula is the right to health, including sexual and reproductive health. Others include the right to bodily integrity, right to be free from discrimination, In the international context, health was first recognized as a human right by the Universal Declaration of Human Rights (UDHR);32 a more comprehensive expression of this right was given in Article 12 of the Covenant on Economic, Social and Cultural Rights (ICESCR),33 and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).34 Article 12 of the ICESCR recognizes the right of everyone to ‘the enjoyment of the highest attainable standard of physical and mental health.’ States Parties are therefore required to adopt measures to ensure the full realization of the right to health, especially through the reduction of infant mortality; improvement of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases; among others.35 According to Vesa,36 Article 12 could be interpreted to impose a duty on State Parties to protect women’s physical and mental health and provide domestic remedies when their health is in danger, for example, due to sexual violence, including child marriage. General Comment No. 14 (GC14)37 gives a better understanding and interpretation of Article 12 of the ICESCR. Paragraph 3 of GC 14 emphasizes the fact that the right to health shares a symbiotic relationship with other human rights contained in the International Bill of Rights, including the rights to human dignity, life, non-discrimination, equality, privacy and the prohibition against torture, among others. According to Paragraph 8, the right to health contains both freedoms and entitlements. The right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture; are listed as the freedoms while the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health is listed as the entitlements.

32 Adopted by the United Nations (UN) General Assembly resolution 217A (111) of 10th December, 1948.
33 Adopted by the UN General Assembly resolution 2200A of 16th December, 1966.
34 Adopted by the UN General Assembly resolution 3180 of 18th December, 1979.
35 ICESCR, Article 12.
On the issue of discrimination against women, the CESCR suggests that it can be eliminated through the development and implementation of a comprehensive national strategy for promoting women’s right to health throughout their life span. According to the CESCR, the main purpose of the strategy should be ‘reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.’ The importance of undertaking ‘preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights’ is also stressed.

Under Paragraph 35, States are under the obligation to ‘ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family planning; to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence’. Gender-based expressions of violence may include other forms of cultural practices which endanger the life and health of women, including child marriage. The right to health is said to be violated when State Parties fail to take all measures to prevent infringement of the right, including failure to protect women against violence or to prosecute perpetrators and the failure to discourage the continued observance of harmful traditional medical or cultural practices. Similarly, Article 24 of the Convention on the Rights of the Child (CRC), 1989 places a duty on State Parties to recognize the right of the child to the enjoyment of the highest attainable standard of health; to endeavor to implement appropriate measures to diminish infant and child mortality; provide medical assistance; and abolish traditional practices prejudicial to the health of children. Child marriage sometimes affects the health of young girls as it may lead to early child birth. Early child birth often leads to higher risks of complications and reproductive health problems for young girls.

According to the CRC Committee, ‘all policies affecting children’s health should be grounded in a broad approach to gender equality that ensures young women’s enjoyment of all human rights including the recognition of equal rights related to sexual and reproductive health and the elimination of all forms of sexual and gender-based violence’. Children’s right to health contains a set of freedoms and entitlements, including the right to control one’s health and body and sexual and reproductive freedom to make responsible choices. The CRC Committee notes that children require information and education on all aspects of health, including sexual and reproductive health education, which entails self-awareness and knowledge about the body, sexual health and wellbeing, responsible sexual behavior, and sufficient knowledge regarding reproductive health and prevention of gender-based violence. This shows the interrelation of the right to health with other human rights.

Though the CRC does not expressly mention child marriage, other instruments supplementing the CRC have mentioned it. The Human Rights Council (HRC) recognizes that early/forced marriage is a harmful practice that violates and abuses human rights and prevents individuals from living their lives free from all forms of violence; and has adverse consequences for the enjoyment of human rights, such as the right to education and the right to the highest attainable standard of health, including sexual and reproductive health. The Council notes as follows:

Child, early and forced marriage constitutes a serious threat to multiple aspects of the physical and psychological health of women and girls, including but not limited to their sexual and reproductive health, significantly increasing the risk of early, frequent and

38 Ibid Paragraph 21.
39 Ibid Paragraph 51.
40 Adopted by UN General Assembly resolution 44/2 of 20th November, 1989 and entered into force 2nd September, 1990.
42 UN Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health.
43 Ibid.
unintended pregnancy, maternal and newborn mortality and morbidity, obstetric fistula and sexually transmitted infections, including HIV/AIDS, as well as increasing vulnerability to all forms of violence, and every girl and woman at risk of or affected by these practices must have equal access to quality services such as education, counselling, shelter and other social services, psychological, sexual and reproductive health-care services and medical care.\textsuperscript{45}

The HRC urges State Parties to enforce laws and policies aimed at preventing child marriage and ensure that marriage is entered into only with the informed, free and full consent of the intending spouses and that men and women have equal rights in all matters pertaining to marriage.\textsuperscript{46} Free and full consent connotes total and complete approval, devoid of any form of coercion or undue pressure. The HRC further requires State Parties to promote and protect the human rights of all women and girls, including their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence; and to adopt laws, policies and programmes that promote enjoyment of all human rights, including reproductive rights.\textsuperscript{47}

Government through the provision of safe shelters, counseling, and organizing empowerment programmes can help to support women and girls who have been made to go through child marriage.\textsuperscript{48} This is a very important provision as the obligation is not limited to putting an end to the act, but also requires support to be given to women and girls who have been subjected to child marriages. The provisions of the CRC and the supplementing general comments provided are indeed essential for women and girls. It is therefore important for State Parties to ensure the implementation of the rights in the CRC, in order to reduce the susceptibility of women and girls to violations, especially pertaining to child marriage.

At the regional level, the right to health and by extension sexual and reproductive health is guaranteed by practically all the regional instruments. For instance, Article 16 of the African Charter on Human and People’s Rights (ACHPR), 1981\textsuperscript{49} guarantees the right to the enjoyment of the best attainable state of physical and mental health and requires states to take necessary steps to protect the health of their people. Also, Article 14 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Women’s Protocol), 2003\textsuperscript{50} requires States Parties to ‘ensure that the right to health of women, including sexual and reproductive health is respected and promoted’, including ‘right to control their fertility’ and ‘the right to decide whether to have children, the number of children and the spacing of children’.

6. Child Marriage, a Form of Discrimination against Women

Article 1 of CEDAW defines discrimination against women as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’ This definition encompasses enjoyment of all classes of human rights, including the right to sexual and reproductive health, as a subsect of the right to health. Article 5(a) provides that State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and woman. Coomaraswamy and Kols argue that without strong state measures, it is doubtful that religious and cultural practices constituting violence against women will be eliminated.\textsuperscript{51} In effect, discriminatory cultural practices such as child marriage, female genital mutilation and other forms of domestic violence should be

\textsuperscript{45}Ibid, Preamble.
\textsuperscript{46}Ibid, Paragraph 3.
\textsuperscript{47}Ibid, Paragraph 12.
\textsuperscript{48}Note 52 above, paragraph 18.
\textsuperscript{49}Adopted by the Organisation of African Unity (OAU) on 27th June, 1981 and entered into force 21\textsuperscript{st} October, 1986.
\textsuperscript{50}Adopted by the African Union on 11\textsuperscript{th} July, 2003 and entered into force 25\textsuperscript{th} November, 2005.
Article 16 puts equal rights in marriage in the proper perspective, highlighting some elements of SRH rights. Article 16(1)(a)-(b) of CEDAW enjoins State Parties to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular to ensure that marriage is entered on a basis of equal rights of men and women to freely choose a spouse and to enter into marriage only with free and full consent. In its General Recommendations No. 21 of 1991, the CEDAW Committee stated as follows:

A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties’ reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman’s marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.

The right of a couple to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights is expressed in Article 16(1)(e). This provision does not exclude the condition of equality, as the basis of CEDAW is equality of the rights of both men and women. In effect, both the husband and the wife can exercise the right to determine the number and spacing of their children. This is contrary to the belief in African society that the husband is the head of the home and must take decisions on all matters relating to the home. Since pregnancy and motherhood may have physical and mental effects on a woman, she should be party to the decision of the number and spacing of her children.

A very important aspect of Article 16 is the provision on child betrothal and marriage, and the necessity for legislative actions to stop the practice. Article 16(2) provides that the betrothal and the marriage of a child shall have no legal effect; and that all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. To prevent health hazards such as obstetric fistula, in the form of vesico-vaginal fistula or recto-vaginal fistula, child marriage must be completely phased out. The CEDAW Committee stated that due to the amount of responsibility people assume when they marry, marriage should not be permitted before they have attained full maturity and capacity to act.

According to the CEDAW and CRC Committee, State Parties should ‘establish legal structures to ensure that harmful practices are promptly, impartially and independently investigated, that there is effective law enforcement and that effective remedies are provided to those who have been harmed by such practices’. The CEDAW and CRC Committee however note that the enactment of legislation alone is not enough to combat harmful practices and suggest that legislation must be supplemented with a comprehensive set of measures to facilitate its implementation and enforcement, such as modes of monitoring and evaluation of results achieved through legislations. This is also emphasized by the CEDAW Committee under GC 14. Paragraph 22 enjoins State Parties to adopt adequate measures to eliminate harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, among others.

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53 Ibid
55 Ibid, Paragraph 40.
With regard to marriage, Article 6 of the Women’s Protocol provides that ‘State Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage’. Necessary legislative measures should be put in place to ensure that ‘no marriage shall take place without the free and full consent of both parties’ and ‘the minimum age of marriage for women shall be 18 years’. Child marriage often occurs when a girl is below the age of 18 years and without her consent. The express wording of Article 6 is to the effect that marriage should be entered into freely and at the attainment of the age of majority. Similarly, Article 21(1) of the African Charter on the Rights and Welfare of the Child (ACRWC), 1990 requires State Parties to ‘take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child’. This should be done by eliminating customs and practices that are injurious to the health or life of the child and discriminatory to the child on grounds of gender or other status. Thus, Article 21(2) requires State Parties to take all measures, including legislative action, to prohibit child marriage and betrothal; and to set the minimum age of marriage at 18 years. This is an express bar against child or forced marriages. However, the requirement of consent is still missing from the provision.

7.0 Legislation dealing with Child Marriage in Nigeria

Protection of girls from being subjected to child marriage can be linked to various fundamental rights in Chapter IV of the 1999 Constitution. Section 33 provides that every person has a right to life, and no one shall be deprived intentionally of his right to life. Therefore, child marriage resulting in obstetric fistula, which threatens the lives of women and girls represent a potential infringement of the right to life. Section 37 guarantees the right to privacy of citizens to their homes, correspondence, telephone conversations and telegraphic communications. This section recognizes the importance of individual privacy and protects it. Freedom of choice as to when and who to marry is part of the right to privacy and persons who encourage child marriage are violating this right.

Child Rights Act 2003
The Child Rights Act (hereafter called CRA) represents the domestication of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Prior to the enactment of the CRA, various issues were raised, including the fact that since it is based on the CRC and the ACRWC, it would introduce values and norms foreign to the diverse societies in Nigeria. It has been noted that the CRA, to a large extent replicates the provisions of the CRC and the ACRWC. Section 1 provides that the best interest of the child must be the primary consideration in every action concerning the child. This is the bedrock of the provisions of the CRA. Section 277 defines a child as a person under the age of 18 years. Section 277 also defines the age of majority as the age at which a person attains the age of 18 years. Thus, for the purposes of the CRA, a child in every respect is a person below 18 years. The CRA recognizes all the fundamental rights provided in Chapter IV of the 1999 Constitution and makes it applicable to children. Thus, in addition to the rights discussed above, children have specific rights enshrined in the CRA.

Section 21 of the CRA provides that ‘no person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever’. Section 22 also prohibits betrothal of a child to any person. By virtue of section 23, a person who marries a child, or to whom a child is betrothed, or who promotes the marriage of a child, or who betroths a child, commits an offence and is liable to a fine.

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56 Article 6(a)-(b) Women’s Protocol.
58 Cap. 50, LFN 2004.
59 This is so because the CRA is essentially based on the best interest of the child principle which is found in both the CRC and the ACRWC.
61 Ibid 269.
62 Section 3(1) of the CRA.
or imprisonment or to both fine and imprisonment. Bazza makes a distinction between early marriage and forced marriage.\textsuperscript{63} He argues that in Nigeria, early marriage occurs in the form of child betrothal, which involves marrying out a girl child immediately after she is born; while forced marriage, otherwise referred to as ‘induced marriage’ is marrying out a girl against her wish.\textsuperscript{64} Whether it is early marriage or forced marriage, the position of the CRA remains the same.

It is instructive to note that matters relating to children are not in the Exclusive Legislative list, containing matters over which the National Assembly may legislate. Thus, even though the CRA prohibits child marriage and betrothal, before it can be enforceable in a State in Nigeria, it has to be enacted under the State’s laws. Item 61, Part 1 of the Second Schedule to the 1999 Constitution puts the formation, annulment and dissolution of marriages under Islamic Law and Customary Law, beyond the powers of the National Assembly. Under section 7(a) of the 1999 Constitution, the House of Assembly of a State has powers to make laws with respect to any matter not included in the Exclusive Legislative list set out in Part 1 of the Second Schedule to the 1999 Constitution. In effect, since child marriages are primarily conducted under Islamic and Customary Law, for it to be validly prohibited across all States of Nigeria, the House of Assembly of each of the thirty-six States must domesticate the Childs Rights Act, 2003. Egede notes that there has been a strong opposition to the re-enactment of the CRA in some Houses of Assembly, particularly in the Northern part of Nigeria as it is their view that the CRA is contrary to their beliefs and cultural values.\textsuperscript{65} This is presumably because once a person marries a person who is below 18, the marriage is presumed to make her an adult, the husband is permitted to do whatever he likes; and whatever transpires in the marriage is seen as consensual.

Section 12(2) of the 1999 Constitution allows the National Assembly to make laws for the Federation, or any part of it, in respect of matters not included in the Exclusive Legislative list. This implies that the National Assembly may make laws regulating matters such as Islamic and customary marriages which fall under the concurrent list. The downside of this provision is that such a law cannot be enacted unless it is ratified by a majority of all Houses of Assembly in the Federation.\textsuperscript{66} Thus, the provisions of the Child Rights Act can only be made enforceable in States in Nigeria if the majority of all Houses of Assembly ratify it; out of the 36 States in Nigeria, only 12 States have not re-enacted the CRA.\textsuperscript{67}

Jigawa State is the only Northern State which has re-enacted the CRA in Nigeria. The Jigawa State Child Rights Law, 2006 (hereafter CRL) is essentially a replication of the CRA, except for certain modifications. For instance, section 2 of the CRL defines a child as a person under the age of puberty. The age of puberty is defined as the age at which a person is physically and physiologically capable of consummating marriage.\textsuperscript{68} Thus, it is immaterial whether a girl has attained the age of 18 years or not. Section 21(1) also provides that no person under the age of puberty is capable of contracting a valid marriage, and that a marriage so contracted is null and void, and of no effect whatsoever. Where the question of puberty is an issue, the court is to determine such according to the circumstances of each case.\textsuperscript{69} In effect, the CRL will not be contravened if a child who has attained the age of puberty is given out in marriage. Puberty may be defined as ‘the age at which a young person is physically capable of sexual reproduction, mostly between the ages of 9 and 13 for girls’.\textsuperscript{70} This age also marks the beginning of menstruation\textsuperscript{71} and the development of the reproductive organs of a girl.\textsuperscript{72}

\textsuperscript{64}Ibid.
\textsuperscript{65}Egede (note 62 above) 271.
\textsuperscript{66}Section 12(3) of the 1999 Constitution.
\textsuperscript{68}Section 2 of the CRL.
\textsuperscript{69}Section 21(2) CRL.
Menstruation is mostly heralded by various psychological reactions, including depression, irritability, anxiety, among others. At the commencement of puberty, a girl just begins to discover herself. Certainly, it is wrong for such a girl to take on the responsibility for catering for a household, along with performing conjugal duties expected of a married woman.

It may be implied from the above that in terms of the CRL of Jigawa State, a nine year old girl who is most likely going through puberty and general self-discovery, may be given out in marriage without contravening the law. Ogunniran posits that apart from the fact that early marriage hinders the education and self-development of girls; the health implications of such marriages are worrisome.

Other Laws relevant to child marriage

Regarding marriage and consent, the Marriage Act does not make consent of the intending partners a condition for a valid marriage. Section 18 merely provides that if either party to a marriage is under 21 years of age, the consent of the father (or where he is absent, the consent of the mother or guardian) must be obtained before a marriage can be validly contracted. However, section 3(1)(d) and (e) of the Matrimonial Causes Act provide that a marriage is void where the consent of one of the parties is not a real consent because it was obtained by duress, fraud or where either of the parties is not of marriageable age. Since both Acts fail to provide a minimum age of marriage, recourse may be had to the definition provided in the CRA, namely 18 years. Armstrong argues that forcing a girl who is under the age of 18 years who is incapable of giving free or informed consent, into marriage and thereby denying her the liberty to leave the union in exercise of her will amounts to slavery and servitude which is contrary to the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015. Section 13(1) prohibits all acts of human trafficking. Section 13(2) goes further by stating the actions which may amount to trafficking. Section 13(2) provides that any person who recruits, transports, transfers, harbours or receives another person by means of threat or use of force or other forms of coercion; abduction, fraud, deception, abuse of power or of a position of vulnerability; or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of that person is guilty of an offence and is liable on conviction to imprisonment for a term of not less than two years and to a fine.

Section 13(4)(b) also provides that ‘the recruitment, transportation, transfer, harbouring or receipt of child for the purpose of exploitation, shall be considered trafficking in persons even if this does not involve any of the means set forth in the definition of trafficking in persons’. This provision may be interpreted to cover child abduction for the purpose of forced marriage. A recent case of abduction which is currently a subject of adjudication before the Federal High Court sitting in Yenagoa, a city in Bayelsa State of Nigeria, is that of Yunusa Dahiru, a 27 year old man who

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71 Menstruation is ‘the process in a woman of discharging blood and other material from the lining of the uterus at intervals of about one lunar month from puberty until the menopause, except during pregnancy.’ See ‘Menstruation’ available at https://www.google.co.za/search?sourceid=chrome-psyapi2&ie=UTF-8&q=what+is+menstruation&oq=what+is+menstron&rlz=1C1VSNC_enNG573NG575&aq=chrome.1.69i57f0j5.10499j0j7&bav=on.2%2Cor.&biw=1366&bih=628&expd=1&rct=j&hovrd=1458731699073000 accessed on 23rd March, 2019.
72 Matlin (note 72 above) 110-111.
73 Ibid 113.
75 Cap M6 LFN 2004.
76 Cap M7 LFN 2004.
allegedly abducted, and forcefully married Ese Oruru, a 14-year-old girl after he had her converted to Islam.\textsuperscript{78} According to newspaper reports,\textsuperscript{79} Ese, originally from Bayelsa State in the southern part of Nigeria, was abducted in August 2015 by Yunusa and taken to Kano State, in the northern part of the country where she was forcibly converted to Islam and renamed ‘Aisha’. After her release, she was found to be five months pregnant. Yunusa was thereafter arraigned on a five count charge of abduction, child trafficking, illicit sex, sexual exploitation and unlawful carnal knowledge contrary to certain provisions of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and the Criminal Code.

8. Conclusion and Recommendations

Obstetric fistula is a social concern and a very serious health issue, which has various causes including child marriage. The provision of adequate nutrition for children to ensure proper development, providing prenatal care as early as possible for pregnant women and watching over the delivery of infants to ensure shorter and safer labors are paramount in the reduction of obstetric fistula. In addition, if the practice of child marriage is curbed, the risk of experiencing obstetric fistula may reduce. International, regional and sub-regional organizations have through various conventions adopted instruments to protect women and girls against child marriage. It is therefore left for State Parties to ensure the enjoyment of the rights provided in these instruments. In the light of the above study, there should be implementation of existing laws. The laws regarding age of marriage should be properly enforced and there should be uniformity as it can help to ensure that young women are of sufficient age and maturity to be able to voluntarily consent to marriage, in order to avoid the physical, psychological and the various health risks attached to early marriage and early child bearing. The Child Rights Act should be made applicable throughout Nigeria, or matters relating to children should be placed in the Exclusive List in the 1999 Constitution so that only the National Assembly can legislate on such matters and the laws will be applicable throughout Nigeria. A national survey (that includes a physical examination giving more accurate data about the number of fistula patients) should be conducted by the government and other state actors, but this survey should be done region by region to determine the number of women suffering from fistula in each region, based on this classification government should make provision for treatment in these regions and follow-ups and reports should be published. Access to skilled care, including surveillance during labour, is important in preventing obstetric fistula. Whether a woman delivers at home or in a health facility, there is time to detect prolonged labour and take action before the mother suffers continued pressure on soft tissues that leave her urinary, intestinal and reproductive systems damaged. There should be provision of free caesarean delivery for child brides where necessary as this will curb the high incidence of obstructed labour, which may prevent vesicovaginal fistula. Government should ensure free access to healthcare for victims of obstetric fistula as this will encourage them to go to the hospital for treatment. Public awareness should be created that urges women to postpone marriage and childbearing until after teenage and community awareness about the problem of prolonged labour, and preparedness for emergencies, will reduce the number of Obstetric Fistulas. Prevention is the key to ending fistula. Ensuring skilled birth care at all births and providing timely and high quality emergency obstetric care for all women who develop complications during delivery would make fistula rare occurrence in developing countries as it is in the industrialized world. Additionally, providing family planning to those who want it could significantly reduce maternal disability and death. Counseling and other forms of support such as livelihood skills, literacy, job training and health education may also be necessary to help women reintegrate into their communities, rebuild their lives, and regain their dignity and hope after surviving fistula. Follow-up is also crucial for all women and girls who have had fistula repair surgery, helping to ensure they do not develop the injury again during subsequent births, and helping to protect the survival and health of both mother and baby. Women and girls who have been deemed inoperable or incurable also require special and sustained attention and support.
